

# **CAPACITY REMUNERATION MECHANISM (CRM)**

## **FUNCTIONING RULES (Version 3)**

### **Proposal from Elia**

February 1st 2023

<b>1</b>	<b>INTRODUCTION</b>	<b>11</b>
<b>2</b>	<b>GENERAL PROVISIONS</b>	<b>14</b>
2.1	ADOPTION, APPROVAL AND AMENDMENT	14
2.2	INTERPRETATION	14
2.3	COSTS RELATED TO THE CRM ACTOR'S PARTICIPATION IN THE CRM OR LCT	15
2.4	CONTRACTUAL RELATIONSHIP WITH OTHER MARKET PARTIES	15
2.5	COMMUNICATION	15
2.5.1	NOTIFICATIONS	15
2.6	CRM IT INTERFACE AND IT REQUIREMENTS	16
2.6.1	Preliminary access to the CRM IT Interface	17
2.6.2	Prequalification module of the CRM IT Interface	17
2.6.3	Financial security module of the CRM IT Interface	18
2.6.4	Auction module of the CRM IT Interface	18
2.6.5	Secondary market module of the CRM IT Interface	18
2.7	DATA ACCURACY	19
2.8	CONFIDENTIALITY	19
2.9	DATA PROTECTION	20
<b>3</b>	<b>DEFINITIONS</b>	<b>22</b>
3.1	GENERAL DEFINITIONS	22
3.2	ABBREVIATIONS	39
<b>4</b>	<b>SERVICE TIME SCHEDULE</b>	<b>41</b>
4.1	INTRODUCTION	41
4.2	KEY MILESTONES	42
4.3	TIMINGS PER OPERATIONAL PROCESS	45
4.3.1	Prequalification Processes	45
4.3.2	Financial Security	53
4.3.3	Auction & pre-delivery control	54
4.3.4	Secondary Market	55
4.3.5	Availability Monitoring	57
<b>5</b>	<b>PREQUALIFICATION PROCESSES</b>	<b>59</b>
5.1	INTRODUCTION	59
5.2	PREQUALIFICATION PROCESS REQUIREMENTS	59
5.2.1	Preparation phase	59

5.2.2	Requirements prior to the submission of a Prequalification File	59
5.2.3	Requirements for the submission of the Prequalification File	60
5.3	REVIEW OF THE INFORMATION SUBMITTED	71
5.3.1	Application form	72
5.3.2	Prequalification File	72
5.3.3	Audits	74
5.4	VOLUMES DETERMINATION	75
5.4.1	Nominal Reference Power	75
5.4.2	Opt-out Volume	82
5.4.3	Reference Power	85
5.4.4	Eligible Volumes	85
5.4.5	Remaining Eligible Volumes	86
5.4.6	Secondary Market (Remaining) Eligible Volume	87
5.4.7	Fast Track Volume	87
5.5	PREQUALIFICATION RESULTS NOTIFICATION	88
5.6	EVOLUTION IN TIME OF THE INFORMATION SUBMITTED	89
5.6.1	Renewal of CMU's Prequalification File	89
5.6.2	Automatic updates performed by ELIA	90
5.6.3	Updates performed by the CRM Actor	90
5.7	NOTIFICATION TO THE CREG AND THE FEDERAL PUBLIC SERVICE ECONOMY	94
<b>6</b>	<b>AUCTION PROCESS</b>	<b>97</b>
6.1	INTRODUCTION	97
6.2	BID SUBMISSION	97
6.2.1	Bid compliance conditions	98
6.2.2	Bid submission via CRM IT Interface	100
6.3	AUCTION CLEARING	102
6.3.1	Adaptations and corrections of the Demand Curve	102
6.3.2	Grid constraints	105
6.3.3	Auction clearing methodology	108
6.3.4	Bid remuneration methodology	110
6.4	AUCTION RESULTS	111
<b>7</b>	<b>CAPACITY CONTRACT SIGNATURE</b>	<b>113</b>
<b>8</b>	<b>PRE-DELIVERY CONTROL</b>	<b>115</b>

8.1	INTRODUCTION	115
8.2	PRE-DELIVERY PERIOD DEFINITION	115
8.3	PRE-DELIVERY CONTROL MODALITIES	115
8.3.1	Moments of control	116
8.3.2	Total Contracted Capacity	116
8.3.3	Permit reports	116
8.3.4	Quarterly reports	117
8.4	PRE-DELIVERY CONTROL PROCESS	119
8.4.1	Step 1 - Pre-delivery Obligation	119
8.4.2	Step 2 - Missing Volume	120
8.4.3	Step 3 - Pre-delivery control penalties	123
8.4.4	Step 4 - Pre-delivery activity reports issuance and contestation	125
8.5	DELAYS ON INFRASTRUCTURE WORK	127
8.5.1	Trigger	127
8.5.2	Operational procedure applicable	127
8.5.3	Participation to Secondary Market	128
8.5.4	Penalties	128
8.6	PROCESS TO CHANGE FROM ADDITIONAL CMU OR VIRTUAL CMU TO EXISTING CMU	128
8.6.1	From Additional CMU to Existing CMU	128
8.6.2	From Virtual CMU to Existing CMU(s)	129
8.7	PROCESSES TO FOLLOW PRIOR THE START OF ANY TRANSACTION PERIOD	129
8.7.1	Declared Day-ahead Price	130
8.7.2	NEMO	130
<b>9</b>	<b>AVAILABILITY OBLIGATION</b>	<b>131</b>
9.1	INTRODUCTION	131
9.2	GENERAL PROVISIONS	131
9.3	UNAVAILABLE CAPACITY	131
9.4	AVAILABILITY MONITORING	133
9.4.1	AMT Moments	133
9.4.2	Declared Market Price and Required Volume for CMUs without Daily Schedule	135
9.4.3	Obligated Capacity and Available Capacity determination	141

9.5	AVAILABILITY TESTS	155
9.5.1	Modalities	155
9.5.2	Determination of the Obligated Capacity and the Available Capacity	157
9.6	MISSING CAPACITY AND UNAVAILABILITY PENALTY	159
9.6.1	Determination of Missing Capacity	159
9.6.2	Unavailability Penalty calculation	160
9.6.3	Notification and Contestation	163
9.6.4	Penalty escalation procedure	164
<b>10</b>	<b>SECONDARY MARKET</b>	<b>167</b>
10.1	INTRODUCTION	167
10.2	GENERAL PROVISIONS	167
10.3	CONDITIONS FOR SECONDARY MARKET PARTICIPATION	169
10.3.1	Conditions for Parties on the Secondary Market	169
10.3.2	Conditions for Exchanges	169
10.3.3	Conditions for CMUs	170
10.4	SECONDARY MARKET TRANSACTIONS REQUIREMENTS	170
10.4.1	Secondary Market transaction external ID	172
10.4.2	Seller of an Obligation	172
10.4.3	CMU of the Seller of an Obligation	172
10.4.4	Transaction of the Seller of an Obligation's CMU	172
10.4.5	Buyer of an Obligation ID	172
10.4.6	CMU of the Buyer of an Obligation	173
10.4.7	Transaction Period	173
10.4.8	Secondary Market Capacity	174
10.4.9	Capacity Remuneration	179
10.4.10	Strike Price	179
10.4.11	Requirement of Financial Security	180
10.5	SECONDARY MARKET TRANSACTION APPROVAL PROCESS	180
10.5.1	Notification of a Secondary Market transaction	180
10.5.2	Acknowledgement of receipt by ELIA	181
10.5.3	Determination of the Ex-ante or Ex-post status of the Secondary Market transaction	181
10.5.4	Processing of the Secondary Market transaction by Elia	181

10.6	CONTRACTUAL IMPACT OF A TRANSACTION ON THE SECONDARY MARKET	185
10.6.1	General provisions	185
10.6.2	Contractual implementation of the transaction	186
10.6.3	Transaction impact for the Buyer of an Obligation	188
10.6.4	Transaction impact for the Seller of an Obligation	188
10.7	PENALTY ESCALATION FOR THE SECONDARY MARKET	188
10.8	TIMING AND DURATION	189
10.8.1	Secondary Market implementation	189
10.8.2	Access to the Secondary Market platform	189
10.8.3	Termination of the Secondary Market	189
10.9	HIGH-LEVEL IT REQUIREMENTS	189
<b>11</b>	<b>FINANCIAL SECURITIES</b>	<b>191</b>
11.1	INTRODUCTION	191
11.2	GENERAL PROVISIONS REGARDING THE FINANCIAL SECURITY OBLIGATION	191
11.2.1	Transactions for which a Financial Security obligation applies	192
11.2.2	Validity Period	193
11.2.3	Transfer of Capacity Contract	194
11.3	TYPES OF FINANCIAL SECURITIES	194
11.3.1	Common requirements for a bank guarantee and an Affiliate guarantee	195
11.3.2	Additional requirements for an Affiliate guarantee	195
11.3.3	Requirements concerning cash payment	196
11.4	SECURED AMOUNT	196
11.4.1	Required Level	196
11.4.2	Volume to be Guaranteed	197
11.5	CALL UPON THE FINANCIAL SECURITY	198
11.6	RELEASE OF THE FINANCIAL SECURITY	199
11.6.1	Release moments	199
11.6.2	Procedure for the release	200
<b>12</b>	<b>PAYBACK OBLIGATION</b>	<b>202</b>
12.1	INTRODUCTION	202
12.2	GENERAL PROVISIONS	202

12.3	MODALITIES OF THE PAYBACK OBLIGATION	203
12.3.1	Parameters of the formula of the Payback Obligation	203
12.3.2	Payback Obligation formula	209
12.3.3	Stop-Loss Amount of a Transaction	212
12.4	PAYBACK OBLIGATION PROCESS	213
12.4.1	Stop-Loss Amount initial calculation	213
12.4.2	Calculation of the ex-post indexed Strike Price application for the Payback Obligation calculation	213
12.4.3	Effective Payback Obligation calculation	213
12.4.4	Monthly delivery activity report	215
12.4.5	Settlement and invoicing of the Effective Payback Obligation	216
12.4.6	Contestation	216
<b>13</b>	<b>LIABILITY AND FORCE MAJEURE</b>	<b>218</b>
13.1	LIABILITY	218
13.1.1	Notification of the breach	218
13.1.2	Liability of CRM Actors and ELIA	218
13.1.3	Warranty clause	219
13.1.4	Interaction with other regulated contracts	219
13.1.5	Limitation of liability clauses in other contracts and third party rights	219
13.2	FORCE MAJEURE	219
13.3	DAMAGE OR ELIA WARRANTY EXCEEDING THE LIMITATIONS	221
<b>14</b>	<b>DISPUTE RESOLUTION</b>	<b>222</b>
14.1	INTRODUCTION	222
14.2	CONSULTATION PHASE	222
14.2.1	Specific or general consultation mechanism	222
14.2.2	Consultation procedure	222
14.3	CRM DISPUTES COMMITTEE	223
14.3.1	Objective and Rules of Procedure	223
14.3.2	Organisation	223
14.3.3	Procedures	223
14.3.4	Main characteristics of the procedure before the CRM Disputes Committee	225
<b>15</b>	<b>FALLBACK PROCEDURES</b>	<b>226</b>

15.1	INTRODUCTION	226
15.2	GENERAL PRINCIPLES	226
15.3	PREQUALIFICATION PROCESSES	227
15.3.1	Application form submission	227
15.3.2	Acknowledgment and compliance checks	227
15.3.3	Prequalification File	228
15.3.4	Change of the Prequalification File submission	228
15.3.5	Notification from ELIA	229
15.4	AUCTION PROCESS	229
15.4.1	Bid submission issue	229
15.4.2	Grid constraints issues	230
15.4.3	Auction results issues	231
15.5	PRE-DELIVERY CONTROL	232
15.5.1	Pre-delivery test date notification for Existing CMUs	232
15.5.2	Quarterly reports submission to ELIA for Additional and Virtual CMUs	232
15.5.3	Pre-delivery control results	233
15.5.4	Contestation for Existing CMU	233
15.6	AVAILABILITY MONITORING AND TESTING	234
15.6.1	Notification of limitation on Available Capacity	234
15.6.2	AMT Moment identification	235
15.6.3	Declared Price and Associated Volume declaration	235
15.6.4	Notification of the Availability Test	236
15.6.5	Submission of the delivery activity report	237
15.6.6	Notification of three successful deliveries	237
15.7	SECONDARY MARKET	238
15.7.1	Notification issuance of a Secondary Market transaction	238
15.7.2	Acknowledgement of reception by ELIA	239
15.7.3	Approval or rejection of a Secondary Market transaction by ELIA	239
15.8	FINANCIAL SECURITIES	240
15.8.1	Submission of Financial Security	240
15.8.2	Release of Financial Security	241
<b>16</b>	<b>TRANSPARENCY AND MOTIVATION</b>	<b>242</b>
16.1	INTRODUCTION	242



16.2	GENERAL PRINCIPLES	242
16.3	PREQUALIFICATION RESULTS	243
16.4	AUCTION REPORT	243
16.4.1	Opt-out Volumes	243
16.4.2	Volume corrections of the Demand Curve	244
16.4.3	Results of the Auction	244
16.5	PRE-DELIVERY ACTIVITY REPORT	246
16.6	YEARLY REPORT BEFORE THE START OF THE DELIVERY PERIOD	247
<b>17</b>	<b>DIRECT AND INDIRECT FOREIGN CAPACITY PARTICIPATION</b>	<b>248</b>
17.1	INTRODUCTION	248
17.2	DIRECT FOREIGN CAPACITY PARTICIPATION	248
17.3	INDIRECT FOREIGN CAPACITY PARTICIPATION	249
<b>18</b>	<b>ANNEXES</b>	<b>251</b>
18.1	ANNEX A: PREQUALIFICATION PROCESSES	251
18.1.1	ANNEX A.1: METERING REQUIREMENTS	251
18.1.2	ANNEX A.2: GRID USER / CDS USER DECLARATION	253
18.1.3	ANNEX A.3: CDSO DECLARATION	256
18.1.4	ANNEX A.4: PROJECT EXECUTION PLAN	259
18.1.5	ANNEX A.5: COOPERATION AGREEMENT ELIA – CDSO ON THE EXCHANGE OF DATA REQUIRED FOR THE PROVISION OF THE SERVICE	266
18.1.6	ANNEX A.6: GUIDELINES FOR THE QUANTIFICATION OF CO2 EMISSIONS FOR THE PREQUALIFICATION TO THE CAPACITY REMUNERATION MECHANISM IN BELGIUM	275
18.2	ANNEX B: PRE-DELIVERY CONTROL	281
18.2.1	ANNEX B.1: PRE-DELIVERY PERIOD DEFINITION AND TOTAL CONTRACTED CAPACITY DETERMINATION	281
18.2.2	ANNEX B.2: IMPACT OF ADDITIONAL PRE DELIVERY CONTROL ON CONTRACTED CAPACITIES ON ADDITIONAL CMUS	285
18.2.3	ANNEX B.3: CONTENT OF A QUARTERLY REPORT	286
18.2.4	ANNEX B.4: TEMPLATE FOR THE PERMIT REPORT	291
18.3	ANNEX C: AVAILABILITY OBLIGATION	293
18.3.1	ANNEX C.1: BASELINE METHODOLOGY	293

18.4	ANNEX D: SECONDARY MARKET PROCESS	295
18.4.1	ANNEX D.1: SECONDARY MARKET EXCHANGE MANDATE FORM	295
18.5	ANNEX E: FINANCIAL SECURITIES	298
18.5.1	ANNEX E.1: STANDARD BANK GUARANTEE FORM ASSOCIATED WITH THE FUNCTIONING RULES [•]	298
18.5.2	ANNEX E.2: STANDARD AFFILIATE GUARANTEE FORM ASSOCIATED WITH THE FUNCTIONING RULES [•]	300
18.5.3	ANNEX E.3: STANDARD BANK GUARANTEE AMENDMENT FORM ASSOCIATED WITH THE FUNCTIONING RULES [•]	302
18.5.4	ANNEX E.4: STANDARD AFFILIATE GUARANTEE AMENDMENT FORM ASSOCIATED WITH THE FUNCTIONING RULES [•]	303
18.5.5	ANNEX E.5: ILLUSTRATION OF DETERMINATION OF VOLUME TO BE GUARANTEED	304
18.6	ANNEX F: TRANSPARENCY	310
18.6.1	ANNEX F.1: OVERVIEW OF THE OPT-OUT VOLUMES IN THE AUCTION REPORT	310
18.6.2	ANNEX F.2: OVERVIEW OF THE INFORMATION ON THE SUBMITTED BIDS IN THE AUCTION REPORT	311
18.6.3	ANNEX F.3: OVERVIEW OF THE INFORMATION ON THE SELECTED BIDS IN THE AUCTION REPORT	313
18.6.4	ANNEX F.4: OVERVIEW OF THE INFORMATION IN THE PRE-DELIVERY ACTIVITY REPORT	314
18.6.5	ANNEX F.5: OVERVIEW OF THE INFORMATION IN THE REPORT BEFORE THE START OF THE DELIVERY PERIOD	315
18.7	ANNEX G: DISPUTES	316
18.8	ANNEX H: APPLICATION OF PROVISIONS OF FUNCTIONING RULES TO CAPACITY CONTRACTS ALREADY CONCLUDED	333

# 1 INTRODUCTION

1. The current document constitutes the Functioning Rules of the Belgian Capacity Remuneration Mechanism (hereafter referred to as 'CRM') established by the Belgian Federal Commission for Electricity and Gas Regulation (hereafter referred to as 'CREG') in accordance with article 7undecies § 12 of the Law of 29 April 1999 on the organization of the Electricity Market hereafter referred to as 'Electricity Act'.
2. Every year, as per article 7undecies paragraph 12 of the Electricity Act, ELIA submits to CREG and to the Directorate-General for Energy proposed Functioning Rules by February 1 at the latest. ELIA and CREG publish the Functioning Rules established by CREG by May 15. The Functioning Rules only take effect after they have been approved by the King and have been published in the Belgian Official Gazette (Moniteur belge).
3. The Functioning Rules are to be considered in relation to other relevant documents in their version in force at the time of adoption of these Functioning Rules, including:
  - Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity;
  - The Electricity Act of April 29th 1999;
  - The following Royal Decrees:
    - Royal Decree of 28 April 2021 establishing the parameters used to determine the capacity volume to be provided, including calculation methods, and the other parameters necessary for organising auctions, as well as the method and conditions for granting an individual exemption to the application of the intermediate price cap(s) in connection with the Capacity Remuneration Mechanism; *[placeholder to amendment of Royal Decree on Methodology]*
    - Royal Decree of 21 May 2021 on the establishment of the eligibility criteria set out in article 7undecies, § 8, al. 1, 1° and 2°, of the law of 29 April 1999 on the organisation of the electricity market, with regard to the conditions under which capacity holders benefitting or having benefitted from support measures are entitled or obliged to take part in the prequalification process, and on the minimum threshold, in MW;
    - Royal Decree of 4 June 2021 setting out the investment thresholds, eligibility criteria for investment costs and the classification procedure; and
    - Royal Decree of 30 May 2021 determining the conditions and methods for overseeing the correct functioning of the capacity remuneration mechanism by the Commission for Electricity and Gas Regulation (CREG);
  - The "Volume and Parameters" Ministerial Decrees;
  - The standard capacity contract, as approved by the CREG in accordance with article 7undecies, § 11 of the Electricity Act.
4. The Functioning Rules describe in detail the methodologies, rules and principles of the CRM. Most justifications are included in the design notes, consultation reports and the material provided in the context of the Task Force CRM (design and implementation)

that are all published on the ELIA website<sup>1</sup>. These documents can be considered as non-binding background information.

5. In accordance with article *7undecies* paragraph 12 of the Electricity Act, the Functioning Rules are established in order to:
  - foster competition as much as possible in the Auctions;
  - avoid any market abuse or market manipulation, anti-competitive behaviour or unfair trade practice;
  - ensure the economic efficiency of the CRM in order to guarantee that the Capacity Remunerations provided are adequate and proportionate and that the potential negative effects on the good functioning of the market remain as limited as possible;
  - respect the technical constraints of the grid and take into account the disposals of the Federal Grid code regarding the submission and the treatment of the connection requests to the transmission system and the conclusion of Connection Contracts without prejudice to the technical limitations and obligations applicable to capacities connected to other networks.
  
6. Furthermore, article *7undecies* paragraph 12 of the Electricity Act states that the Functioning Rules must, in particular, contain:
  - the eligibility criteria with respect to the right to participate in the Prequalification Process;
  - the Prequalification modalities & criteria;
  - the modalities for notifying the Opt-out Volume;
  - the Auction modalities;
  - the Availability Obligations and the obligations prior the Delivery Period for Capacity Providers and the related Penalties in case of failure to fulfil these Obligations;
  - the Financial Securities to be provided by the Capacity Providers;
  - the organization of the Secondary Market, at the latest 1 year before the 1st Delivery Period;
  - the modalities related to the exchange of information and the rules providing transparency on the CRM;
  - the latest date by which each Capacity Holder of Unproven Capacity must complete his Prequalification File with the concerned Delivery Points.
  
7. This document covers the following sections:

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<sup>1</sup> <https://www.elia.be/fr/users-group/implementation-crm>

- Introduction (chapter 1)
- General Provisions (Chapter 2)
- Definitions (Chapter 3)
- Service Time Schedule (Chapter 4)
- Prequalification Process (Chapter 5)
- Auction process (Chapter 6)
- Capacity Contract signature (Chapter 7)
- Pre-delivery control (Chapter 8)
- Availability Obligation (Chapter 9)
- Secondary Market (Chapter 10)
- Financial Securities (Chapter 11)
- Payback Obligation (Chapter 12)
- Liability and Force Majeure (Chapter 13)
- Dispute Resolution (Chapter 14)
- Fallback procedures (Chapter 15)
- Transparency and Motivation (Chapter 16)
- Direct and Indirect Foreign Capacity Participation (Chapter 17)
- Annexes (Chapter 18)

## 2 GENERAL PROVISIONS

### 2.1 ADOPTION, APPROVAL AND AMENDMENT

8. The Functioning Rules are established by the CREG on the basis of a proposal by ELIA, which consults the market participants in advance in accordance with article *7undecies*, paragraph 12 of the Electricity Act. The Functioning Rules shall take effect after they have been approved by Royal Decree and published in the Belgian Official Gazette (*Moniteur belge*).
9. All versions of the Functioning Rules are proposed by ELIA after consultation with market participants, and with a view to being established by CREG, in accordance with article *7undecies*, paragraph 12 of the Electricity Act. Each new version of the Functioning Rules shall be immediately applicable, after its approval by royal decree and in the Belgian Official Gazette (*Moniteur belge*).
10. Unless otherwise provided, the provisions contained in the present Functioning Rules shall apply to Capacity Contracts already concluded at the time of their entry into force. Annex 18.8 indicates the provisions of previous versions of the Functioning Rules that remain applicable to Capacity Contracts already concluded.
11. Any reference to legislation, regulations, directives, orders, instruments, codes or any other legal provision is to be understood as a reference to legislation, regulations, directives, orders, instruments, codes or any other legal provision as amended over time and in force at the time of the establishment of the present Functioning Rules.

### 2.2 INTERPRETATION

12. These Functioning Rules are written in French and Dutch, both are equivalent and to be considered as the original version. No precedence exists between these two versions. In addition, an English version has been drawn up by Elia on the basis of the original version and is published on its website.
13. The definitions as set out in the Electricity Act and its implementing royal decrees apply to the Functioning Rules. For the purpose of the Functioning Rules, the list of definitions (included in chapter 3) completes the definitions of the Electricity Act and its implementing decrees.
14. In the event of a contradiction between the provisions in the service time schedule (Chapter 4) or in the Annexes (Chapter 18) and the provisions in the other chapters, the provisions in the latter shall prevail. The content of Chapter 1 is not binding.
15. Each Chapter contains an introduction which serves as a user's guide, contributing via an introductory explanation to a good understanding of each process. The introduction sections have no binding force. The introduction sections can only be relied upon to the extent that the Functioning Rules would need further interpretation, which can neither be found in the legislation and implementing royal decrees, nor in these Functioning Rules.
16. As from the publication of the Functioning Rules on the website of ELIA, parties interested in participating in the CRM or LCT may contact ELIA by email

([customer.crm@elia.be](mailto:customer.crm@elia.be)) with questions related to the interpretation of these Functioning Rules. ELIA must only answer to those questions that are within the scope of these Functioning Rules and are relevant. Any interpretation of the Functioning Rules by ELIA shall first be submitted to the CREG for approval. The questions and answers to these questions will be published on ELIA's website, unless confidentiality is invoked by the inquiring party and accepted by ELIA and the CREG.

## **2.3 COSTS RELATED TO THE CRM ACTOR'S PARTICIPATION IN THE CRM OR LCT**

17. ELIA does not remunerate the cost incurred by the Capacity Holder, the (Prequalified) CRM Candidate or Capacity Provider resulting from his participation in the CRM or LCT, whether his CMU has been selected or not in or as a result of the Prequalification and Auction process.

Participation by the Capacity Holder, the (Prequalified) CRM Candidate or Capacity Provider in the CRM or LCT does not grant any right or guarantee in respect of ELIA apart from what is set out by these Functioning Rules and, if applicable, the Capacity Contract.

## **2.4 CONTRACTUAL RELATIONSHIP WITH OTHER MARKET PARTIES**

18. The CRM Actor informs the Grid User(s) or CDS User(s) for whom it acts to form a CMU of the scope and purpose of the Functioning Rules. The CRM Actor makes all reasonably necessary in the context of its contractual relations with such Grid User(s) or CDS User(s) so that the intervention of such Grid User(s) or CDS User(s) does not constitute an obstacle or difficulty to the implementation of the Functioning Rules.
19. The CRM Actor and ELIA ensure that their own mutual contractual relations are always based on the existence and proper performance of the requisite contractual agreements with the parties concerned who have concluded one of the other regulated contracts with ELIA or with another system operator within the Belgian Control Area.

## **2.5 COMMUNICATION**

### **2.5.1 NOTIFICATIONS**

20. A notification refers to any written and electronic communication required to be given by a CRM Actor, ELIA or another entity identified under these Functioning Rules or the Capacity Contract.
21. Each notification is dated with the day of actual sending.

22. In case notifications have to take place through the CRM IT Interface as per these Functioning Rules, the fallback procedures described in chapter 15 shall apply if the CRM IT Interface is unavailable.
23. Apart from exceptions provided for under these Functioning Rules, all communications and notifications between a CRM Actor and ELIA shall be effected via the CRM IT interface.
24. Telephone calls are not considered as formal correspondence (whether in the context of the Functioning Rules or the Capacity Contract).

## 2.6 CRM IT INTERFACE AND IT REQUIREMENTS

25. ELIA sets up a CRM IT Interface in order to enable ELIA and the CRM Actors to perform the necessary actions in the context of the participation and execution of the CRM or LCT and in order to handle communication, including notifications, between parties.

The CRM IT Interface is a web based application. It does not require specific development from the CRM Actor's side and does not require any other software than commonly-used internet browsers.

The CRM Actor shall, at its own expense, make sure to have the information technology and communication means required for the use of the CRM IT Interface and shall implement the necessary safety measures in its IT environment to prevent unauthorised access to the CRM IT Interface through its IT environment. The CRM Actor shall also take the necessary measures to ensure a back-up of the data and documents that he uploads onto the CRM IT Interface and that are made available by ELIA via the CRM IT Interface.

26. The CRM Actor may only use the CRM IT Interface in the context of and for the purpose of participation in and implementation of the CRM or LCT.
27. To facilitate the communication between all the CRM Actors, ELIA generates various IDs and makes them accessible for the CRM Actor via the CRM IT Interface.
28. The CRM Actor shall comply with the requirements and instructions for the correct use of the CRM IT Interface, and shall regularly ascertain any changes to and updates of the requirements and instructions.

ELIA has the right to modify the procedural requirements and/or technical requirements for the use of the CRM IT Interface, upon prior notice via the CRM IT Interface and ELIA's website at least one month before the application of the new requirements. In urgent cases, adjustments can be made without prior notice. In that case, ELIA shall notify the CRM Actor by email as soon as possible after the change is made.

29. For some requirements in the context of the Capacity Contract (e.g: Availability Test trigger), actions might be needed on the CRM Actor's side. In such case, ELIA will share the IT specifications no later than two months prior to the expected go live of the related requirement.



30. The CRM IT Interface is intended to be accessible 24/7, unless otherwise indicated. ELIA shall be entitled at any time to suspend or otherwise limit the availability of the CRM IT Interface from time to time, in whole or in part, in order to make any changes that would improve or extend its operation or to provide for its maintenance. Also, it cannot be guaranteed that access to or operation of the CRM IT Interface will be uninterrupted or free from errors, bugs, or technical failures, since the provision of the interface depends, inter alia, on the proper functioning of the Internet.
31. The fallback procedures that apply in case of maintenance, unavailability or other problems related to the CRM IT Interface are detailed in chapter 15.

### **2.6.1 Preliminary access to the CRM IT Interface**

32. Capacity Holders can fill in the application form via a preliminary access to the CRM IT Interface. Once the application form is approved by ELIA (following the rules of section 5.3.1), each person mentioned as a "contact person" in the application form and for who a "role" has been indicated, receives a user ID by e-mail and is invited to create a password in order to access additional CRM IT Interface modules, such as the platform dedicated to the Prequalification File submission or to the Financial Security submission.

### **2.6.2 Prequalification module of the CRM IT Interface**

33. ELIA shall ensure that the CRM IT Interface is operational.
34. In the event that the CRM Actor identifies a problem when submitting or modifying information to ELIA via the CRM IT Interface during a Prequalification Process, the procedures detailed in section 15.3.3 apply.
35. Three types of ID will be used by ELIA during the Prequalification Procedure to communicate with the CRM Actor: The Delivery Point ID, the CMU ID and the project ID. Those three ID are described in more detail in the 3 sections below.

#### **2.6.2.1 Delivery Point ID**

36. Whenever a new Delivery Point is created in the CRM IT Interface, a corresponding ID is generated by the CRM IT Interface. It is not strictly necessary to submit the Prequalification File to ELIA to obtain the ID; it is sufficient to include and save the Delivery Point in the CRM IT Interface. Once included and saved, the Delivery Point's ID is visible in the CRM IT Interface.
37. The ID of the Delivery Point does not change if the status of the Delivery Point switches from "additional" to "existing".
38. It is the responsibility of the CRM Actor to communicate this ID to the Grid User or to the CDS User in order for them to be able to include it in the Grid User Declaration or the CDS User Declaration.
39. To meet the specific requirements that a DSO may have regarding Delivery Points connected to a DSO grid or to a CDS itself connected to a DSO grid, the communications between a DSO and the CRM Actor regarding the Delivery Point are initiated by the CRM Actor before the submission of the Prequalification File which includes the Delivery Point.

To initiate those communication, the CRM Actor needs the Delivery Point's ID. To get this ID, the process described in § 36 must be followed.

40. If a Delivery Point is participating for the first time in the Prequalification Procedure and is included in a CMU linked to an Investment File, its ID shall be retained by ELIA and subsequently supplied to any CRM Actor using the CMU concerned within the context of a Prequalification Procedure. When it is not the first time that a Delivery Point is participating in the Prequalification Procedure and that this Delivery Point is linked to an Investment File, the aforementioned ID of the Delivery Point shall be used by the CRM Actor in the Investment File concerned; after having been communicated by ELIA.

### **2.6.2.2 CMU ID**

41. Each time a new CMU is created in the CRM IT Interface (as per section 5.2.3), a corresponding ID is generated by the CRM IT Interface.

### **2.6.2.3 Project ID**

42. The project ID is the reference used in the communication between the CRM Actor, ELIA and the CREG regarding the Investment File.
43. Where a CRM Actor has submitted (or intends to submit) an Investment File to the CREG for its CMU and as part of its Prequalification File, it requests the creation of a project ID on the CRM IT Interface. Where, in the event that several CMUs are linked to a same Investment File (Linked Capacities), the CRM Actor has requested a project ID to be created for the first submitted CMU, it provides the Project ID received for the first CMU submitted in the Prequalification File of the other CMU(s).

## **2.6.3 Financial security module of the CRM IT Interface**

44. In the event that the CRM Actor identifies a problem when submitting information via the Financial Security module to ELIA, the procedures detailed in section 15.8 apply.
45. Each time a new Financial Security is created in the CRM IT Interface, a corresponding ID is automatically generated by the CRM IT Interface.

## **2.6.4 Auction module of the CRM IT Interface**

46. Access rights to the CRM IT Interface for the introduction of Bids are granted to the Prequalified CRM Candidate when the Standard or Specific Prequalification Process is successfully completed.

## **2.6.5 Secondary market module of the CRM IT Interface**

47. The right of access to the CRM IT Interface related to the Secondary Market is granted once the conditions according to section 10.3 are fulfilled. The Prequalified CRM Candidate is authorized to access it according to the Secondary Market timing and duration (as per section 10.8).

## 2.7 DATA ACCURACY

48. The CRM Actor shall promptly and correctly provide ELIA with all information required within the context of the CRM or LCT, including the information required under these Functioning Rules and the Capacity Contract.

The CRM Actor is at all times responsible for providing accurate, complete and up-to-date information to ELIA (including any information provided in the Bid(s)), and to ensure that this information remains accurate, complete and up-to-date during the entire CRM or LCT process (including the application, prequalification, Auction, Pre-delivery and Delivery Period) in accordance with the principles set out in these Functioning Rules, including in section 5.6. The CRM Actor also warrants and guarantees that it lawfully holds the information it transfers to ELIA and is legally entitled to transfer said information to ELIA.

49. ELIA regularly performs checks and has the right to audit (or have audited) all along the process all information provided by a CRM Actor. In the event that inaccurate, incomplete, out-of-date information or other inconsistencies are identified during a check or audit, the processes, penalties and sanctions as set out in these Functioning Rules shall apply, without prejudice to other remedies available to ELIA.
50. The CRM Actor shall verify the data that he introduces on the CRM IT Interface as well as the data that is prefilled on, generated by or communicated via the CRM IT Interface and shall inform ELIA without delay of any (alleged) errors or lack or absence of clarity. When the CRM Actor expects certain actions or information from ELIA and these are not communicated within the expected time, it shall inform ELIA as soon as possible.
51. ELIA performs an automatic verification on the information contained in or generated by the CRM IT Interface, but cannot guarantee that illogical or erroneous data will always be noticed as part of this verification. The CRM Actor may not assume that the data are always correct, and shall carry out the necessary verifications as much as possible.

## 2.8 CONFIDENTIALITY

52. Information of a commercial, technical, strategic, financial nature, or other sensitive information that is not publicly known and that is commonly regarded as valuable and confidential, will be treated by both ELIA and the CRM Actor as confidential information. Such information shall not be communicated or disclosed to third parties unless:
  - communication or disclosure is mandatory in the context of the CRM or LCT (e.g. in the context of the communication with the CREG) or required under the transparency obligations under these Functioning Rules or by other legal or regulatory obligations; or
  - prior written permission has been obtained from the disclosing party; or

- such information at the time of disclosure by the disclosing party to the receiving party is within the public domain, or after such disclosure becomes a part of the public domain through no fault of the receiving party; or
- a party is called upon to testify in court, before the CRM Disputes Committee or in its relations with the competent regulatory, administrative and judicial authorities; or
- communication of the information is essential for the performance of contracts concluded or to be concluded with suppliers of goods and services, including within the framework of the Capacity Contract or, with regard to ELIA, of its transmission system development, maintenance and operation tasks, if communication of the information is necessary for the proper functioning and integration of the market or in order to guarantee the safety, reliability and efficiency of the transmission system, provided that the recipient of this information undertakes to grant it the same degree of confidentiality as provided for in this clause; or
- the information is already lawfully known by a party at the time of the communication and has not been communicated previously by the disclosing party, directly or indirectly, or by a third party, in breach of a confidentiality obligation; or
- the information, after being communicated, has been brought to the attention of the receiving party and/or its staff and agents by a third party, without breaching a confidentiality obligation with regard to the disclosing party.

In addition, ELIA is entitled to communicate or disclose the information in consultation with operators of other grids or within the framework of contracts and/or rules with foreign system operators or regional security coordinators/regional coordination centres, insofar as necessary and provided that the recipient of the information undertakes to grant it the same degree of confidentiality as ELIA.

53. This section is without prejudice to the specific legal and regulatory provisions relating to the confidentiality obligation applicable to ELIA.
54. ELIA and the CRM Actor shall take all reasonable measures to protect the secrecy of and avoid disclosure or use of confidential information of the other party. ELIA and the CRM Actor shall take the measures necessary to ensure that this confidentiality undertaking is also strictly observed by their employees, as well as by any person who is not an employee but for whom ELIA or the CRM Actor is nevertheless responsible to the other party and has received the confidential information on a strict need-to-know basis.
55. Each party retains full ownership of every information, even if it has been communicated to other parties. ELIA and the CRM Actor agree to notify the other in writing of any actual or suspected misuse, misappropriation or unauthorized disclosure of confidential information of the disclosing party which may come to the receiving party's attention.
56. The confidentiality obligation shall apply for up to five years after the latest of the next moments, i.e. the end of the process (e.g. prequalification or auction) in which the confidential information has been exchanged or the end of a Transaction Period, in case a Transaction has been concluded.

## 2.9 DATA PROTECTION

57. In the context of the CRM or LCT, ELIA and the CRM Actor shall process personal data in accordance with the Data Protection Legislation. The definitions set out in the Data Protection Legislation are applicable to the corresponding terms in the Functioning Rules.
58. ELIA and the CRM Actor act as separate data controllers for the personal data that they process in the context of the CRM or LCT.
59. Information about the processing of the personal data by ELIA in the context of the CRM or LCT is set out in its privacy policy available on its website.
60. The CRM Actor, hereby:
  - warrants and guarantees that all personal data it provides to ELIA in the context of the CRM or LCT are accurate, complete and kept up to date, and that he shall inform ELIA without undue delay if he becomes aware that the personal data it has transferred are inaccurate, or have become outdated;
  - warrants and guarantees that he lawfully holds and is entitled to transfer these personal data to ELIA;
  - warrants and guarantees that he (i) shall duly inform the data subjects concerned in accordance with Data Protection Legislation that their personal data may be transferred to ELIA in the context of the CRM or LCT, and that it shall hereby include a reference to Elia's privacy policy, and (ii) shall provide Elia, upon request, evidence demonstrating that the data subjects have been duly informed in accordance with this article.

## **3 DEFINITIONS**

### **3.1 GENERAL DEFINITIONS**

61. For reasons of completeness and informational purposes, the list of definitions hereunder also includes the relevant terms already defined in the Electricity Act, the Federal Grid Code or in the European legislation. For these definitions already provided under the Electricity Act or the Federal Grid Code a non-official English translation is provided.

<b>Term</b>	<b>Definition</b>
<b>Access Point</b>	As defined in article 2, § 1, 29° of the Federal Grid Code for an access to the transmission grid.  For an access to the ELIA Grid other than the transmission grid, or to a Public Distribution Grid: a point, defined by the physical location and voltage level, at which access to the ELIA Grid other than transmission grid, or to a Public Distribution Grid, is granted, with a goal to injecting or taking off power, from an electricity production unit, a consumption facility, a non-synchronous storage facility, connected to this grid.
<b>Activation of Redispatching Services</b>	The use of Redispatching Services in line with article 22 (2) of Commission Regulation (EU) 2017/1485 of 2 August 2017 establishing a guideline on electricity transmission system operation (SOGL) and article 12 of the Coordination and Congestion Rules (as published by ELIA).
<b>Active Volume</b>	The component of the Available Capacity measured as the part of a CMU without Daily Schedule that reacted to a market price signal in accordance with its (Partial) Declared Prices, determined according to section 9.4.3.2.3.1.
<b>Additional Capacity</b>	The Capacity for which, at the time of Prequalification File submission, no representative Nominal Reference Power can be calculated based on quarter-hourly measurements or that is subject to a technical agreement in accordance with the connection process as defined in the Federal Grid Code.
<b>Additional Capacity Market Unit (Additional CMU)</b>	A Capacity Market Unit which includes at least one Additional Delivery Point.
<b>Additional Delivery Point</b>	A Delivery Point associated to an Additional Capacity.
<b>Adjacent European Member State</b>	To be defined in the Royal Decree on "Indirect Foreign Capacity".
<b>Adjacent Transmission System Operator (Adjacent TSO)</b>	To be defined in the Royal Decree on "Indirect Foreign Capacity".
<b>Aggregated Nominal Reference Power</b>	The Nominal Reference Power of an Aggregated CMU corresponding to the sum of the Nominal Reference Power of each of its Capacities.
<b>AMT Hour</b>	A Day-ahead Market segment identified by the Availability Monitoring Trigger, during which the Day-ahead Market Price surpasses the AMT Price.
<b>AMT Moment</b>	A series of consecutive AMT Hours.
<b>AMT Price or <math>p_{AMT}</math></b>	The ex-ante defined price level identifying AMT Hours for a Delivery Period.

<b>Ancillary Services</b>	As defined in article 2, § 1, 52° of the Federal Grid Code.
<b>Announced Missing Capacity</b>	The part of the Missing Capacity that is the minimum between the Missing Capacity and the Announced Unavailable Capacity.
<b>Announced Unavailable Capacity</b>	The Unavailable Capacity notified to ELIA before the period of unavailability according to §481.
<b>Associated Delivery Point</b>	A Delivery Point associated with an Aggregated CMU that meets the conditions for the award of a Capacity Contract for more than one Delivery Period, with the sole effect of improving its Derating Factor without affecting its Nominal Reference Power.
<b>Associated Eligible Volume</b>	The Reference Power of an Aggregated CMU multiplied by the Derating Factor related to the CMU Delivery Points and Associated Delivery Points as determined during the Prequalification Process, minus the Eligible Volume of the CMU.
<b>Associated Volume</b>	For a Partial Declared Price, the volume the Capacity Provider is prepared to deliver with his CMU at that price as declared by him or, for the Declared Prices, the Nominal Reference Power.
<b>Auction</b>	As defined in article 2, 73° of the Electricity Act, including the targeted tender (LCT).
<b>Available Capacity</b>	The CMU's capacity that is observed/confirmed as available as a result of the Availability Monitoring Mechanism or the Availability Test. The Available Capacity can consist of both Proven Availability and Unproven Availability.
<b>Availability Monitoring</b>	The process to monitor whether the CMU's Available Capacity equals at least its Obligated Capacity during AMT Hours as referred to in article 7undecies, § 12, al. 3, 5° of the Electricity Act.
<b>Availability Monitoring Mechanism</b>	The mechanism that monitors whether the CMU's Available Capacity equals at least its Obligated Capacity during AMT Hours as referred to in article 7undecies, § 12, al. 3, 5° of the Electricity Act.
<b>Availability Monitoring Trigger (AMT)</b>	The trigger identifying moments relevant for adequacy during the Delivery Period, during which Availability Monitoring can apply. It occurs if the AMT Price is surpassed by the Day-ahead Market Price during at least one Day-ahead Market segment.
<b>Availability Obligations</b>	The obligation of a CMU to have an Available Capacity that equals at least its Obligated Capacity during AMT Hours or an Availability Test.
<b>Availability Ratio</b>	The ratio that expresses the day-ahead unavailability of a CMU, applied to offset this unavailability in the Payback Obligation as referred to in the <i>Royal Decree on Methodology</i> , article 21, § 6 and as calculated in accordance with section 12.3.1.3.
<b>Availability Test</b>	The test in which the CMU has to demonstrate its availability by actually delivering energy upon request of ELIA. During an Availability Test ELIA monitors whether the CMU's delivered energy equals at least its Obligated Capacity.
<b>Balance Responsible Party (BRP)</b>	As defined in article 2, 7° of Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing (EBGL) and listed in the register of Balance Responsible Parties.
<b>Balancing Market</b>	As defined in article 2, 2° of Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing (EBGL).
<b>Baseline</b>	The power on which the energy volume that the CMU would have taken off is evaluated in case no Demand Side Management



	is activated.
<b>Bid</b>	The offer made by a Prequalified CRM Candidate in the Auction.
<b>Bid Cap</b>	The maximum Bid Price (in €/MW/year) that can be made for a Bid in the Auction.
<b>Bid Price</b>	The price (in €/MW/year) at which a Prequalified CRM Candidate is offering a Bid in the Auction.
<b>BRP Source</b>	The Balance Responsible Party of the Access Point of the Grid User.
<b>Buyer of an Obligation</b>	The Capacity Provider taking over the rights and obligations resulting from the Capacity Contract of a Seller of an Obligation via a transaction on the Secondary Market.
<b>Calibrated Strike Price</b>	The value of the Strike Price applicable at a certain moment as determined as a result of the yearly calibration process as referred to in article <i>7undecies</i> § 2 of the Electricity Act for the CRM or <i>[placeholder to E-law amendment]</i> for the LCT.
<b>Capacity</b>	Power associated to a Delivery Point in accordance with article 1, §2, 4° of the Royal Decree on "Investment Thresholds".
<b>Capacity Category</b>	As defined in article 2, 84° of the Electricity Act. As determined in article <i>7undecies</i> § 11 of the Electricity Act, the maximal duration for which the Capacity Provider receives a remuneration is 1-year, 3-years, 8-years or 15-years. As determined in <i>[placeholder to E-law amendment]</i> , the maximal duration of 1-year, 3-years, 8-years or 15-years also applies to the Capacity Contracts signed under the LCT.
<b>Capacity Contract</b>	The contract signed between a Capacity Provider and ELIA as referred to in article <i>7undecies</i> § 11, al. 1 of the Electricity Act, including the contracts signed as a result of the LCT (LCT Capacity Contract). As determined in <i>[placeholder to E-law amendment]</i> , the terms and conditions of the CRM Capacity Contract also apply to the LCT Capacity Contract.
<b>Capacity Contract Duration</b>	For Transactions on the Primary Market, the number of consecutive Delivery Period(s) that the Capacity Contract covers as stipulated in the Capacity Contract. For Transactions on the Secondary Market, the Capacity Contract Duration can be defined on the basis of other elements.
<b>Capacity Holder</b>	As defined in article 2, 74° of the Electricity Act. In these current Functioning Rules, a Capacity Holder is a (future) Grid User, another entity a (future) Grid User has designated (or will designate) through a Grid User Declaration or a CDS User in case of a Delivery Point connected to a CDS.
<b>Capacity Market Auditor</b>	The independent auditor appointed, where necessary, by the CREG to monitor the proper functioning of the capacity remuneration mechanism, in accordance with the Royal Decree on "Monitoring".
<b>Capacity Market Unit (CMU)</b>	A Capacity (« Individual CMU ») or several associated Capacities (« Aggregated CMU») used in the consecutive phases of the Capacity Remuneration Mechanism or the Low Carbon Tender to deliver the Service.

<b>Capacity Provider</b>	As defined in article 2, 75° of the Electricity Act.
<b>Capacity Remuneration</b>	As defined in article 2, 76° of the Electricity Act.
<b>Capacity Remuneration Mechanism (CRM)</b>	As defined in article 2, 71° of the Electricity Act.
<b>CDS Market Access Point</b>	A market access point, as defined in article 2, §1, 30° of the Federal Grid Code
<b>CDSO Declaration</b>	The official declaration of the concerned CDSO provided to ELIA during the Prequalification Process for (a) specific Delivery Point(s) connected to the CDS in the form set out in annexes 18.1.3.1 and 18.1.3.2.
<b>CDS Operator (CDSO)</b>	A natural or legal person that acts as the operator of the CDS and has signed Annex 6 of to the Access Contract with ELIA.
<b>CDS User</b>	Any natural or legal person that injects electricity to or takes electricity off from a CDS.
<b>CDS User Declaration</b>	The official declaration of a CDS User provided to ELIA during the Prequalification Process, containing proof of the agreement between the CRM Candidate and a CDS User to provide the Service at one (or more) specific Delivery Point(s).
<b>Closed Distribution System (CDS)</b>	As defined in article 2, § 1, 3° of the Federal Grid Code. Depending on the context in which the CDS is referred to in these Functioning Rules, CDS refers to a CDS connected to the ELIA Grid or to a CDS connected to the Public Distribution Grid.
<b>CO<sub>2</sub> Emissions Cap</b>	The cap on CO <sub>2</sub> emissions from fossile fuels per kWh of electricity, applicable to generation capacities, and fixed at 550 g.
<b>Connection Contract</b>	As defined in article 2, § 1, 9° of the Federal Grid Code and in the relevant Regional Grid Code.
<b>Contracted Capacity</b>	The Capacity of a CMU associated to a Transaction on the Primary Market or on the Secondary Market.
<b>CRM Actor</b>	All (potential) participants to the CRM or LCT, including a Capacity Holder, CRM Candidate, Prequalified CRM Candidate, Capacity Provider, Buyer of an Obligation and Seller of an Obligation.
<b>CRM Candidate</b>	The Capacity Holder whose application form has been accepted by ELIA.
<b>CRM IT Interface</b>	The set of information systems within the control of ELIA used to perform its tasks under the Functioning Rules.
<b>CRM Required Volume</b>	The volume that should be contracted in an Auction for a given Delivery Period.
<b>Daily Schedule</b>	The imposed program of production of a CMU (expressed in MW), given on a quarter hourly basis, per part (a) of article II.4 §1 in the Terms and Conditions scheduling agent, developed by ELIA in accordance with articles 46, 49 and 52 of Commission Regulation (EU) 2017/1485 of 2 August 2017 establishing a guideline on electricity transmission system operation (SOGL) and

	article 246 until article 252 and article 377 of the Federal Grid Code, and, provided to ELIA in day-ahead and updated according to these terms and conditions.
<b>Data Protection Legislation</b>	The applicable laws and regulations relating to the collection and processing of personal data, including Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) and the Act of 30 July 2018 on the protection of natural persons with regard to the processing of personal data and its implementing decrees.
<b>Day-ahead Market (DAM)</b>	The energy market as referred to in article 2, 26° of Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management.
<b>Day-ahead Market Price</b>	As published on ELIA's website ( <a href="https://www.ELIA.be/en/grid-data/transmission/day-ahead-reference-price">https://www.ELIA.be/en/grid-data/transmission/day-ahead-reference-price</a> ), the Belgian reference price as calculated by ELIA as the volume weighted average price of the prices of the NEMO hubs in the Belgian bidding zone, as defined in the Belgian MNA ("Multiple NEMO Arrangement for the Belgian bidding zone").
<b>Declared Balancing Price</b>	The positive imbalance price optionally declared by the Capacity Provider equal to or above which he is prepared to deliver energy with his CMU in the energy market by dispatching at least its Obligated Capacity.
<b>Declared Day-ahead Price</b>	The value of the CMU's Reference Price declared by the Capacity Provider equal to or above which he is prepared to deliver energy with his CMU in the energy market by dispatching at least its Obligated Capacity.
<b>Declared Eligible Volume</b>	The Eligible Volume, as declared by the CRM Candidate, of a Virtual Capacity Market Unit which has been submitted to participate to a Specific Prequalification Process.
<b>Declared Intraday Price</b>	The Intraday Market price optionally declared by the Capacity Provider equal to or above which he is prepared to deliver energy with his CMU in the energy market by dispatching at least its Obligated Capacity.
<b>Declared Market Price (DMP)</b>	For a given AMT Hour, the Day-ahead Market Price equal to or above which the CMU delivers the Required Volume. It is a result of the (Partial) Declared Prices and Associated Volumes declared by the Capacity Provider, relative to the actual prices on the relevant markets (day-ahead, intraday and balancing) and according to section 9.4.2.3.
<b>Declared Nominal Reference Power</b>	The Nominal Reference Power, as declared by the CRM Candidate or by a DSO to ELIA, of an Additional Delivery Point which has been submitted to participate to a Standard Prequalification Process.
<b>Declared Price</b>	The collective name of the Declared Day-ahead Price, the Declared Intraday Price and the Declared Balancing Price.
<b>Delivery Period</b>	As defined in article 2, 77° of the Electricity Act.
<b>Delivery Point</b>	A delivery point, as defined in article 2, 89° of the Electricity Act.
<b>Demand Curve</b>	As defined in article 2, 78° of the Electricity Act and determined in the Ministerial Decree on "Volume and Parameters" for the CRM or the <i>[placeholder to E-law amendment]</i> for the LCT.

<b>Demand Side Management (DSM)</b>	As defined in article 2, 66° of the Electricity Act.
<b>Derating Factor</b>	As defined in article 2, 83° of the Electricity Act.
<b>Derating Factor(CMU,t)</b>	<p>At any time 't', Derating Factor (CMU,t) is equal to:</p> <p>For an Energy Constrained CMU, the weighted average Derating Factor of the relevant Transactions in Annex A of the CMU's Capacity Contract, with the weighing based on the ratio of the Contracted Capacity associated to the Transaction divided by the Derating Factor associated to the Transaction, in accordance with the following formula :</p> $Derating\ Factor(CMU, t) = \left[ \frac{\frac{Contracted\ Capacity_1}{Derating\ Factor_1} \times Derating\ Factor_1 + \frac{Contracted\ Capacity_2}{Derating\ Factor_2} + \dots + \frac{Contracted\ Capacity_n}{Derating\ Factor_n}}{\frac{Contracted\ Capacity_1}{Derating\ Factor_1} + \frac{Contracted\ Capacity_2}{Derating\ Factor_2} + \dots + \frac{Contracted\ Capacity_n}{Derating\ Factor_n}} \right]$ <ul style="list-style-type: none"> <li>For a Non-energy Constrained CMU, the Derating Factor contractually associated to the Transaction with status ex-ante in Annex A to the CMU's Capacity Contract with the most recent Transaction Validation Date and a Transaction Period that includes 't'. In case this concerns multiple Transactions with the same Transaction Validation Date, the Transaction with the shortest Transaction Period is used.</li> </ul>
<b>Detail Study (EDS)</b>	The detail study or the study of the connection request referred to in article 160 of the Federal Grid Code, respectively in the relevant Regional Grid Code.
<b>Direct Foreign Capacity</b>	As defined in article 2, 86° of the Electricity Act.
<b>DSO-CRM Candidate Agreement</b>	The agreement between the CRM Candidate and the concerned DSO confirming the technical possibility for (a) specific Delivery Point(s) connected to the DSO Grid to offer the Service.
<b>Effective Payback Obligation</b>	The Payback Obligation amount related to a Transaction as calculated for a given month, in accordance with the <i>[placeholder to amendment of Royal Decree on Methodology]</i> and taking into account the Stop-Loss Amount if applicable.
<b>Electricity Act</b>	The Act of 29 April 1999 on the organization of the electricity market.
<b>ELIA Grid</b>	The transmission and local transmission grids for electricity for which ELIA has been appointed as system operator.
<b>Eligible Direct Foreign Capacity Holder</b>	To be defined in the Royal Decree on "Indirect Foreign Capacities", established in accordance with article <i>7undecies</i> , § 8, paragraph 1, 3° of the Electricity Act.
<b>Eligible Indirect Foreign Capacity Holder</b>	To be defined in article 1, § 2, 7° of the Royal Decree on "Indirect Foreign Capacities", established in accordance with article <i>7undecies</i> , § 8, paragraph 1, 3° of the Electricity Act.

<b>Eligible Volume</b>	The Reference Power of an Existing CMU or Additional CMU multiplied by the Derating Factor as determined during the Prequalification Process.
<b>Energy Constrained CMU</b>	A CMU that can deliver energy or reduce its consumption for a limited number of hours per day
<b>Exchange</b>	A market operator in accordance with Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments, transposed by the Law of 21 November 2017 on infrastructure for markets in financial instruments and on the implementation of Directive 2014/65/EU.
<b>Existing Capacity</b>	The Capacity for which, at the time of Prequalification File submission, a representative Nominal Reference Power can be calculated based on quarter-hourly measurements.
<b>Existing Capacity Market Unit ("Existing CMU")</b>	A Capacity Market Unit that only includes one or more Existing Delivery Points.
<b>Existing Delivery Point</b>	A Delivery Point associated to an Existing Capacity.
<b>Expected Nominal Reference Power</b>	The Nominal Reference Power, as estimated by the CRM Candidate, of an Existing Delivery Point which has been submitted to participate to a standard Prequalification Process.
<b>Fast Track Nominal Reference Power</b>	The Nominal Reference Power, as estimated by the CRM Candidate, and, if applicable, verified by ELIA or the DSO, of a Delivery Point which has been submitted to participate to a Fast Track Prequalification Process.
<b>Fast Track Prequalification Process</b>	The process to be followed by a CRM Candidate who does not wish to participate in either the Primary Market or the Secondary Market but has the legal obligation to submit a Prequalification File according to the rules defined in article <i>7undecies</i> , § 8, paragraph 2, of the Electricity Act and in the Royal Decree on "Eligibility Criteria".
<b>Fast Track Volume</b>	The Fast Track Nominal Reference Power multiplied by the Derating Factor as determined during the Fast Track Prequalification Process.
<b>Federal Grid Code 2019</b>	The royal decree of 22 April 2019 establishing a technical regulation for the operation of the transmission electricity grid and access to it.
<b>Financial Security</b>	The security provided to cover a CMU's obligations during one or more Validity Period(s) in the form of a bank guarantee, an Affiliate Company guarantee or a cash payment.
<b>Forced Outage</b>	An unplanned removal (full or partial) of a CMU providing the Service for any urgent reason that is not under the operational control of the Capacity Provider, as determined in the Commission Regulation (EU) 2017/1485 of 2 August 2017 establishing a guideline on electricity transmission system operation.
<b>Functioning Rules</b>	These rules referred to in article <i>7undecies</i> , § 12 of the Electricity Act.

<b>Global Auction Price Cap</b>	The price cap applicable in an Auction to all Bids, determined in the Ministerial Decree on "Volume and Parameters" for the CRM and in the <i>[placeholder to LCT legal framework]</i> for the LCT.
<b>Grid User</b>	As defined in article 2, §1, 57° of the Federal Grid Code.
<b>Grid User Declaration</b>	The official declaration of the Grid User provided to ELIA during the Prequalification Process, containing proof of the agreement between the CRM Candidate and the Grid User to provide the Service at one (or more) specific Delivery Point(s).
<b>Headmeter</b>	A (group of) meter(s), as defined in article 2, §1, 5° of the Federal Grid Code or in the applicable Regional Grid Code, associated with the Access Point as determined by ELIA (for the ELIA Grid) or as determined by the DSO (for the Public Distribution Grid), or associated with the CDS Market Access Points as determined by the CDSO (for a Closed Distribution System), installed by ELIA for the ELIA Grid, the DSO for the Public Distribution Grid and the CDSO for the Closed Distribution System.
<b>Indexed Calibrated Strike Price</b>	The indexed value of the Calibrated Strike Price of a Transaction applicable at a certain moment and determined by multiplying the Calibrated Strike Price by an index factor. The Indexed Calibrated Strike Price applies to all Primary Market Transactions as of the Transaction's second Delivery Period and to all Secondary Market Transactions having an index factor parameter in the Secondary Market transaction notification.
<b>Indirect Foreign Capacity</b>	As defined in article 2, 85° of the Electricity Act.
<b>Infrastructure Works</b>	The works which cannot be realized by another entity than the respective system operator (Fluxys, DSOs and ELIA).
<b>Intermediate Price Cap</b>	The price cap applicable in an Auction to a subset of Bids, determined in the Ministerial Decree on "Volume and Parameters" for the CRM and in the <i>[placeholder to LCT legal framework]</i> for the LCT.
<b>Intraday Market</b>	The energy market, as referred to in article 2, 27° of Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management.
<b>Investment File</b>	The file referred to in Article 7 of the Royal Decree on "Investment Thresholds", submitted to the CREG by a Capacity Holder with a view to being classified in a capacity category associated with a Capacity Contract covering more than one Period of Capacity Delivery.
<b>Investment Threshold</b>	As defined in article 1, § 2, 1° of the Royal Decree on "Investment Thresholds".
<b>Joint Bid</b>	The Bid for the Associated Eligible Volume of an Aggregated CMU that disposes of Associated Delivery Points attached to the final Bid for its (Remaining) Eligible Volume of such CMU, introduced for the purpose of obtaining a Capacity Contract for more than one Delivery Period.
<b>Last Published Derating Factor</b>	The latest public value of the Derating Factor for a CMU's category of Derating Factor as determined by the Ministerial Decree on "Volume and Parameters" or by the <i>[placeholder to LCT legal framework]</i> , at the moment of Prequalification Files submission or notification of the Secondary Market transaction and with application to the Transaction Period in accordance with section

	10.4.8.3.
<b>Linked Bids</b>	The two or more Bids for Linked Capacities that can only be selected in the Auction when all other Bids of the Linked Bid are selected as well.
<b>Linked Capacities</b>	As defined in article 1, § 2, 6° of the Royal Decree on "Investment Thresholds".
<b>Low Carbon Tender (LCT)</b>	The targeted tender as referred to in Article <i>7duodecies</i> of the Electricity Act.
<b>Manual Frequency Restoration Reserve (mFRR)</b>	Frequency Restoration Reserve (FRR), as defined in Article 3 (7) of Commission Regulation (EU) 2017/1485 of 2 August 2017 establishing a guideline on electricity transmission system operation (SOGL), that can be activated manually.
<b>Maximum Expected Contracted Capacity</b>	The maximum of the expected Contracted Capacities
<b>Measured Power</b>	The net active power, i.e. the difference between gross offtake and gross injection, measured at a Delivery Point. Net offtake from the grid is considered as a positive value, net injection into the grid is considered as a negative value.
<b>Ministerial Decree on "Volume and Parameters"</b>	The Ministerial Decree referred to in Article <i>7undecies</i> , § 6 of the Electricity Act, by which the Minister for Energy each year instructs the system operator to organize the auctions for the periods of capacity delivery concerned, sets the parameters required for their organization, fixes the maximum volume of capacity that can be contracted with all capacity holders of unproven capacity as part of the auctions concerned and determines the minimum volume to be reserved for the auction to be organized one year prior to the period of capacity delivery.
<b>Missing Capacity</b>	The positive difference between the Obligated Capacity and the Available Capacity.
<b>Missing Volume</b>	The share of a CMU's Pre-delivery Obligation considered as non-available as a result of one of the pre-delivery controls.
<b>New Build Capacity Market Unit (New Build CMU)</b>	An Additional Capacity Market Unit referred to in the commitments and waivers as described in § 92, including those Capacity Market Units that are exempted from the commitments and waivers because of their association with a Capacity Contract, as also described in § 92.
<b>Nominal Reference Power</b>	The maximal capacity that could be offered in an Auction, not taking into account the Derating Factor or the Opt-out Volume.

<b>Nominated Electricity Market Operator (NEMO)</b>	The nominated electricity market operator (NEMO) referred to in Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management.
<b>Non-energy Constrained CMU</b>	A Capacity Market Unit without any daily limit on providing energy or without any limit on its consumption.
<b>Non-SLA Hours</b>	All hours of an Energy Constrained CMU that are not SLA Hours.
<b>Obligated Capacity</b>	The capacity of a CMU that a Capacity Provider is obliged to make available in the form of Available Capacity during Availability Tests and Availability Monitoring, in line with the availability requirement, as referred to in article 7undecies, § 12, al. 2, 5° of the Electricity Act.
<b>Operating Aid</b>	Every aid for which its award is in function of the electricity production of the involved capacity, as specified further in article 1,§1 of the "Eligibility Criteria" Royal Decree.
<b>Opt-out Volume</b>	The (part of) the (Declared) Nominal Reference Power of a CMU for which the CRM Candidate formally indicates prior to the Auction for which it does not want to submit a Bid during an Auction.
<b>Opt-out Notification</b>	The notification based on which a CRM Candidate notifies ELIA that it has decided not to offer the Opt-out Volume into an Auction for a Delivery Period, in line with article 7undecies, § 9 of the Electricity Act.
<b>Partial Declared Balancing Price</b>	The positive imbalance price optionally declared by the Capacity Provider equal to or above which he is prepared to deliver energy in the energy market with his CMU in the energy market by dispatching a part of its Obligated Capacity.
<b>Partial Declared Day-ahead Price</b>	The value of the CMU's Reference Price optionally declared by the Capacity Provider equal to or above which he is prepared to deliver energy in the energy market with his CMU in the energy market by dispatching a part of its Obligated Capacity.
<b>Partial Declared Intraday Price</b>	The Intraday Market price optionally declared by the Capacity Provider equal to or above which he is prepared to deliver energy in the energy market with his CMU in the energy market by dispatching a part of its Obligated Capacity.
<b>Partial Declared Price</b>	The collective name of the Partial Declared Day-ahead Price, the Partial Declared Balancing Price and the Partial Declared Intraday Price.
<b>Parties on the Secondary Market</b>	The Seller and Buyer of an Obligation involved in a transaction on the Secondary Market.
<b>Passive Volume</b>	The component of the Available Capacity measured as the part of a CMU without Daily Schedule that did not react to a market price signal in accordance with its (Partial) Declared Prices, determined according to section 9.4.3.2.3.2.
<b>Pay-as-bid</b>	As defined in article 2, 91° of the Electricity Act.
<b>Payback Obligation</b>	The Capacity Provider's obligation to pay back an amount to ELIA in function of the Contracted Capacity as referred to in article 7undecies § 11 of the Electricity Act.



<b>Peak Hours</b>	The hours starting from 08.00 until 20:00 of every day, excluding weekend and Belgian public holidays.
<b>Permitting Milestone</b>	A key milestone that is reached when all necessary licenses/permits for the construction of the project have been obtained, delivered in the last administrative instance, be definitive, enforceable and cannot be disputed anymore before the State Council or the Council for permitting contestations.
<b>Pmax available (Pmax)</b>	The maximum power (in MW) that the Delivery Point can inject into (or take off) the ELIA Grid for a certain quarter-hour, taking into account all technical, operational, meteorological or other restrictions known at the time of notification to ELIA with the Daily Schedule, without taking into account any participation of the Delivery Point in the provision of balancing services.
<b>Point of Interface</b>	As defined in article 2, §1, 33° of the Federal Grid Code.
<b>Pre-auction</b>	To be defined in the Royal Decree on "Indirect Foreign Capacities".
<b>Pre-delivery Measured Power</b>	The capacity measured during a pre-delivery control and associated to an Existing Delivery Point or Existing CMU.
<b>Pre-delivery Obligation</b>	The capacity of a CMU that a Capacity Provider is obliged to make available during a pre-delivery control.
<b>Pre-delivery Period</b>	The period during which pre-delivery control(s) are organized by ELIA for a CMU to ensure the effective availability of the Contracted Capacities related to the CMU before the Delivery Period containing the start date of the Transaction Period associated to the CMU.
<b>Prequalification File</b>	All documents and data that the CRM Candidate has prepared, updated (when required) and provided to ELIA and which are necessary for the proper and complete execution of the Prequalification Process.
<b>Prequalification Process</b>	As defined in article 2, 82° of the Electricity Act, with it being understood that this process also applies to determine the possibility for Capacity Holders to participate in the Secondary Market.
<b>Prequalified Capacity Market Unit (Prequalified CMU)</b>	A Capacity Market Unit which has succeeded the Standard Prequalification Process or a Virtual Capacity Market Unit which has succeeded the specific Prequalification Process.
<b>Prequalified CRM Candidate</b>	The Capacity Holder that is allowed to participate in the Primary Market or the Secondary Market thanks to the prequalification of one or several Capacity Market Unit(s).
<b>Primary Market</b>	The market where the rights and obligations relating to the Service are created as a result of an Auction.
<b>Project Works</b>	The works that fall – as a result of a competitive selection process – under a system operator (ELIA, Fluxys or a DSO) or another entity's responsibility.
<b>Proven Availability</b>	The Active Volume for a CMU without Daily Schedule. The Pmax Available for (i) a Non-energy Constrained CMU with Daily Schedule or (ii) an Energy Constrained CMU with Daily Schedule within its SLA Hours. The Measured Power for an Energy Constrained CMU with Daily Schedule outside of its SLA Hours.

<b>Public Distribution Grid or “DSO Grid”</b>	As defined in article 2, 49° of the Federal Grid Code, with, for the purpose of these Functioning Rules, the exception of the local transmission grid. For a Public Distribution Grid located in Flanders, this is the electricity distribution network, as defined in article 1.1.3, 32° of the Flemish Decree of 8 May 2009 on energy; in Wallonia, this is the distribution network, as defined in article 2, 17° of the Walloon Decree of 12 April 2001 on the organization of the regional electricity market; in Brussels, this is the distribution network, as defined in article 2, 12° of the Brussels Ordinance of 19 July 2001 on the organization of the electricity market in the Brussels Capital Region.
<b>Public Distribution System Operator or “DSO”</b>	A natural personal or legal entity appointed by the regional regulator or regional authority, responsible for the exploitation, the maintenance and, if necessary, the development of the Public Distribution Grid in a certain zone and, where applicable, for its interconnectors with other systems and who is responsible of guaranteeing the long-term ability of the Public Distribution Grid to meet reasonable demands for electricity distribution.
<b>Redispatching Services</b>	As defined in article 248 and 249, § 6 of the Federal Grid Code.
<b>Reference Power</b>	The Nominal Reference Power of a CMU minus the Opt-out Volume (if applicable).
<b>Reference Price</b>	As defined in article 2, 81° of the Electricity Act.
<b>Regional Grid Code(s)</b>	<p>One or more of the following regional technical regulations:</p> <ul style="list-style-type: none"> <li>• the decision of the Flanders electricity and gas regulator (VREG) of 29 May 2020 approving the technical regulation for the local transmission of electricity for the Flanders region;</li> <li>• the decision of the Flanders electricity and gas regulator (VREG) of 25 June 2021 approving the technical regulation for distribution of electricity for the Flanders region;</li> <li>• the decree of the Walloon Government of 26 January 2012 in relation to the revision of the technical regulation for the operation of the local transmission grid in the Walloon Region and the access to it;</li> <li>• the decree of the Walloon Government of 3 March 2011 approving the technical regulation for the operation of the electricity distribution grid in the Walloon Region and the access to it;</li> <li>• the decree of the Government of the Brussels Capital Region of 13 July 2006 approving the technical regulation for the operation of the regional electricity transmission grid and the access to it;</li> <li>• the decree of the Government of the Brussels Capital Region of 23 May 2014 establishing the technical regulation for the operation of the electricity distribution grid and the access to it.</li> </ul>

<b>Regulation (EU) 2019/943</b>	As defined in article 2, 88° of the Electricity Act.
<b>Remaining Eligible Volume</b>	The maximum capacity that a Capacity Provider can offer for the purpose of a Transaction on the Primary Market.
<b>Remaining Maximum Capacity</b>	The part of the CMU's Nominal Reference Power (in MW) that remains available after consideration of the Unavailable Capacity.
<b>Requested Volume</b>	The volume (in MW) to be secured by a Financial Security, associated to a CMU and at a moment $t$ that is part of (one or more) Validity Periods.
<b>Required Level</b>	The level (in €/MW) to be secured by a valid type of Financial Security, associated to a CMU and at a moment $t$ that is part of (one or more) Validity Periods.
<b>Required Volume</b>	For a specific AMT hour, the volume the CMU is required to deliver in energy, according to the most recent Declared Prices and determined according to section 9.4.2.3.2.
<b>Royal Decree on "Monitoring"</b>	The Royal Decree on the determination of the detailed monitoring rules for the proper functioning of the Capacity Remuneration Mechanism by the Commission for Electricity and Gas Regulation established in accordance with article 7 <sup>undecies</sup> , § 13 of the Electricity Act and published on May 30 <sup>th</sup> 2021.
<b>Royal Decree on "Indirect Foreign Capacity"</b>	The future Royal Decree on the determination of the eligibility criteria meant in article 7 <sup>undecies</sup> , § 8, first paragraph, 3° of the law of 29 April 1999 on the organization of the electricity market, related to the conditions and modalities under which capacity holders of indirect foreign capacity can participate to the prequalification process of the Capacity Remuneration Mechanism.
<b>Royal Decree on "Eligibility Criteria"</b>	The Royal Decree of 21 May 2021 on the determination of the eligibility criteria meant in article 7 <sup>undecies</sup> , § 8, paragraph 1, 1° and 2° of the law of 29 April 1999 on the organization of the electricity market, related to the conditions under which capacity holders who benefit or have benefited from support measures have the right to participate to the prequalification procedure and related to the minimum threshold in MW.
<b>Royal Decree on "Investment Thresholds"</b>	The Royal Decree of 4 June 2021 on the determination of the the investment thresholds and the eligibility criteria for the Investment Costs, and the procedure of classification.
<b>Royal Decree on "Methodology"</b>	<i>[placeholder to amendment of Royal Decree on Methodology]</i>
<b>Secured Amount</b>	The amount (in €) to be secured by a Financial Security, associated with a CMU and at a moment $t$ that is part of (one or more) Validity Periods.
<b>Secondary Market</b>	As defined in article 2, 92° of the Electricity Act.
<b>Secondary Market Capacity</b>	The capacity in MW that is subject to a Transaction on the Secondary Market.

<b>Secondary Market Eligible Volume</b>	The capacity that a CRM Candidate can contract for a CMU's Transaction on the Secondary Market, as calculated after the Prequalification Process, not taking into account already Contracted Capacities.
<b>Secondary Market Exchange Mandate</b>	The mandate given by a Prequalified CRM Candidate or a Capacity Provider to an Exchange for the notification of a Secondary Market transaction involving his CMU to Elia. The mandate consists in the form in annex 18.4.1 duly completed and signed.
<b>Secondary Market Remaining Eligible Volume</b>	The maximum capacity that a Capacity Provider can contract for a CMU's Transaction on the Secondary Market.
<b>Seller of an Obligation</b>	The Capacity Provider that transfers the rights and obligations resulting from the Capacity Contract to a Buyer of an Obligation via a transaction on the Secondary Market.
<b>Service</b>	The Capacity Provider's rights and obligations related to the delivery of a Capacity, as stipulated in the Functioning Rules and in the Capacity Contract.
<b>Service Level Agreement (SLA)</b>	The service level for an Energy Constrained CMU as determined during the Prequalification Process.
<b>Service Time Schedule</b>	The time schedule covering the full CRM process as determined in the current Functioning Rules.
<b>SLA Hour</b>	For an Energy-Constrained CMU, up to N AMT Hours over one day where N corresponds to the number of hours in the CMU's SLA, for which a non-zero Obligated Capacity applies to ex-ante acquired obligations. The SLA Hours are established according to §537 and 539.
<b>Specific Prequalification Process</b>	The process to be followed by a CRM Candidate to prequalify a VCMU (Unproven Capacity) to participate to the Primary Market with this related VCMU.
<b>Standard Prequalification Process</b>	The process to be followed by a CRM Candidate who wants to prequalify an Existing CMU or an Additional CMU to be able participate to the CRM or LCT with this related CMU.
<b>Stop-Loss</b>	The mechanism that caps the amount of the Payback Obligation that a Capacity Provider has to pay.
<b>Stop-Loss Amount</b>	The maximum amount of the Payback Obligation related to a CMU's Transaction that a Capacity Provider has to pay to ELIA as determined for a Delivery Period.
<b>Strike Price</b>	As defined in article 2, 80° of the Electricity Act.
<b>Submeter</b>	Either a meter, as defined in article 2, §1, 5° of the Federal Grid Code or in the applicable Regional Grid Code, situated downstream of the Headmeter; or, an equation between one or more meter(s) situated downstream of the Headmeter and/or the Headmeter.

<b>Total Contracted Capacity</b>	The sum of all Contracted Capacities for a CMU at a specific moment during a Delivery Period.
<b>Transaction</b>	An agreement about the contractual rights and obligations resulting from the Service, closed in the form of a Capacity Contract between a Capacity Provider and ELIA, in the Primary Market or the Secondary Market at a Transaction Date, identified by a transaction identification number, for the Contracted Capacity and covering a Transaction Period.
<b>Transaction Date</b>	The date and time a transaction is made, i.e. the date and time that a Bid is submitted in the Auction or the date and time that ELIA acknowledges the reception of the notification of a Secondary Market transaction.
<b>Transaction Period</b>	The period linked to a Transaction, defined by a start date/start time and end date/end time, during which the rights and obligations related to the Delivery Period(s) apply, following the conclusion of a Capacity Contract.
<b>Transaction Validation Date</b>	On the Primary Market, the date and time at which the results of the related Auction are published (after validation by the CREG). On the Secondary Market, the date and time stamp of the signature by ELIA of the Annex A of the Seller of an Obligation.
<b>Unannounced Missing Capacity</b>	For the purpose of the determination of the Unavailability Penalty, the amount of Missing Capacity that was not notified before the period of unavailability, in accordance with §481) notified by the Capacity Provider to be Unavailable.
<b>Unavailability Penalty</b>	The amount to be paid by the Capacity Provider in case of Missing Capacity.
<b>Unavailable Capacity</b>	The share of the CMU's capacity which is or will be unavailable during a certain period notified to ELIA by the Capacity Provider.
<b>Unproven Availability</b>	For a CMU without Daily Schedule, (i) the Available Capacity during the AMT Hours with no Payback Obligation and the Declared Day-ahead Price was not surpassed or (ii) the Passive Volume during AMT Hours with a Payback Obligation.
<b>Unproven Capacity</b>	As defined in article 2, §1, 90° of the Electricity Act.
<b>Unsheddable Margin</b>	The minimal amount of net active power offtake (in kW/MW) that cannot be curtailed (inflexible or unsheddable power) at the Delivery Point(s) concerned.
<b>Validity Period</b>	The period of time for which a Financial Security is to be provided by a (Prequalified) CRM Candidate or a Capacity Provider, as a condition to make a Transaction on the Primary Market or the Secondary Market.
<b>Virtual Capacity Market Unit (VCMU)</b>	A Capacity Market Unit associated to Unproven Capacity.
<b>Volume to be guaranteed</b>	The volume to be covered by a Financial Security.
<b>Winter Period</b>	As defined in article 2, 51° of the Electricity Act.
<b>Working Day</b>	Any calendar day except for Saturdays, Sundays and Belgian public holidays.



## 3.2 ABBREVIATIONS

<b>AMT</b>	Availability Monitoring Trigger
<b>BRP</b>	Balance Responsible Party
<b>CC</b>	Contracted Capacity
<b>CDS</b>	Closed Distribution System
<b>CDSO</b>	Closed Distribution System Operator
<b>CEP</b>	Clean Energy Package
<b>CMU</b>	Capacity Market Unit
<b>CRM</b>	Capacity Remuneration Mechanism
<b>DAM</b>	Day-ahead Market
<b>DF</b>	Derating Factor
<b>DMP</b>	Declared Market Price
<b>DP</b>	Delivery Period
<b>DSM</b>	Demand Side Management
<b>DSO</b>	Public Distribution System Operator
<b>DSO Grid</b>	Public Distribution Grid
<b>EBGL</b>	Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing.
<b>EDS</b>	Detail Study
<b>EV</b>	Eligible Volume
<b>GCT</b>	Gate Closure Time
<b>GOT</b>	Gate Open Time
<b>IDM</b>	IntraDay Market
<b>LCT</b>	Low Carbon Tender
<b>NEMO</b>	Nominated Electricity Market Operator

<b>NRP</b>	Nominal Reference Power
<b>RES</b>	Renewable Energy Sources
<b>SLA</b>	Service Level Agreement
<b>SOGL</b>	Commission Regulation (EU) 2017/1485 establishing a guideline on electricity transmission system operation.
<b>TCC</b>	Total Contracted Capacity
<b>TP</b>	Transaction Period
<b>TSO<sup>2</sup></b>	Transmission System Operator
<b>VCMU</b>	Virtual Capacity Market Unit
<b>Y-1</b>	One year before the start of the Delivery Period
<b>Y-4</b>	Four years before the start of the Delivery Period
<b>WD</b>	Working Day

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<sup>2</sup> Elia Transmission Belgium SA has been designated as Transmission System Operator by Ministerial Decree of 13 January 2020 for a duration of twenty years, starting from 31 December 2019. Given the political choice behind the financing of the CRM expressed by the resolution DOC 55 1220/007 approved by the Parliament, which constitutes the workbase for the follow up committee, The Transmission System Operator has been put forward as the contractual counterparty designated according to article 7quaterdecies, § 1 of the Electricity Act.



## 4 SERVICE TIME SCHEDULE

### 4.1 INTRODUCTION

*This section summarizes most relevant milestones and operational deadlines or timings a CRM Actor should keep in mind when considering a participation to the Service.*

*The chapter is organized around two sections. Section 4.2 focuses on the key milestones specified in the Electricity Act and/or other legal documents related to the Capacity Remuneration Mechanism. Section 4.3 proposes an overview of the most relevant timings for each CRM operational process.*

*The following dispositions have to be seen as an executive summary. It does not replace the operational details and associated timings specified in each section of the Functioning Rules. The timings summarized in the tables of this chapter are not exhaustive (as some scenarios are not identified in this section). In case there would be inconsistencies on the timings illustrated in this chapter compared to the other chapters of the Functioning Rules (including the annexes), the timings stated in the other chapters would prevail.*

## 4.2 KEY MILESTONES

62. The dates summarized below are extracted from the Electricity Act and other legal documents related to the Capacity Remuneration Mechanism (CRM).

PERIODS	Gate opening time	Gate closure time	Remarks in respect of the forthcoming Auction
MINISTERIAL DECREE	NA	March 31, Y-4/Y-1	Last date where Ministerial Decree on "Volume and Parameters" is officially published.
FUNCTIONING RULES PUBLICATION	NA	May 15, Y-4/Y-1	Last date where Functioning Rules for a related Auction are officially published.
PREQUALIFICATION PROCESS <sup>3</sup>			
Prequalification File submission		June 15, Y-4/Y-1	Last date by which the CRM Candidate may submit his Prequalification File in order to be able to participate to the forthcoming Auction.

<sup>3</sup> A Prequalification File can be introduced at any time, but no later than June 15 of the year of the forthcoming Auction. However and considering the yearly update of the Functioning Rules published every May 15, any Prequalification File initiated before such date, and to be submitted for the forthcoming Auction, is required to be updated for compliancy before June 15

Prequalification results notification		September 15 <sup>4</sup> , Y-4/Y-1	Last date by which the prequalification results are officially notified by ELIA to each CRM Candidate individually.
Opt-out Notification submission/adaptation		September 30 06:00, Y-4/Y-1	Last day by which a CRM Candidate is allowed to provide (or to adapt) an Opt-out Notification to ELIA.

<b>AUCTION</b>			
Bid submission	1 WD after September 15 9:00 , Y-4/Y-1	September 30 17:00 , Y-4/Y-1	Period during which Bids may be introduced by Prequalified CRM Candidates.
Auction clearing	October 1, Y-4/Y-1	October 31, Y-4/Y-1	Period during which the Auction is cleared and results are validated.
Results notification	NA	October 31, Y-4/Y-1	Date by which Auction results are published.

<b>PRE-DELIVERY PERIOD</b>	<b>November 1, Y-4/Y-1</b>	<b>October 31, Y</b>	
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<sup>4</sup> In the event that the CRM Candidate submitted an Investment File to CREG, the prequalification results are notified to the CRM Candidate on September 1, Y-4/Y-1.

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<b>DELIVERY PERIOD</b>	<b>November 1, Y</b>	<b>October 31, Y+1</b>	
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## 4.3 TIMINGS PER OPERATIONAL PROCESS

63. This section summarizes the most important milestones per operational process (Prequalification Process, Opt-out Notification, processes for DSO-connected Capacities, processes for CDS-connected Capacities, Financial Security process, Auction process, pre-delivery control, Secondary Market and Availability Monitoring). For the sake of efficiency, Working Day is referred to hereafter as 'WD'.


The specified timings always refer to a maximum duration expressed in Working Days. For the sake of clarity, ELIA will always make best efforts to reduce the timings foreseen in the tables in order to respect the deadlines defined in section 4.2 above.

In the tables below:

- "A" is the submission date of the Prequalification File by the CRM Candidate to ELIA;
- "B" is the publication of the Auction results by ELIA;
- "C" is Transaction Date related to a Transaction made via the Secondary Market;
- "D" is the Availability Test/delivery date;
- "E" is the Financial Security submission.

### 4.3.1 Prequalification Processes

64. Some specific aspects of a Prequalification Process may be running in parallel depending on various parameters related to the CRM Candidate (Opt-out Notification, communication with CREG when a multi-year Capacity Contract is requested, discussion with DSO regarding the DSO-connected Delivery Points, discussion with CDSO regarding the CDS-connected Delivery Points, etc.). Some of these parallel processes are illustrated in the tables below (tables of sections 4.3.1.1 and 4.3.1.2).



Action	Due Date				Details
	Standard Prequalification Process & Fast Track Prequalification Process		Standard Prequalification Process for Secondary Market participation only	Specific Prequalification Process	
	CMU with Investment file	CMU without investment file			
Application form submission date	A – 5 WD	A – 5 WD	A – 5 WD	A – 5 WD	The CRM Candidate submits to ELIA his application form in order to be allowed to submit a Prequalification File.
Approval/rejection of application form	A	A	A	A	Once the CRM Candidate has submitted his application form, ELIA has 5 WD to approve or reject it.
Prequalification File submission date <sup>5</sup>	A	A	A	A	In order to launch the Prequalification Process, the CRM Candidate submits his Prequalification File via the CRM IT Interface.
Results of the Prequalification File compliance-check# 1	August 1	August 15	A + 45 WD	A + 45 WD	The first Prequalification File submission is followed by a compliance check realized by ELIA either by August 1 or 15 (depending on the presence of an investment file) or within maximum 45 WD starting from the Prequalification File submission date in case the CRM Candidate wants to prequalify for Secondary Market participation only. This may trigger a request for additional information in case the Prequalification File is provisionally “rejected”.
Finalization of the			A + 60 WD	A + 60 WD	In the event that ELIA requests for additional information, the CRM Candidate needs to come

<sup>5</sup> Either way, a Prequalification File is always submitted to ELIA at the latest on June 15 of a year (as per section 4.2 above) in order to be able to participate to the forthcoming Auction of the same year.

Prequalification File	10 WD before September 1	10 WD before September 15			back to ELIA with this additional information by 10 WD before either September 1 or 15 (depending on the presence of an investment file) or by maximum 15 WD starting from ELIA's request in case the CRM Candidate wants to prequalify for Secondary Market participation only.
Results of the final Prequalification File compliance-check	September 1	September 15	A + 70 WD	A + 70 WD	Final results with respect to the compliance check of the Prequalification File are communicated to the CRM Candidate either by September 1 or 15 (depending on the presence of an investment file) or by 70 Working Days starting from the Prequalification File submission date if the CRM Candidate wants to prequalify for Secondary Market participation only.
Notification of the provisional Nominal Reference Power for the Existing Delivery Point(s), if applicable	August 1	August 15	A + 45 WD	NA	ELIA may determine the provisional Nominal Reference Power for some Existing Delivery Point and communicates it via the CRM IT Interface to the CRM Candidate either by August 1 or 15 (depending on the presence of an investment file) or within 45 WD starting from the Prequalification File submission date in case the CRM Candidate wants to prequalify for Secondary Market participation only.
Contestation of the provisional Nominal Reference Power(s), if applicable	10 WD before September 1	10 WD before September 15	A + 60 WD	NA	If needed, the CRM Candidate can contest the provisional Nominal Reference Power(s) communicated by ELIA by 10 WD before either September 1 or 15 (depending on the presence of an investment file) either within 15 WD starting from the date of this communication via the CRM IT Interface in case the CRM Candidate wants to prequalify for Secondary Market participation only.

Notification of the final Nominal Reference Power for the Existing Delivery Point(s), if applicable	September 1	September 15	A + 70 WD	NA	ELIA notifies the final Nominal Reference Power for each Delivery Point included in the CMU to the CRM Candidate either by September 1 or 15 (depending on the presence of an investment file) or within 70 WD starting from the Prequalification File submission date in case the CRM Candidate wants to prequalify for Secondary Market participation only.
Prequalification results notification	September 1	September 15	A + 70 WD	A + 70 WD	ELIA notifies the results and therefore different volumes (Eligible Volumes, Secondary Market Eligible Volume, Fast Track Volume, etc.) to the CRM Candidate either by September 1 or 15 (depending on the presence of an investment file) or within 70 WD starting from the Prequalification File submission date in case the CRM Candidate wants to prequalify for Secondary Market participation only.





#### 4.3.1.1 Process linked to a Prequalification File including DSO-connected Delivery Point(s)

65. This process running in parallel is only applicable in the framework of a Standard Prequalification Process or a Fast Track Prequalification Process. All the deadlines presented in this table are complementary to the timing presented above for the Standard Prequalification Process and the Fast Track Prequalification Process.

Action	Due date			Details
	Standard Prequalification Process & Fast Track Prequalification Process		Standard Prequalification Process for Secondary Market participation only	
	CMU with Investment File	CMU without Investment File		
Communication of the Delivery Point's ID by the CRM Candidate to the concerned DSO(s)	A	A	A	Before launching the processes with a DSO, the CRM Candidate needs to first access the CRM IT Interface to get the ID of the DSO-connected Delivery Point(s). Then, he will communicate this(these) ID(s) to the concerned DSO(s).
Notification of the Prequalification File submission by ELIA	A	A	A	As soon as a Prequalification File, including DSO-connected Delivery Point(s), has been submitted by the CRM Candidate to ELIA, ELIA notifies it to the DSO.
Signature of the DSO-CRM Candidate agreement	A	A	A	The CRM Candidate contacts the concerned DSO(s) to sign a DSO-CRM Candidate agreement for each DSO-connected-Delivery Point.
Communication by the concerned DSO(s) to ELIA of the final Nominal Reference Power	August 1	August 15	A + 45 WD	As soon as the CRM Candidate agrees with the concerned DSO(s) on the Nominal Reference Power for each DSO-connected Delivery Point participating to the Service, the DSO(s)

				communicate(s) the related Nominal Reference Power(s) to ELIA.
Communication by ELIA of the final Nominal Reference Power to the CRM Candidate	September 1	September 15	A + 70 WD	ELIA communicates the final Nominal Reference Power to the CRM Candidate either by September 1 or 15 depending on the presence of an investment file, or within 70 WD starting from the Prequalification File submission date in case the CRM Candidate wants to prequalify for Secondary Market participation only.

#### 4.3.1.2 Process linked to a Prequalification File including CDS-connected Delivery Point(s) (if CDS is connected to ELIA grid)

66. All the deadlines presented in this table are complementary to the timings presented in the tables above and below for the Standard Prequalification Process and the Fast Track Prequalification Process.

Action	Due date		Fast-track Prequalification Process	Details
	Standard Prequalification Process			
	If the CDS point is an Existing Delivery Point	If the CDS point is an Additional Delivery Point		
CDSO Declaration submission by the CRM Candidate	A	A	A	As part of the Prequalification File, the CRM Candidate provides a CDSO Declaration to ELIA for the CDS-connected Delivery Point when the CDS is connected to the ELIA Grid.
CDS User Declaration submission by the CRM Candidate	A	A	NA	In case the CRM Candidate is not the CDS User, a CDS User Declaration is submitted as part of the Prequalification File for the CDS-connected Delivery Point.
Submission of the cooperation agreement by the CDSO	A +25 WD	NA	NA	A cooperation agreement is to be signed by ELIA and the CDSO before the Nominal Reference Power is determined. This cooperation agreement is provided to ELIA within 25 WD starting from the submission date of the Prequalification File.
Submission of the cooperation agreement by ELIA	A + 35 WD	NA	NA	From the moment, ELIA receives the cooperation agreement from the CDSO, ELIA signs it and provides it back to the CDSO within 10 WD starting from the receipt by ELIA.

### 4.3.2 Financial Security

Actions	Due Date		Details
	Primary Market	Secondary Market	
Financial Security submission	E (September 1 <sup>st</sup> )	E (Notification of the transaction on the Secondary Market)	To be able to access the Auction with his CMU or to validate a Transaction on the Secondary Market and if relevant (cf. section 11.2.1.2), the CRM Actor must submit a Financial Security to ELIA.
Financial Security approval/rejection	E + 15 WD	E +15 WD	From the moment a Financial Security is received from the CRM Actor, ELIA has 15 WD to come back to the CRM Actor to approve or reject the Financial Security.

### 4.3.3 Auction & pre-delivery control

Actions	Due Date	Details
Results notification of the Auction issued to each bidder individually	B	ELIA notifies individually to each Prequalified CRM Candidate the results of the Auction.
Signature of the Capacity Contract	B + 40 WD	Within a time window of 40 WD after the notification of the Auction results, the Prequalified CRM Candidate signs his Capacity Contract with ELIA.
Signature of the Capacity Contract in the event of signature of a Connection Contract	Notification of the Connection Contract + 20 WD	In the event of the signature of a Connection Contract: after the notification of the results of the Auction and at the latest 20 WD after the signature of the Connection Contract (according to the timing required in the applicable technical regulation), the Prequalified CRM Candidate signs his Capacity Contract with ELIA.

### 4.3.4 Secondary Market

Actions	Due Date		Details
	Bilateral Secondary Market transaction	Secondary Market transaction via an Exchange	
Notification of a Secondary Market transaction	C - 4 WD	C - 1 WD	The Buyer of Obligation or Seller of Obligation submits a notification of the Secondary Market transaction to ELIA via the CRM IT Interface.. This Secondary Market transaction can also be notified by an Exchange which receives a mandate from both the Buyer and the Seller of an Obligation. The Buyer of an Obligation provides a Financial Security as pre-condition for the transaction to take place (if applicable).
Notification, as a matching confirmation, of the other actor involved in the Secondary Market transaction	C - 1 WD	NA	As soon as either the Buyer or the Seller of an Obligation notifies his intention to realize a transaction on the Secondary Market with the necessary information, the other party must confirm this transaction to ELIA within 3 WD before notification acknowledgement. This is not applicable to an exchange which has received a mandate from both parties prior notification.
Acknowledgement of reception of the notification including the signature of a Capacity Contract	C		Maximum 1 WD after ELIA is notified by both the Buyer and the Seller of an Obligation, ELIA acknowledges reception of the notification. The acknowledgment timing defines the Transaction Date
Approval/rejection of the Secondary Market transaction notification	C + 2 WD		Within a time frame of 2 WD after notification acknowledgement, ELIA notifies the approval or rejection of the Secondary Market transaction.
Transaction Validation Date	Max C + 12 WD or C + 17 WD		As soon as the Secondary Market transaction is approved by ELIA, ELIA receives a possible ad hoc report in case of suspicion by the market auditor of irregularity of the transaction on the Secondary Market or ELIA sends an ad

		<p>hoc report to CREG within 5 WD after approval of the transaction by ELIA. In the absence of such ad hoc report within 5 WD, or if, within 10 WD after the approval of the transaction on the Secondary Market by ELIA, the CREG does not request Elia to cancel the transaction on the Secondary Market, ELIA modifies the Contracted Capacity of the Transaction of the Seller of an Obligation accordingly.</p> <p>If, on the contrary, the CREG asks ELIA to cancel the transaction, ELIA changes the status of the transaction on the Secondary Market to 'rejected' (and cancels the transaction).</p>
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### 4.3.5 Availability Monitoring

Actions	Due date	Details
Notification of Announced Unavailable Capacity	D – 1 calendar day	A Capacity Provider notifies his unavailability at the latest at 11 : 00 on the calendar day preceding the delivery/Availability Test, if it is to be counted as Announced Unavailable Capacity.
Notification of Unavailable Capacity	D+10 working days	ELIA rejects notifications of Unavailable Capacity submitted later than 10 Working Days after the start date of the unavailability by the Capacity Provider.
Approval or rejection of the notification of Unavailable Capacity	F + 5 working days	Where 'F' represents the moment of reception of the Capacity Provider's notification of Unavailable Capacity, Elia has up to 5 WD to approve or reject it and notify the Capacity Provider.
Availability Test announcement	D – 1 calendar day	An Availability Test is announced by ELIA between 15:00 and 15:30 on the calendar day preceding the Availability Test.
Notification of (Partial) Declared Prices	D – 1 calendar day	Updated or new (Partial) Declared Prices are notified by the Capacity Provider to ELIA at the latest at 9: 00 on the calendar day preceding the delivery.
AMT Moment/Hours announcement	D – 1 calendar day	The exact AMT Hours/Moment is (are) announced at the latest at 15:00 the calendar day preceding the occurrence of the AMT Hour. If no AMT Hours are identified before that time, the fallback procedure applies according to section 15.6.
Delivery/Availability Test	D	The start and end time of an Availability Test may coincide with an AMT Moment. In this case, the Availability Test has a priority over the AMT Hour.
Settlement	15 <sup>th</sup> of M+2 following D	ELIA shares with each concerned Capacity Provider their respective delivery activity report containing all results of the Availability Monitoring and Availability Tests (over month M on each CMU separately) along with associated penalty(ies), if applicable. In the same report, ELIA indicates whether the Capacity Provider is/should be subject to a downwards revision of the Monthly Remuneration (as defined in the Capacity Contract). In case a downwards revision of the Monthly Remuneration of the Capacity Provider takes place after at minimum 3 separate detections during Availability Tests or AMT Moments, each occurring on different calendar days, of Unannounced Missing Capacity > 20% of the Obligated Capacity, the Capacity Provider notifies

		ELIA once he has fulfilled 3 consecutive deliveries successfully (i.e. Availability Tests or AMT Moments with no Missing Capacity). From that moment, ELIA has 5 Working Days to verify the information received by the Capacity Provider. ELIA then reinstates the original Monthly Remuneration as of the next payment.
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# 5 PREQUALIFICATION PROCESSES

## 5.1 INTRODUCTION

*The purpose of a Prequalification Process is to determine whether and with which volumes a Capacity Holder is eligible to participate in the Auction or the Secondary Market.*

*This chapter details the three different Prequalification Processes (i.e. Standard Prequalification Process, Specific Prequalification Process and Fast Track Prequalification Process) that may be followed by a Capacity Holder. It is structured in six sections.*

*Sections 5.2 to 5.5 describe the processes a CRM Actor goes through when prequalifying a CMU.*

*Section 5.6 focuses on the evolution in time of the submitted information.*

*Section 5.7 details the communication between ELIA and the CREG during a Prequalification Process.*

## 5.2 PREQUALIFICATION PROCESS REQUIREMENTS

### 5.2.1 Preparation phase

67. In anticipation of a participation to the CRM or LCT, a Capacity Holder is invited to prepare its file in order to facilitate the submission and processing of its Prequalification File. In particular, the Capacity Holder is invited to verify upfront the EAN codes and anticipated Nominal Reference Power (cf. section 5.4.1) of the Delivery Points it wishes to be prequalified. Moreover, the Capacity Holder is invited to timely get in touch with its relevant grid operator(s) to prepare the prior requirements related to the submission of a Prequalification File.

### 5.2.2 Requirements prior to the submission of a Prequalification File

68. Prior to submitting a Prequalification File, a Capacity Holder shall first become a CRM Candidate by filling in an application form (according to section 5.2.2.1) and then declare that it undertakes to comply with the checks listed in section 5.2.2.2.

#### 5.2.2.1 Application form

69. The Capacity Holder is invited to fill in an application form through a preliminary access to the CRM IT Interface.
70. For a legal person, the form includes the company or association details and the contact details of the contact person (in this respect, functional mailboxes are allowed). For a natural person, it contains the personal contact details.
71. The application form is reviewed by ELIA in accordance with section 5.3.1.
72. To be able to submit his application form, the Capacity Holder confirms to ELIA that he complies with the relevant Data Protection Legislation (as detailed in section 2.9) by marking the dedicated box in the CRM IT Interface.

73. When the application form has been approved by ELIA, each contact person mentioned in the application form is considered to be a user of the CRM IT Interface.

### 5.2.2.2 Compliance check(s)

74. Once the application form is approved by ELIA and prior to the submission of a Prequalification File, the CRM Candidate declares that it undertakes<sup>6</sup> to comply with the provisions listed below by ticking the corresponding boxes in the CRM IT Interface:
- for participation in a Standard Prequalification Process or a Specific Prequalification Process:
    - the Functioning Rules; and
    - the provisions of the Capacity Contract, that he commits to sign if selected during the Auction and which complies with the standard capacity contract approved by the CREG; and
    - if applicable, the eligibility criteria for the investment costs fixed pursuant to article 7undecies § 9 al. 4 of the Electricity Act; and
    - the admissibility criteria for the Prequalification Process fixed pursuant to article 7undecies § 8 al. 1, 1° and 2° of the Electricity Act; and
    - if applicable, the requirements in terms of prior authorisation for the establishment and operation of the facilities referred to in article 4 § 1 of the Electricity Act; and
    - if applicable, the CO<sub>2</sub> Emissions Cap; and
    - Any other applicable legal and regulatory framework.
  - for participation in a Fast Track Prequalification Process, the CRM Candidate only declares that it undertakes to comply with the sections related to the Fast Track Prequalification Process of the Functioning Rules for the Capacity Remuneration Mechanism.

It is up to the CRM Actor to remain fully compliant at all times with the checks mentioned above applicable to it.

### 5.2.3 Requirements for the submission of the Prequalification File

75. This section lists all the requirements to be timely respected by a CRM Actor for his Prequalification File to be considered as “approved” by ELIA. The data and documents submitted make up the Prequalification File. Prequalification Files that fail to timely meet the requirements as described in this section will be considered as “rejected” by ELIA.
76. A Prequalification File is for one CMU only.
77. The Prequalification File requirements vary depending on the type of Prequalification Process (standard, specific or fast track), whether the information requested concerns a Delivery Point or a CMU and on the status of the concerned Delivery Point or CMU (existing, additional or virtual).

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<sup>6</sup> This can be done by any user of the CRM IT Interface and once it has been done, it is considered as validated for all other users linked to the same CRM Candidate.

78. A CRM Actor may submit a Prequalification File to ELIA (or make changes to a Prequalification File in case it is authorized, in accordance with §§ 109 and 110) whenever needed provided that:
- **if the CRM Actor wants to participate in the Primary Market**, this Prequalification File (or its change) is submitted within the deadline defined in article *7undecies* §8 last alinea of the Electricity Act; or
  - **if the CRM Actor wants to participate in the Secondary Market** (as of a Buyer of an Obligation), this Prequalification File (or its change) is submitted at the latest seventy Working Days before being able to conclude a Transaction via the Secondary Market; or
  - **if the CRM Actor does not want to participate in the Primary Market nor to the Secondary Market** but is obligated to submit a Prequalification File in compliance with article *7undecies* § 8 al. 2 of the Electricity Act, this Prequalification File (or its change) is submitted within the deadline defined in article *7undecies* § 8 al. 7 of the Electricity Act.

### 5.2.3.1 Requirements applicable to the Standard Prequalification Process

#### 5.2.3.1.1 General requirements for a Delivery Point

79. A Delivery Point can belong to only one CMU and therefore to only one CRM Candidate at a specific point in time of a Delivery Period.
80. More than one Delivery Point (in a single CMU or in different CMUs) can be used to deliver the Service behind an Access Point as long as these Delivery Points do not influence each other.

The use of two Delivery Points (in a single CMU or in different CMUs) delivering a Service via a Submeter and the related Headmeter or via two hierarchically-linked Submeters (one Delivery Point upstream of the other one) is tolerated at a specific point in time of a Delivery Period only if the following three conditions are met:

- the two Submeters (or the Headmeter and the Submeter) belong to the same CRM Candidate; and
- the CRM Candidate renounces to invoke any influence of the Service supplied downstream on the Service supplied upstream; and
- one of the two concerned Delivery Points has already successfully prequalified in the FCR service (Frequency Containment Reserve, one of the balancing services).

ELIA applies the 'first come, first served' rule when processing Prequalification Files.

81. The following table includes all the data and documents that shall be provided per Delivery Point (existing or additional) to ELIA by a CRM Candidate as part of his Prequalification File in order to be considered as "approved" (as per § 115) in case he participates in a Standard Prequalification Process.

The crosses in the table indicate for which status (existing and/or additional) the requirement applies. An asterisk in the last two columns means that the information is mandatory for all Existing or Additional Delivery Points, whereas an asterisk in the comments-column describes the subset of Delivery Points for which the information provision is mandatory.

Requirements	Type of data	Comments	Delivery Point's status	
			Existing	Additional
<b>General information:</b>				
Delivery Point name	Name	The CRM Candidate chooses and communicates a Delivery Point's name. There is no requirement with respect to the choice of this name. For a CDS-connected Delivery Point if the CDS is connected to the ELIA Grid, the Delivery Point's name is included in the CDSO Declaration.	X*	X*
Associated Delivery Point	Name (drop-down list)	The CRM Candidate indicates if the Delivery Point is to be interpreted as an Associated Delivery Point or not.	X*	X*
Technology	Name (drop-down list)	The technology of the Delivery Point is supplied according to the list provided by Article 13 §1 of the [placeholder to amendment of Royal Decree on Methodology].	X*	X*
Type of Delivery Point	Name (drop-down list)	The CRM Candidate needs to inform ELIA about the fact that the Delivery Point is connected to the ELIA grid, a Distribution System Operator (DSO) grid or a Closed Distribution System (CDS). In the event that the Delivery Point is connected to a CDS, the CRM Candidate also needs to inform ELIA if the CDS is connected to the ELIA Grid or the DSO Grid.	X*	X*
Single line diagram	Diagram (PDF)	A single line diagram (as defined in articles 366 and 367 of the Federal Grid Code) is a diagram with the specific identification of the exact location of the Delivery Point. It can include more than one Delivery Point. For a CDS-connected Delivery Point if the CDS is connected to the ELIA Grid, the single line diagram is included in the CDSO Declaration. *Providing a single line diagram is mandatory for existing ELIA Grid-connected Delivery Points and for existing CDS-connected Delivery Points when a CDS is connected to the ELIA Grid.	X	X
Linked Capacities	Number (ID of the Delivery Point(s))	*The CRM Candidate provides ELIA with the list of Delivery Points which are linked together (Linked Capacities). The link between Delivery Points leads to links between CMUs and can be translated into "Linked Bids" for the Auction as specified in § 243.	X	X
Corresponding DSO	Name (drop down list)	* In case the Delivery Point is connected to a DSO Grid or a CDS connected to the DSO Grid, the CRM Candidate indicates which DSO needs to be contacted by ELIA to initiate the Delivery Point's Nominal Reference Power calculation.	X	X
EAN code(s) of the Access Point	Number	The EAN code of the Access Point is the unique identification number used to identify the metering device of the Access Point that is related to the Delivery Point. For a CDS-connected Delivery Point, the EAN code(s) is(are) included in the CDSO Declaration if the CDS is connected to the ELIA Grid. For a Delivery Point that is not CDS-connected, if the Delivery Point is defined on the level of the Headmeter, the provided EAN code of the Access Point will be the same as the provided EAN code of the Delivery Point.	X*	X
EAN code(s) of the Delivery Point/Identification of the Delivery Point (for a CDS-connected Delivery Point)	Number	The EAN code of the Delivery Point is a unique identification number used to identify the metering device of the Delivery Point. For a CDS-connected Delivery Point if the CDS is connected to the ELIA Grid, the EAN code(s) correspond(s) to the one(s) that is(are) included in the CDSO Declaration.	X*	X
CO <sub>2</sub> calculation module	Signed document (PDF)	This is a calculation module provided by the Federal Public Service Economy on its CRM webpage and is filled in by the CRM Candidate as part of its Prequalification File. *This requirement is mandatory for Delivery Points that concern a production capacity using fossil fuels.	X	X
CO <sub>2</sub> emission	Number (in g/kWh)	*The CRM Candidate must provide a CO <sub>2</sub> emission of the Delivery Point if it concerns a production capacity using fossil fuels as detailed in Annex 18.1.6. Other capacities can provide CO <sub>2</sub> emission whenever relevant. Their value set by default is 0, with this parameter being used for the Auction in case tie-breaking rules are necessary (as per section 6.3.3.2). The CO <sub>2</sub> emissions are the subject of a decision by ELIA based on an advice of Federal Public Service Economy during the Prequalification File review process as detailed in §§ 114 and 115).	X	X
CO <sub>2</sub> emission additional documentation	PDF	*Whenever desired by the CRM Candidate, or when explicitly requested by the Federal Public Service Economy, additional specific CO <sub>2</sub> related documentation is provided via the CRM IT interface.	X	X
Grid User Declaration	Signed document (pdf)	*The Grid User Declaration is a signed declaration to provide in case the Grid User differs from the CRM Actor. The list of the clauses that must at least be presented into this signed declaration can be found in annex 18.1.2. A Delivery Point can be related to only one Grid User Declaration at a time.	X	

<b>Information related to production or energy storage permit</b>	Signed document (pdf)	<p>*As stated in article 7 <i>undecies</i> § 8 al. 4 of the Electricity Law, if required according article 4 §1 of the Electricity Act, the CRM Candidate provides:</p> <ul style="list-style-type: none"> <li>- the production or energy storage permit if the CRM Candidate already has it; or</li> <li>- proof that a production or energy storage permit request has been introduced at the latest fifteen days after the publication of the Ministerial Decree "Volume and Parameters", if the CRM Candidate does not yet have it.</li> </ul> <p>One production or energy storage permit can be valid for more than one Prequalification File as it may cover more than one CMU. For the CMU to be prequalified, such production or energy storage permit must be valid at least until the notification of the Auction results (defined in section 6.4) and must be obtained within twenty days before the deadline for submitting Bids in connection with the auctions, in accordance with article 7 <i>undecies</i> §12 al. 3, 2 a).</p>		X
<b>General information – For CDS connected Delivery Points:</b>				
<b>CDSO Declaration</b>	Signed document (PDF)	This declaration can be found in annex 18.1.3. *Providing a CDSO Declaration is mandatory in case of a CDS-connected Delivery Point when the CDS is connected to the ELIA Grid.	X	X
<b>EAN code of the CDS Market Access Point</b>	Number	*In case of a CDS-connected Existing Delivery Point, the CRM Candidate is obliged to provide the EAN code of the CDS Market Access Point. The corresponding EAN code(s) is(are) included in the CDSO Declaration if the CDS is connected to the ELIA Grid.	X	X
<b>CDS User Declaration</b>	Signed document (pdf)	*The CDS User Declaration is a signed declaration to provide in case of a CDS-connected Delivery Point and in case the CDS User differs from the CRM Actor. The list of the clauses that must at least be presented into this signed declaration can be found in annex 18.1.2. A Delivery Point can be related to only one CDS User Declaration at a time.	X	
<b>General information – For Eligible Direct Foreign Capacity Holders:</b>				
<b>Agreement between Belgium and Adjacent Member State</b>	Signed document (PDF)	*In the event that the CRM Candidate is an Eligible Direct Foreign Capacity Holder, he provides to ELIA the agreement as set in Article 7 <i>undecies</i> §8 al. 5. This agreement allows the Eligible Direct Foreign Capacity Holder to prequalify a CMU including this Delivery Point.	X	X
<b>Declaration by the Eligible Direct Foreign Capacity Holder</b>	Signed document (PDF)	*In the event that the CRM Candidate is an Eligible Direct Foreign Capacity Holder, he provides to ELIA a declaration stating that he will respect the requirements of the agreement signed between Belgium and the European adjacent Member State.	X	X

<b>Nominal Reference Power related information – for Existing Delivery Points:</b>				
<b>Expected Nominal Reference Power</b>	Number (in MW)	In case of an Existing Delivery Point, the CRM Candidate provides the Expected Nominal Reference Power of the Delivery Point. For a CDS-connected Delivery Point, the Expected Nominal Reference Power is included in the CDSO Declaration.	X*	
<b>NRP based on injection data only</b>	Name (drop-down list)	The CRM Candidate indicates to ELIA whether the NRP of his Delivery Point can be determined based on injection data only. This will have an impact on the methodology used to determine NRP.	X*	
<b>Nominal capacity of production</b>	Number (in MW)	The sum of nameplate capacities of any production units (given by the manufacturer of the production unit – also called rated capacity, nominal capacity or installed capacity) installed with a direct or indirect electrical connection to the Delivery Point and intended to provide the Service. The nameplate capacity does not influence the determination of the Nominal Reference Power and is not used by ELIA during the Prequalification Process. It is considered as a complementary information relevant for ELIA in the event of an assessment of the information received during the Prequalification Process (according to section 5.3.3). *This requirement is mandatory only for Delivery Points that concern production capacity.	X	
<b>Non-representative days for NRP determination</b>	Signed document	In case the NRP of the Delivery Point cannot be determined based on injection data only, the CRM Candidate may provide a list of non-representative days of the past thirteen months, which will then be discarded from the period used to determine the NRP as described in § 131. Non-representative days can only be exceptional holidays, strike days or closing periods that have an impact on the injection/offtake profile of the Delivery Point. This has to be justified as such by the CRM Candidate.	X	
<b>Unsheddable Margin</b>	Number (in MW)	The Unsheddable Margin cannot be lower than the negative of the Nameplate capacity of production and the negative of the maximal injection. *This requirement is mandatory only for Delivery Points for which NRP cannot be calculated based on injection data only	X	
<b>Full technical injection Capacity</b>	Number (in MW)	This is the maximum possible injection of active power as measured at the Delivery Point. The term injection is used to designate a certain sense of energy flow and does not exclusively refer to the technical means with which Service is provided. The full technical injection capacity is not measured by ELIA during the tests taking place during the Prequalification Process. It can be perceived as complementary	X*	

		information relevant for ELIA in the case of assessment of the information received during the Prequalification Process (according to section 5.3.3).		
<b>Full technical offtake Capacity</b>	Number (in MW)	This is the value indicating the maximum possible offtake of active power at a Delivery Point. The term offtake is used to designate a certain sense of energy flow and does not exclusively refer to the technical means with which the Service is provided. The full technical offtake capacity is not measured by ELIA during the tests taking place during the Prequalification Process. It can be perceived as complementary information relevant for ELIA in the case of assessment of the information received during the Prequalification Process (according to section 5.3.3). *This requirement is mandatory only for Delivery Points for which NRP cannot be calculated based on injection data only	X	
<b>Nominal Reference Power related information – for Additional Delivery Points:</b>				
<b>Declared Nominal Reference Power</b>	Number (in MW)	In case of Additional Delivery Point, the CRM Candidate provides the Declared Nominal Reference Power of the Delivery Point.		X*

**Grid constraint related information – for Additional Delivery Points part of a New Build CMU:**

<b>Existing connection capacity</b>	Number (in MW)	It is the connection capacity (as per the Detail Design). Such value is used by ELIA to determine the volume of additional connection capacity which will be subject to the grid constraints applicable to the forthcoming Auction. In this way, the additional connection capacity corresponds to the difference between the capacity agreed upon in the technical agreement and (if any) the sum of the existing connection capacity(ies) associated to this technical agreement. *This requirement is mandatory only for Additional Delivery Points that are part of a New Build CMU.		X
<b>Technical agreement</b>	Name (drop-down list)	*If a signed technical agreement is required according to the connection process (cf. applicable Federal or Regional Grid Code), the CRM Candidate indicates to ELIA whether or not this technical agreement has already been obtained (Yes/No).The technical agreement must be obtained no later than the 25th of August preceding the Auction concerned. For a CDS-connected Delivery Point, the ID if the technical agreement corresponds to that included in the CDSO Declaration.		X
<b>EDS ID</b>	Number (EDS ID)	*An EDS ID can be valid for more than one Prequalification File as it may cover more than one CMU and Delivery Point.		X

Table 1: Requirements per Existing Delivery Point and per Additional Delivery Point

### 5.2.3.1.2 Requirements for Existing Delivery Points

82. An Existing Delivery Point may be any point or a group of points associated to:

- a Headmeter at an Access Point connected to the ELIA Grid; or
- a meter (or set of meters) used by the CDSO as part of its invoicing obligations in relation to a CDS Market Access Point; or
- a Headmeter at an Access Point connected to the DSO Grid; or
- a Submeter within the electrical facilities of a Grid User downstream of an Access Point connected to the ELIA Grid or to a CDS; or
- a Submeter within the electrical facilities of a Grid User downstream of an Access Point connected to the DSO Grid.

83. In addition to the general requirements, an Existing Delivery Point respects the metering requirements as detailed in annex 18.1.1.

### 5.2.3.1.3 Requirements for CDS-connected Existing Delivery Points when the CDS is connected to the ELIA Grid

84. For an Existing Delivery Point connected to a CDS (itself connected to the ELIA Grid), a cooperation agreement (covering the data exchanges between the CDSO and ELIA, see annex



18.1.5), or an amendment to such an agreement, is to be signed by ELIA and the CDSO before the Nominal Reference Power can be determined. The signed cooperation agreement, or the signed amendment, is sent by the CDSO to ELIA by e-mail within twenty-five Working Days starting from the submission date of the Prequalification File.

85. After receipt of the signed cooperation agreement, ELIA signs it in turn and provides it back to the CDSO via email within ten Working Days starting from the receipt by ELIA of this agreement.
86. For a CDS-connected Existing Delivery Point, which is itself connected to the ELIA Grid, the following requirements apply:
  - the CDSO grants approval for the Delivery Point to participate in the Service, commits to sign a cooperation agreement with ELIA (annex 18.1.5) and provides a completed CDSO Declaration (annex 18.1.3) to the CRM Candidate – who will, in turn, provide a scan of this declaration and some information included in it to ELIA in accordance with the Table 1;
  - the features of metering at the Delivery Point must be communicated to ELIA in the “CDS Metering Technical Info Checklist” (as referred to in annex 18.1.5).
87. In collaboration with the CDSO, the CDS User provides to ELIA via email ([operations.crm@elia.be](mailto:operations.crm@elia.be)) the EAN codes of the Delivery Points being part of a CMU that participates to the Fast Track Prequalification Process or Standard Prequalification Process no later than the Prequalification File submission date of the corresponding CMU.

#### **5.2.3.1.4 Requirements for Delivery Points connected to the DSO Grid or to a CDS itself connected to the DSO Grid**

88. For each Additional Delivery Point, and prior to the submission to ELIA of the Prequalification File in which the Delivery Point will be included, the CRM Candidate obtains minimally a proposal for a Connection Contract valid until publication of the results of the Auction.
89. The CRM Candidate signs with the relevant DSO a DSO-CRM Candidate Agreement using the latest template made available by Synergrid<sup>7</sup> for any Delivery Point connected to a DSO Grid and prior to the submission of the Prequalification File in which the Delivery Point will be included.<sup>8</sup>
90. In case of a Delivery Point connected to a DSO Grid-connected CDS, no CDSO Declaration is to be provided to ELIA. Bilateral agreements can be made between the DSO and the CDSO, but the DSO remains responsible towards ELIA to provide the required data, which is covered by the DSO-CRM Candidate Agreement.

#### **5.2.3.2 Requirements common to the Standard Prequalification Process and the Specific Prequalification Process**

##### **5.2.3.2.1 General requirements for a CMU**

91. The following table includes all the data and documents that shall be provided per CMU to ELIA by a CRM Candidate as part of his Prequalification File in order to be considered as “approved” (as per § 115). An asterisk in the last three columns means that the information is mandatory for

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<sup>7</sup> The latest template of the DSO-CRM Candidate agreement can be found here: <http://www.synergrid.be/index.cfm?PageID=16832>

<sup>8</sup> ELIA considers that a DSO-CRM Candidate has been signed as soon as a (Declared) Nominal Reference Power is provided by a DSO to ELIA (according to sections 5.4.1.1.1.2.2 & 5.4.1.1.2).

all Existing, Additional or Virtual CMUs, whereas an asterisk in the comments-column describes the subset of CMUs for which the information provision is mandatory.

Requirements	Type of data	Comments	Status of the CMU		
			Existing	Additional	Virtual
<b>General information:</b>					
<b>CMU name</b>	Name	The CRM Candidate chooses and communicates a CMU name. There is no requirement with respect to the choice of this name.	X*	X*	X*
<b>Project ID</b>	Number	*The CRM Candidate provides <sup>9</sup> or asks for a project ID in the event that his CMU is linked to an Investment File submitted or to be submitted to CREG.		X	
<b>Project execution plan</b>	Document	The project execution plan is the document that establishes the method(s) used to execute the project linked to the CMU. More information about this project execution plan can be found in annex 18.1.4. A project execution plan can be linked to more than one CMU. In case of a New Build or Virtual CMU, the CRM Candidate is required to use the template as provided in annex 18.1.4.		X*	X*
<b>Link with a VCMU</b>	Number (VCMU ID)	*In case the Capacity Provider goes through a Standard Prequalification Process with an Existing CMU that will be used to take over the obligation related to a VCMU, he shall provide the related VCMU ID ID. This information shall be included in the Prequalification File from the first Prequalification File submission date and cannot be subsequently modified or added to a file.	X		
<b>Renouncing the operating aid</b>	Signed document (pdf)	The CRM Candidate provides to ELIA a declaration (according to the template provided by the Energy Department of the Federal Public Service Economy) renouncing all operating aid during the Delivery Period(s) covered by a Capacity Contract.	X*	X*	X*
<b>Waiver declaration (capacity reservation and allocation)</b>	Tick box	*If required according to and as described in § 92.		X	
<b>Declaration of commitment to the energy transition</b>	Signed document	*If required according to and as described in § 93.		X	
<b>Permit requirement</b>	Document	In accordance with § 94, in order to meet the permit requirements to be able to participate to the Primary or Secondary (as the Buyer of an Obligation) Market, the CRM Candidate provides ELIA proof that it has been awarded, in the last administrative instance, all relevant permits that are required under regional regulations for the construction and/or the operation of the Capacit(y)(ies) included in the CMU in question.	X*	X*	
<b>Permitting Milestone status</b>	Document	For ELIA to be able to establish the Permitting Milestone status, which has an influence on the Financial Security obligation and which is monitored during the Pre-delivery Period via the quarterly reports, the CRM Candidates provides ELIA with all relevant permit information.		X*	
<b>Participation in the Primary Market or the Secondary Market</b>	Name (drop-down list)	The CRM Candidate indicates to ELIA if he intends to participate in the Secondary Market only or not.	X*		
<b>Volume related information – for Existing and Additional CMU</b>					
<b>Derating Factor excluding the Associated Delivery Point(s)</b>	Number (drop-down list)	The CRM Candidate selects the Last Published Derating Factor that corresponds to the category and, where appropriate, sub-category to which its CMU – excluding the Associated Delivery Point(s), if any – belongs. The chosen Derating Factor will lead to two values: one value valid for a Y-1	X*	X*	

<sup>9</sup> In the event that more than one CMUs are linked to a same Investment File, the CRM Candidate creates a project ID via the CRM IT Interface only once; this is done via the first submitted CMU. Then, in the Prequalification File of the other CMU(s), the CRM Candidate provides the project ID received in the first submitted CMU.

		<p>Auction and another one for a Y-4 Auction.</p> <p>The chosen Derating Factor allows ELIA to determine the Eligible Volumes and to define whether or not the CMU is an Energy-constrained CMU:</p> <ul style="list-style-type: none"> <li>- If the CMU selects a SLA, the CMU is considered as an Energy-constrained CMU;</li> <li>- If the technology of a CMU is declared as falling under Category III with Daily Schedule, in line with article 13 of <i>[Placeholder for amendment of Royal Decree Methodology]</i> the CMU is categorized as an Energy Constrained CMU with a number of hours in line with its SLA, or in absence thereof categorized as an Energy Constrained CMU with an SLA of 4 hours;</li> </ul> <p>If all other cases, the CMU is categorized as a Non-Energy Constrained CMU.</p>											
<b>Derating Factor including the Associated Delivery Point(s)</b>	Number (dropdown list)	<p>*If the CMU contains at least one Associated Delivery Point, the CRM Candidate selects the Last Published Derating Factor that corresponds to the category and, where appropriate, sub-category to which its CMU – including the Associated Delivery Point(s) – belongs. The chosen Derating Factor gives two values: one value valid for a Y-1 Auction and another one for a Y-4 Auction.</p> <p>The chosen Derating Factor allows ELIA to determine the Associated Eligible Volumes and to define whether or not the CMU is an Energy-constrained CMU:</p> <ul style="list-style-type: none"> <li>- If the CMU Candidate selects a SLA, the CMU is considered as an Energy-constrained CMU;</li> <li>- If the technology of a CMU is declared as falling under Category III with Daily Schedule, in line with article 13 of <i>[Placeholder for amendment of Royal Decree Methodology]</i>, the CMU is classified as an Energy Constrained CMU with a number of hours in line with its SLA, or in absence thereof classified as an Energy Constrained CMU with an SLA of 4 hours;</li> <li>- If all other cases, the CMU is categorized as a Non-Energy Constrained CMU.</li> </ul> <p>In case the CMU contains at least one Associated Delivery Point, the classification of whether a CMU is an Energy-constrained CMU based on the Derating Factor including the Associated Delivery Point(s) prevails.</p>	X	X									
<b>Opt-out Notification</b>	List of information (and signed document in case of motivational letter in accordance with § 181 last bullet in pdf)	<p>*As detailed in section 5.4.2, in case the CRM Candidate wants to declare an Opt-out Volume for his CMU, an Opt-out Notification is provided to ELIA per Auction for which he wants to declare an Opt-out Volume.</p>	X	X									
<b>Degradation</b>	Percentage	<p>CRM Candidates, for CMUs for which an Investment File is or will be submitted to the CREG, can specify the degradation of their Contracted Capacity over time. To this end, the CRM Candidate specifies the percentages that will be used to degrade the Contracted Capacity over the Capacity Contract Duration, up to 15 years, depending on the Capacity Category (cf. table below). The degradation percentage associated to the first Delivery Period must be 100% and the percentage has to be lower or equal year-by-year.</p> <table border="1"> <tr> <td>Delivery Period 1</td> <td>100 %</td> </tr> <tr> <td>Delivery Period 2</td> <td>?</td> </tr> <tr> <td>...</td> <td></td> </tr> <tr> <td>Delivery Period 15</td> <td>?</td> </tr> </table>	Delivery Period 1	100 %	Delivery Period 2	?	...		Delivery Period 15	?			X
Delivery Period 1	100 %												
Delivery Period 2	?												
...													
Delivery Period 15	?												
<b>Volume related information – for Virtual CMU</b>													
<b>Declared Eligible Volume</b>	Number (in MW)	In case of participation in a Specific Prequalification Process, the CRM Candidate declares by himself the Eligible Volume of the CMU.			X*								

Table 2: Requirements per Existing CMU, per Additional CMU and per Virtual CMU

92. Except for the Delivery Points that are already associated to a Capacity Contract, in which case an exemption applies, for each Delivery Point connected to the ELIA Grid or to a CDS connected to the ELIA Grid, the CRM Candidate, who is also an applicant for connection within the meaning of the Federal Grid Code or the applicable Regional Grid Code, or who calls on the connection applicant for a CMU that comprises an electricity production facility or an electricity storage facility, proceeds with the following formal commitments and waivers by marking the dedicated boxes in the CRM IT Interface:

- if the connection applicant has connection capacity which is allocated within the meaning of article 166 of the Federal Grid Code or the corresponding article of the applicable Regional Grid Code or if he has concluded a connection contract in application of article 109 of the Federal Grid Code or the corresponding article of the applicable Regional Grid Code, and the connection has not yet been commissioned at the time of the Prequalification File submission deadline referred to in article 7undecies, § 8, last alinea, of the Electricity Act:
  - an undertaking not to put the connection in service prior to the publication of the results of the forthcoming Auction;
  - a waiver, until the publication of the results of the forthcoming Auction, of the rights conferred on it by the allocation of connection capacity and/or the conclusion of the connection contract;
  - a waiver of the rights conferred on it by the allocation of connection capacity and/or the conclusion of the connection contract if the CMU is not selected during the next Auction in so far as the results of the Auction render it impossible to implement the initial technical solution set out in article 160 of the Federal Grid Code, article 105 of the Federal Grid Code or the corresponding article of the applicable Regional Grid Code ;
- if the connection applicant has a reserved connection capacity in accordance with articles 153 and 160 of the Federal Grid Code or articles 98 and 99 of the Federal Grid Code or the corresponding article of the applicable Regional Grid Code without having concluded a connection contract:
  - an undertaking not to sign the connection contract before the publication of the results of the forthcoming Auction;
  - a waiver, until the publication of the results of the next Auction, of the rights conferred on it by the reservation of connection capacity;
  - a waiver of the rights conferred on it by the reservation of connection capacity if the CMU is not selected during the Auction in so far as the results of the next Auction render it impossible to implement the initial technical solution set out in article 160 of the Federal Grid Code, article 105 of the Federal Grid Code or the corresponding article of the applicable Regional Grid Code;
- if the connection applicant does not have allocated connection capacity or reserved connection capacity:
  - an undertaking not to sign the connection contract before the publication of the results of the forthcoming Auction;
  - a waiver, until the publication of the results of the next Auction, of the reservation of connection capacity attached to a Detail Study (EDS), issued where applicable prior to the notification of the prequalification results;
  - a waiver of the rights that would be conferred on it by any reservation of connection capacity if the CMU is not selected during the Auction and in so far as the results of the Auction render it impossible to implement the initial technical solution set out in article 160 of the Federal Grid Code or the corresponding article of the applicable Regional Grid Code.

93. The CRM Candidate that wishes to obtain prequalification for a CMU that comprises a fossil fuel-fired electricity production facility and to conclude for this purpose a Capacity Contract relating to more than one Delivery Period acknowledges that obtaining such a Capacity Contract does not exempt it either from the legislation or current and future objectives established by the European Union and/or Belgium aiming to reduce greenhouse gas emissions. In addition, it agrees, in the event of obtaining such a Capacity Contract to contribute to the work to prepare policies to achieve

said objectives. To that end it appends to its Prequalification File a written declaration in which it undertakes, in the event of one of its Bids being selected in the Auction:

- to study the technical and economic feasibility of reducing greenhouse gas emissions, in accordance with relevant European and Belgian legislation and objectives, for the CMU in question by no later than 31 December 2027;
- to establish, by 31 December 2028, a greenhouse gas emissions reduction plan indicating how the CMU in question will contribute to the transition to carbon neutrality in 2050, with interim objectives for the years 2035 and 2045. The different CRM Actors concerned by the establishment of an emission reduction plan can decide to create this plan jointly; and
- to reach, for the CMU concerned, zero or negative emissions by 2050 at the latest.

Compliance with the undertakings set out above is verified by the Federal Public Service Economy.

94. The CRM Candidate that participates in the Standard Prequalification Process shall provide, by 06:00 on the Bid submission deadline as referred to in § 284 or at the latest at the time of the notification of a Secondary Market transaction as the Buyer of an Obligation, depending on whether the CRM Candidate plans to participate in the Primary or Secondary Market, proof that it has been awarded, in the last administrative instance, all relevant permits that are required under regional regulations for the construction and/or the operation of the Capacit(y)(ies) included in the CMU in question.

#### **5.2.3.2 Requirements for Existing CMUs and Additional CMUs**

95. An Existing CMU or Additional CMU shall:
- contain at least one Delivery Point; and
  - respect the minimum threshold to participate in the CRM set pursuant to article 7*undecies*, § 8, al. 1, 2° of the Electricity Act.
96. A CMU containing a Delivery Point with Daily Schedule cannot contain another Delivery Point.

#### **5.2.3.2.3 Requirements for Virtual CMUs**

97. A Virtual Capacity Market Unit (VCMU) has a Declared Eligible Volume that:
- is higher than or equal to the minimum threshold to participate in the CRM set pursuant to article 7*undecies*, § 8, al. 1, 2° of the Electricity Act; and
  - does not exceed the cap set under article 7*undecies* § 6 al. 1 of the Electricity Act.
98. Only one VCMU can be submitted to ELIA by the same CRM Candidate for each Y-4 Auction. This does not prevent the Prequalified CRM Candidate from submitting in an Auction several bids related to that sole VCMU.

#### **5.2.3.3 Requirements for Fast Track Prequalification Process**

99. A CMU that follows the Fast Track Prequalification Process consists of only one Delivery Point.
100. This Delivery Point respects the following conditions:
- it is part of one CMU only; and

- it is equivalent to or related to an Access Point; and
- it is an electricity production or storage capacity that has the obligation to introduce a Prequalification File in accordance with article 7undecies § 8 al. 2 of the Electricity Act.

The obligation to submit a Prequalification File for the electricity production and storage capacities submitted is also aimed at the following Additional Capacities:

- Additional Capacities for which a valid production or energy storage permit was obtained and for which a technical agreement was signed with ELIA;
- Additional Capacities for which a Connection Contract was signed with ELIA, whose connection has not yet been commissioned and for which the related Capacity Holder has decided not to participate in the Auctions organized during the current year.

101. The following table includes all the data and documents that shall be provided per Delivery Point (existing and/or additional) to ELIA by a CRM Candidate as part of his Prequalification File in order to be considered as “approved” (as per § 115).

An asterisk in the last two columns means that the information is mandatory for all Existing or Additional Delivery Points, whereas as asterisk in the Comments-column describes the subset of Deliver Points for which the information provision is mandatory.

Requirements	Type of data	Comments	Delivery Point's status	
			Existing	Additional
<b>General information:</b>				
Delivery Point name	Name	The CRM Candidate chooses and communicates a Delivery Point's name. There is no requirement with respect to the choice of this name. For a CDS-connected Delivery Point if the CDS is connected to the ELIA Grid, the Delivery Point's name is included in the CDSO Declaration.	X*	X*
Technology	Name (drop-down list)	The technology of the Delivery Point is supplied according to the list provided by Article 13 § 1 of the <i>[placeholder to amendment of Royal Decree on Methodology]</i> .	X*	X*
Type of Delivery Point	Name (drop-down list)	The CRM Candidate needs to inform ELIA about the fact that the Delivery Point is connected to the ELIA Grid, a DSO Grid or a CDS. In the event that the Delivery Point is connected to a CDS, the CRM Candidate also needs to inform ELIA if the CDSO is connected to the ELIA Grid or the DSO Grid.	X*	X*
Corresponding DSO	Name (drop down list)	*The CRM Candidate indicates – if the Delivery Point is connected to a DSO Grid or a CDS connected to the DSO Grid – which DSO needs to be contacted by ELIA to initiate the Delivery Point's Nominal Reference Power calculation, when relevant.	X	X
EAN code(s) of the Access Point	Number	The EAN code of the Access Point is unique the identification number used to identify the metering device of the Access Point that is related to the Delivery Point. For a CDS-connected Delivery Point if the CDS is connected to the ELIA Grid, the EAN code(s) correspond(s) to that (those) included in the CDSO Declaration. If the Delivery Point is defined on the level of a Headmeter, the provided EAN code of the Access Point will be the same as the provided EAN code of the Delivery Point.	X*	X
EAN code(s) of the Delivery Point/Identification of the Delivery Point (for a CDS-connected Delivery Point)	Number	The EAN code of the Delivery Point is a unique identification number used to identify the metering device related of the Delivery Point. For a CDS-connected Delivery Point if the CDS is connected to the ELIA Grid, the EAN code(s) correspond(s) to the one(s) that (are) included in the CDSO Declaration.	X*	X

<b>Grid User Declaration</b>	Signed document (in pdf)	*The Grid User Declaration is a signed declaration to provide in case the Grid User differs from the CRM Candidate. The list of the clauses that must at least be presented into this signed declaration can be found in annex 18.1.2. A Delivery Point can be related to only one Grid User Declaration at a time.	<b>X</b>	
<b>General information – For CDS connected Delivery Points:</b>				
<b>CDSO declaration</b>	Signed document (in pdf)	*In case of a CDS-related Delivery Point, when the CDS is connected to the ELIA Grid, the CRM Candidate provides a CDSO-declaration. This declaration can be found in annex 18.1.3	<b>X</b>	<b>X</b>
<b>CDS User Declaration</b>	Signed document (in pdf)	*The CDS User Declaration is a signed declaration to provide in case of a CDS-connected Delivery Point and in case the CDS User differs from the CRM Actor. The list of the clauses that must at least be presented into this signed declaration can be found in annex 18.1.2. A Delivery Point can be related to only one CDS User Declaration at a time.	<b>X</b>	
<b>Volume related information:</b>				
<b>Fast Track Nominal Reference Power</b>	Number (in MW)	It is a declaration by the CRM Candidate about the Nominal Reference Power for the Delivery Point participating to the Fast Track Prequalification Process.	<b>X*</b>	<b>X*</b>
<b>NRP based on injection data only</b>	Name (drop-down list)	The CRM Candidate indicates to ELIA whether the NRP of his Delivery Point can be determined based on injection data only. This will have an impact on the methodology used to determine NRP.	<b>X*</b>	
<b>Non-representative days for NRP determination</b>	Signed document	In case the NRP of the Delivery Point cannot be determined based on injection data only, the CRM Candidate may provide a list of non-representative days of the past thirteen months, which will then be discarded from the period used to determine the NRP as described in § 131. Non-representative days can only be exceptional holidays, strike days or closing periods that have an impact on the injection/offtake profile of the Delivery Point. This has to be justified as such by the CRM Candidate.	<b>x</b>	
<b>Unsheddable Margin</b>	Number (in MW)	The Unsheddable Margin is the minimal amount of net active power offtake (in MW) that cannot be curtailed (inflexible or unsheddable power) at the Delivery Point concerned. *This requirement is mandatory only for Delivery Points for which NRP cannot be calculated based on injection data only	<b>X</b>	
<b>Derating Factor</b>	Number (drop-down list)	The CRM Candidate selects the Last Published Derating Factor that corresponds to the category and, where appropriate, sub-category to which its CMU belongs. The chosen Derating Factor will lead to two values: one value valid for a Y-1 Auction and another one for a Y-4 Auction.	<b>X*</b>	<b>X*</b>
<b>Opt-out Notification</b>	List of information (and signed document in case of motivational letter in accordance with § 181 last bullet in pdf)	As detailed in section 5.4.2, an Opt-out Notification is provided to ELIA for each Auction.	<b>X*</b>	<b>X*</b>

Table 3: Requirements for Fast Track Prequalification Process

## 5.3 REVIEW OF THE INFORMATION SUBMITTED

102. Once an application form or a Prequalification File has been submitted, ELIA verifies its completeness, veracity and accuracy in order to ensure that it is compliant with the requirements listed in section 5.2.
103. The application form submission date and Prequalification File submission date are the dates of receipt by ELIA for which a CRM Actor receives a notification confirming the good reception by ELIA, of respectively the application form or the Prequalification File.



104. To verify compliance, by the CRM Actor, with legal and regulatory provisions, all the information submitted by the CRM Actor are stored by ELIA for at least twelve years starting from:
- the Prequalification File rejection date; or
  - the Prequalification File approval date or the date of the notification that the Bid for this CMU was not selected, both dates being subject to the absence of a Secondary Market Transaction; or
  - the date of the termination of the Capacity Contract, in case a Capacity Contract is concluded.

### **5.3.1 Application form**

105. Within five Working Days starting from the application form submission date, ELIA approves or rejects the application form and notifies the Capacity Holder. In the event that ELIA, for technical reasons, does not come back to the Capacity Holder within the timeframe mentioned above, the process described in section 15.3 applies.
106. In case of rejection, the notification is provided along with the appropriate motivation. Such rejection does not prevent the Capacity Holder from submitting a new application form.
107. Except in the situation described in section 5.6.3.1, the approval of the application form remains valid for an indefinite period of time.
108. If the Capacity Holder wishes to contest the decision taken by ELIA regarding the rejection of an application form, he shall use one of the recourse methods described in chapter 14.

### **5.3.2 Prequalification File**

109. Once a Prequalification File is submitted, the CRM Candidate may only make changes in the following cases:
- Upon request of ELIA, i.e. when ELIA notifies the CRM Candidate that there is missing and/or erroneous data in the Prequalification File;
  - After the processing of a Prequalification File by ELIA, i.e. if the CMU follows a Fast Track Prequalification Process, after ELIA has approved the Prequalification File and if the CMU follows a Standard or Specific Prequalification Process, after ELIA has prequalified the CMU.

The process that applies in these situations is described in § 115.

110. No modification of the Prequalification File can be made by the CRM Candidate between September 1 and October 31 inclusive, except in the following cases:
- upon request of ELIA (as per § 109);
  - for changes linked to an Opt-out Notification (as per section 5.4.2.1.1);
  - in the event of a change in a Prequalification File related to an Aggregated CMU subject to an Investment File (as per section 5.6.3.2.1);
  - In the event of a change in the Prequalification File for the transmission of information related to the obtention of a technical agreement process as applicable following the relevant Federal or Regional Grid Code).



- in the event of transmission, within the timeframe referred to in article *7undecies*, § 12, para. 3, 2°, a), of information related to the obtaining of a production or energy storage permit.

111. The process of Prequalification File compliance-check consists in verifying that:

- the requirements of sections 5.2.3.1 and 5.2.3.2 are respected in case of Standard Prequalification Process; or
- the requirements of section 5.2.3.2 are respected in case of Specific Prequalification Process; or
- the requirements of section 5.2.3.3 are respected in case of Fast Track Prequalification Process.

112. The review of a Prequalification File is carried out in accordance with the process described in §§ 113 to 120.

113. As part of the review of compliance of the CMU with the CO<sub>2</sub> Emissions Cap, ELIA shares CO<sub>2</sub> related information with the Federal Public Service Economy per email at the moment of the Prequalification File submission. In return, the Federal Public Service Economy notifies ELIA of its advice by email within twenty Working Days for Prequalification Files not associated to a Project ID and within ten Working Days for Prequalification Files associated to a Project ID. This advice is either positive or negative.

If the Federal Public Service Economy requires additional information in order to be able to give its advice, it will inform ELIA by email within the above-mentioned timeframe. In this case, ELIA asks the CRM Candidate to provide the missing information as communicated by the Federal Public Service Economy within ten Working Days from the ELIA notification.

Once the additional information is submitted by the CRM Candidate, ELIA notifies the Federal Public Service Economy per email. In return, the Federal Public Service Economy notifies ELIA of its advice within five Working Days. This advice is either positive or negative.

114. In the absence of an advice from the Federal Public Service Economy within the above-mentioned timeframes, the information relating to CO<sub>2</sub> is deemed rejected. In consequence, the corresponding Prequalification File is rejected by ELIA.

115. In parallel to the examination of CO<sub>2</sub> related information by Federal Public Service Economy and in parallel with the determination of the Nominal Reference Power (as per section 5.4.1), ELIA analyses the rest of the information submitted in the Prequalification File. In doing so, the following process applies:

ELIA sends a notification to the CRM Candidate to inform him about the status of his Prequalification File:

- No later than August 1 when an Investment File was submitted to the CREG;
- No later than August 15 when no Investment File has been submitted to the CREG;
- Within forty five Working Days starting from the submission of the Prequalification File in case the CRM Candidate wants to participate to the Secondary Market only.

If ELIA does not identify any missing and/or erroneous data in the Prequalification File when it is submitted, the Prequalification File is considered as "approved".

If ELIA notices missing information and/or wrong data, the Prequalification File is considered as "provisionally rejected".

In such case, ELIA asks to the CRM Candidate to provide/correct it :

- the CRM Candidate has the possibility to make the necessary adaptations– except the addition of a new Delivery Point<sup>10</sup> – no later than :
  - Ten Working Days before September 1 when an Investment File was submitted to the CREG;
  - Ten Working Days before September 15 when no Investment File was submitted to the CREG;
  - Within fifteen Working Days starting from ELIA’s notification in case the CRM Candidate wants to participate to the Secondary Market only.

If there is no longer any missing and/or wrong data, then the Prequalification File is given an “approved” status.

116. ELIA notifies the compliance of the Prequalification File to the CRM Candidate together with the Prequalification results in accordance with the timing defined in section 5.5.

### 5.3.3 Audits

117. Without prejudice to the monitoring powers of the CREG in accordance with article *7undecies*, § 13, of the Electricity Act and the Royal Decree on "Monitoring", ELIA can perform tests and audits in order to check the veracity and the accuracy of the data that is provided within the context of the Prequalification Process, as well as when a Capacity Contract has been concluded, the Pre-delivery Period and the Delivery Period.

Without prejudice to the information review (as detailed in section 5.3.2) and the volumes determination (as detailed in section 5.4) which ELIA is required to carry out, these tests and audits are performed randomly during twelve months starting from this submission date of the Prequalification File to ELIA, as well as in the event of the signing of a Capacity Contract during both the Pre-delivery Period and the Transaction Period. This does not apply to a Prequalification File that has been rejected or archived.

118. Without prejudice to the monitoring powers of the CREG in accordance with article *7undecies*, § 13, of the Electricity Act and the Royal Decree on "Monitoring", ELIA can, until validation of the Primary Market Transactions, perform audits in order to check the veracity and the accuracy of the data that is provided in the application form. It does not apply to a rejected application form.
119. Any erroneous information identified by ELIA will lead to a request for clarification(s) and/or for an adaptation of the previously submitted information. The CRM Actor shall provide a justification and/or submit his adapted application form and/or Prequalification File within twenty Working Days of the request from ELIA.

In case the error(s) remain(s) at the end of this period, ELIA shall report the situation to the relevant authorities and may in addition, depending on the severity of the errors observed:

- trigger a rejection of the Prequalification File; and/or

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<sup>10</sup> The addition of a new Delivery Point is only allowed at the Prequalification File submission #1

- delete one (or more) of the Bids related to the concerned CMU and already submitted by the CRM Actor for an Auction; and/or
- trigger an Availability Test; and/or
- terminate or suspend the Capacity Contract (as defined in the Capacity Contract).

120. If the CRM Actor wishes to contest the decision taken by ELIA pursuant to a test/audit, he shall use one of the recourse methods described in chapter 14.

## 5.4 VOLUMES DETERMINATION

121. This section explains how ELIA determines:

- the (Associated) Eligible Volumes, Remaining Eligible Volumes and the Secondary Market (Remaining) Eligible Volume for CMUs following (or having followed) the Standard Prequalification Process; and
- the Fast Track Volume for CMUs following (or having followed) the Fast Track Prequalification Process.

122. Timing aspects related to the volume(s) determination for each Prequalification Process are defined in the following sections (from 5.4.1 to 5.4.7).

123. Volumes and parameters used below to determine the volumes can evolve in time as per section 5.6.

124. The volumes determination process is done in parallel with the review of the Prequalification File following the process described in section 5.3.2.

### 5.4.1 Nominal Reference Power

#### 5.4.1.1 Standard Prequalification Process and Fast Track Prequalification Process

125. In the context of a Standard Prequalification Process and the Fast Track Prequalification Process, the Nominal Reference Power of a Delivery Point:

- forms the basis to determine the Nominal Reference Power of the CMU, the Reference Power, the (Associated) Eligible Volumes, Remaining Eligible Volumes and the Secondary Market (Remaining) Eligible Volume of the CMU in case the CMU participates to a Standard Prequalification Process;
- forms the basis to determine the Fast Track Volumes of the CMU in case the CMU participates to a Fast Track Prequalification Process;
- is determined in different ways depending on certain characteristics of the Delivery Point and on the type of Prequalification Process, as detailed in the table below:

Standard Prequalification Process	Fast Track Prequalification Process
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<b>Existing Delivery Point</b>	ELIA Grid-connected or CDS-connected when the CDS is connected to the ELIA Grid	Delivery Point with Daily Schedule	<i>Determined by ELIA</i>		
		Delivery Point without Daily Schedule	<i>Determined by ELIA</i>	<i>Determined by ELIA if the 1st method referred to in section 5.4.1.1.1.1 is possible, otherwise declared by the CRM Candidate</i>	
	DSO-connected or CDS-connected when the CDS is connected to the DSO Grid	Expected NRP $\geq$ 5 MW	<i>Determined and communicated to ELIA by the DSO</i>		
		Expected NRP $<$ 5 MW	<i>Determined and communicated to ELIA by the DSO</i>	<i>Determined by the DSO if the 1st method referred to in section 5.4.1.1.1.1 is possible, otherwise declared by the CRM Candidate and communicated to ELIA by the DSO</i>	
<b>Additional Delivery Point</b>	ELIA Grid-connected or CDS-connected when the CDS is connected to the ELIA Grid	Delivery Point with Daily Schedule	<i>Declared by the CRM Candidate</i>		
		Delivery Point without Daily Schedule			
	DSO-connected or CDS-connected when the CDS is connected to the DSO Grid	Declared or Fast Track NRP $\geq$ 5 MW	<i>Declared by the CRM Candidate and communicated to ELIA by the DSO</i>		
		Declared or Fast Track NRP $<$ 5 MW			

#### 5.4.1.1.1 Nominal Reference Power determination for Existing Delivery Points

126. The Nominal Reference Power for ELIA grid-, DSO grid- and CDS-connected Existing Delivery Points is determined in accordance with this section.
127. As part of determining the Nominal Reference power, a provisional Nominal Reference Power is initially notified by ELIA or the related DSO to the CRM Candidate. If no contestation is raised or after a contestation procedure, the final Nominal Reference Power is notified to the CRM Candidate by ELIA or by the relevant DSO.

##### 5.4.1.1.1.1 Methodologies used to determine a Nominal Reference Power

128. The Nominal Reference Power of a Delivery Point can be determined following two methodologies:
- 1<sup>st</sup> method: use of historical data (section 5.4.1.1.1.1.1); or
  - 2<sup>nd</sup> method: prequalification test (section 5.4.1.1.1.1.2).

##### 5.4.1.1.1.1.1 1<sup>st</sup> method – Use of historical data

129. The 1<sup>st</sup> method, which consists in the use of historical data, can be used by ELIA or by the DSO if the period as defined in § 131 contains at least fourteen full calendar days of data.
130. The Nominal Reference Power of a Delivery Point does not have to be redefined if a Nominal Reference Power has been determined for this Delivery Point using method 1 since the last publication of the Functioning Rules. In this case, the latest Nominal Reference Power result can be reused.
131. To determine the provisional Nominal Reference Power using historical data, ELIA or the concerned DSO uses the quarter-hourly measurements over a period defined as follows:
- The period starts with the first injection or offtake into the grid to which the Delivery Point is connected, but at the earliest twelve months before the end of the period, as specified below;

- The period ends five Working Days before the last day of the month before the submission date of the Prequalification File, or later – upon initiative of the grid operator, if valid data is available.

Non-representative days as indicated and duly justified by the CRM Candidate in accordance with §§ 81 or 101 are discarded.

132. For Delivery Points for which the Nominal Reference Power can be determined based on injection data only, as indicated by the CRM Candidate in accordance with §§ 81 or 101:

- The period defined in § 131 is divided by month;
- For each month maximum injection is determined as the lowest observed quarter-hourly measurement (net injection has a negative value for the quarter-hourly measurements);
- The provisional Nominal Reference Power of the Delivery Point is determined as the absolute value of the average of the lowest three values (or the maximum number of available values if less than three) determined per month.

133. For Delivery Points for which the Nominal Reference Power cannot be determined based on injection data only, as indicated by the CRM Candidate in accordance with §§ 81 or 101:

- For each quarter hour part of a weekday or weekend, a baseline is established if sufficient historic data is available, as follows:
  - For quarter hours part of a weekday, the average of the four highest quarter-hourly measurements out of five comparable preceding quarter hours;
  - For quarter hours part of a weekend, the average of the two highest quarter-hourly measurements out of three comparable preceding quarter hours;

Comparable preceding quarter hours are determined as the most recent identical quarter hours during preceding days that also classify as weekday or weekend respectively. Belgian public holidays are discarded;

- For each of the above quarter hours for which a baseline can be established, the difference is calculated between on the one hand the established baseline and on the other hand the observed quarter-hourly measurement or the Unshedable Margin indicated by the CRM Candidate in accordance with §§ 81 or 101, whichever is highest;
- The provisional Nominal Reference Power of the Delivery Point is determined as the highest value observed over all calculated values.

134. For Linked Capacities in accordance with § 81, the Nominal Reference Power is determined based on aggregated data over all Delivery Points that form Linked Capacities. The resulting NRP is allocated over the related Delivery Points pro rata of the Nominal Reference Powers determined considering the Delivery Points individually.

#### **5.4.1.1.1.2 2<sup>nd</sup> method – Organization of a prequalification test**

135. The 2<sup>nd</sup> method, which consists in the organization of a prequalification test, can be used by ELIA or by the DSO if the 1<sup>st</sup> method cannot be applied or when necessary after a contestation of the provisional Nominal Reference Power by the CRM Candidate.

136. In case of a Delivery Point connected to the ELIA Grid or to a CDS itself connected to the ELIA Grid, the CRM Candidate is required to provide ELIA with the following information at least five Working Days prior to the test start date:

- the identification of the Delivery Point(s) being tested;
- the preferred test date, which should respect the overall Prequalification Process timings as defined in §§ 113 to 120.

137. In case of a Delivery Point connected to a DSO Grid or to a CDS itself connected to the DSO Grid, the communication of the test date is done through an adequate communication channel defined and communicated in advance by the DSO to the CRM Candidate. The CRM Candidate must agree with the DSO on the timings, which should respect the overall Prequalification Process timings as defined in §§ 113 to 120.

138. The provisional Nominal Reference Power, as determined by the 2<sup>nd</sup> method, equals:

- For Delivery Points for which the Nominal Reference Power can be determined based on injection data only, as indicated by the CRM Candidate in accordance with §§ 81 or 101, the absolute value of the lowest observed quarter-hourly measurement on the test date (net injection has a negative value for the quarter-hourly measurements);
- For Delivery Points for which the Nominal Reference Power cannot be determined based on injection data only, as indicated by the CRM Candidate in accordance with §§ 81 or 101, the highest positive difference between a baseline established in accordance with the principles defined in § 133 and the observed quarter-hourly value or the Unsheddable Margin indicated by the CRM Candidate in accordance with §§ 81 or 101 – whichever is highest, across all quarter-hours on the test date.

#### **5.4.1.1.1.2 Nominal Reference Power notification and contestation**

##### **5.4.1.1.1.2.1 For Delivery Points connected to the ELIA Grid or to a CDS itself connected to the ELIA Grid**

139. The provisional Nominal Reference Power is notified per Delivery Point by ELIA to the CRM Candidate by :

- August 1, in case an Investment File was submitted to the CREG;
- August 15 in case no Investment File was submitted to the CREG;
- Within forty five Working Days starting from the submission of the Prequalification File in case the CRM Candidate wants to participate to the Secondary Market only.

140. The notified provisional Nominal Reference Power is the final Nominal Reference Power if the CRM Candidate expressly approves the provisional Nominal Reference Power or if no contestation is raised by the CRM Actor by :

- Ten Working days before September 1 in case an Investment File was submitted to the CREG;
- Ten Working Days before September 15 in case no Investment File was submitted to the CREG;
- Within fifteen Working Days starting from ELIA's notification of the provisional Nominal Reference Power in case the CRM Candidate wants to participate to the Secondary Market only.

In case of contestation, the CRM Actor, within the above mentioned timing notifies his contestation to ELIA and indicates the reason of such contestation. Depending on the reasons given by the CRM Actor, ELIA may:

- request a (new)<sup>11</sup> prequalification test (following the same rules of section 5.4.1.1.1.2); or
- if the contestation does not require the holding of a (new) prequalification test, adapt the notified provisional Nominal Reference Power accordingly; or
- if the contestation does not require the holding of a (new) prequalification test and if ELIA rejects the reason for the contestation, confirm the provisional Nominal Reference Power as being the final Nominal Reference Power.

The CRM Actor can contest a provisional Nominal Reference Power only once per Delivery Point and per notification of provisional Nominal Reference Power by ELIA.

141. If a (new) prequalification test is organized, the final Nominal Reference Power is the Nominal Reference Power obtained following the (new) prequalification test.
142. The final Nominal Reference Power is notified with the final Prequalification results deadline notification to the CRM Candidate by :
- September 1 if an Investment File was submitted to CREG;
  - September 15 if no Investment File was submitted to CREG;
  - Within seventy Working Days starting from the submission of the Prequalification File in case the CRM Candidate wants to participate to the Secondary Market only.
143. In case the CRM Actor wishes to contest the final Nominal Reference Power, he uses one of the recourse methods described in chapter 14.

#### **5.4.1.1.1.2.2 For Delivery Points connected to a DSO Grid or to a CDS itself connected to a DSO Grid**

144. The communication channel between a DSO and the CRM Actor as well as the timings to be respected to determine a Nominal reference Power are defined by the DSO and communicated to this CRM Candidate.
145. For the Delivery Points connected to a DSO Grid or to a CDS itself connected to a DSO Grid:
- the provisional and the final Nominal Reference Power(s) are determined by the concerned DSO(s);
  - the communication between the DSO(s) and the CRM Candidate includes the possible contestation of the provisional Nominal Reference Power(s);
146. The final Nominal Reference Power(s) is (are) notified by the DSO(s) to ELIA by:
- August 1 in case an Investment File was submitted to the CREG;
  - August 15 in case no Investment File was submitted to the CREG;

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<sup>11</sup> In case the 1<sup>st</sup> method has been selected as part of the submission of the Prequalification File (or of its change), the CRM Actor needs to provide a date for the prequalification test for the first time. In case the 2<sup>nd</sup> method has been selected as part of the submission of the Prequalification File (or of its change), the CRM Actor needs to provide a new date for a prequalification test.

- Within forty five Working Days starting from the submission of the Prequalification File in case the CRM Candidate wants to participate to the Secondary Market only.

Such Prequalification File submission date is automatically communicated per email by ELIA to the relevant DSO as identified by the CRM Candidate in its Prequalification File.

147. The final Nominal Reference Power is notified by ELIA to the CRM Candidate by:

- September 1, in case an Investment File was submitted to the CREG;
- September 15, in case no Investment File was submitted to the CREG;
- Within seventy Working Days starting from the submission of the Prequalification File in case the CRM Candidate wants to participate to the Secondary Market only.

148. At the latest fifteen Working Days prior to the deadline for a DSO to determine and communicate to ELIA the final Nominal Reference Power, ELIA contacts the relevant DSO to get a status of the ongoing calculation.

149. In the event that the DSO does not communicate to ELIA the final Nominal Reference Power within the above mentioned time period, the concerned CMU will be considered by ELIA as "provisionally rejected".

150. If the CRM Actor wishes to contest the final Nominal Reference Power, it must use one of the recourse methods described in chapter 14.

#### **5.4.1.1.2 Declared Nominal Reference Power for Additional Delivery Points in the context of the Standard Prequalification Process**

151. For each Additional Delivery Point connected to the ELIA Grid or to a CDS itself connected to the ELIA Grid, the CRM Candidate declares in his Prequalification File a Declared Nominal Reference Power.

152. For each Additional Delivery Point connected to a DSO Grid or to a CDS itself connected to a DSO Grid, the DSO communicates to ELIA, through adequate communication channels, the Declared Nominal Reference Power of this Delivery Point within one of the following deadlines:

- by August 1 in case an Investment File was submitted to the CREG for this CMU;
- by August 15 in case no Investment File was submitted to the CREG for this CMU.
- no later than fifteen Working Days before the deadline by which a DSO must communicate to ELIA the Declared Nominal Reference Power, ELIA will remind it of said deadline.

In the event that the DSO does not come back to ELIA with a Declared Nominal Reference Power within the above mentioned time period, the concerned CMU will be considered by ELIA as "provisionally rejected".

153. ELIA then notifies the Final Nominal Reference Power, corresponding to the Declared Nominal Reference Power, to the CRM Candidate by:

- September 1 in case an Investment File was submitted to CREG;
- September 15 in case no Investment File was submitted to CREG.



154. If the CRM Actor wishes to contest the final Nominal Reference Power, it must use one of the recourse methods described in chapter 14.

#### **5.4.1.1.3 Nominal Reference Power in the context of the Fast Track Prequalification Process**

155. As detailed in the table of the § 125, the Nominal Reference Power of a Delivery Point participating to a Fast Track Prequalification Process can be either:

- determined by ELIA; or
- declared by the CRM Actor; or
- determined by the DSO; or
- declared by the CRM Actor then communicated to Elia by the DSO

156. When the Nominal Reference Power is to be determined by ELIA or by the DSO, the principles of section 5.4.1.1.1 apply.

157. When the Nominal Reference Power must be declared by the CRM Candidate to ELIA, it is included in the Prequalification File as the Fast Track Nominal Reference Power. If ELIA finds that the Fast Track Nominal Reference Power is incorrect, it may determine the Fast Track Nominal Reference Power by applying the provisions of section 5.4.1.1.1.1.

158. When the Nominal Reference Power must be declared by the CRM Candidate to the DSO and communicated by the DSO to ELIA, the concerned DSO communicates it to ELIA, via adequate communication channels, by August 15.

159. No later than fifteen Working Days before the deadline by which a DSO must communicate to ELIA the Fast Track Nominal Reference Power, ELIA shall contact the DSO concerned to remind it of this deadline.

If the DSO does not communicate the Fast Track Nominal Reference Power to ELIA within the above mentioned time period, the Prequalification File of the concerned CMU is deemed "provisionally rejected" by ELIA.

160. In any case, ELIA notifies the final Nominal Reference Power to the CRM Candidate as part of the prequalification results notification according to the timing foreseen in section 5.5 by September 15.

161. If the CRM Actor wishes to contest the notified final Nominal Reference Power, it must use one of the recourse methods described in chapter 14.

#### **5.4.1.1.4 Nominal Reference Power determination for CMUs**

162. The Nominal Reference Power of a CMU is determined by ELIA when:

- the final Nominal Reference Power of each Existing Delivery Point part of this CMU has been notified to the CRM Actor following the rules of section 5.4.1.1.1.2; and/or
- the Declared Nominal Reference Power of each Additional Delivery Point part of this CMU has been notified to the CRM Actor following the rules of section 5.4.1.1.2.

163. To determine the Nominal Reference Power of a CMU that goes through the Standard Prequalification Process, ELIA sums up:

- the Nominal Reference Power of each Existing Delivery Point part of the CMU if the CMU is an Existing CMU; or
- the Nominal Reference Power of each Existing Delivery Point part of the CMU with the Declared Nominal Reference Power for each Additional Delivery Point part of the CMU if the CMU is an Additional CMU.

Associated Delivery Points are not taken into account in this calculation.

164. The Nominal Reference Power of a CMU that goes through the Fast Track Prequalification Process is equal to the Nominal Reference Power determined in accordance with section 5.4.1.1.3.

### **5.4.1.2 Specific Prequalification Process**

165. No Nominal Reference Power can be calculated by ELIA or a relevant DSO for a VCMU.

## **5.4.2 Opt-out Volume**

166. The submission of an Opt-out Notification is done via the CRM IT Interface, per CMU and per Auction. In an Opt-out Notification, the CRM Actor is required to specify the information related to the Opt-out Volume that is relevant for the classification of the Opt-out Volume as described in section 5.4.2.2.

167. The notification of an Opt-out Volume that is equal to the Nominal Reference Power of the related CMU is considered as a "full opt-out", whereas the notification of an Opt-out Volume that is less than the Nominal Reference Power of the related CMU is considered as "partial opt-out".

168. The Opt-out Volume cannot be lower than zero MW and cannot be higher than the volume that would result in an (Associated) Eligible Volume or Remaining Eligible Volume of zero MW:

- In case there is not yet a Transaction related to the CMU with a Transaction Period that (partially) overlaps with the Delivery Period to which the Auction relates, the Opt-out Volume cannot be higher than the Nominal Reference Power;
- In case there is a Transaction related to the CMU with a Transaction Period that (partially) overlaps with the Delivery Period to which the Auction relates, the Opt-out Volume cannot be higher than the Nominal Reference Power, minus:
  - In case of an Energy Constrained CMU, the maximum Total Contracted Capacity over the Delivery Period to which the Auction relates divided by the Derating Factor(CMU,t) with Derating Factor(CMU,t) equal to the weighted average Derating Factor of all Transactions in Annex A of the CMU's Capacity Contract that constitute the maximum Total Contracted Capacity over the Delivery Period, calculated in accordance with the definition in chapter 3; or
  - In case of a Non-Energy Constrained CMU, the maximum Total Contracted Capacity over the Delivery Period to which the Auction relates divided by the Derating Factor excluding Associated Delivery Points in accordance with § 91.

169. ELIA transfers each year all submitted Opt-out Notifications to the CREG as part of the Auction report.

170. Opt-out Volumes are published as described in section 16.4.1.

## **5.4.2.1 Opt-out Notification**

### **5.4.2.1.1 Standard Prequalification Process**

171. To declare an Opt-out Volume for a CMU following the Standard Prequalification Process, the CRM Actor submits an Opt-out Notification (and/or any adaptation thereof) at the latest by 6:00 on the date of the Bid submission deadline defined in Article *7undecies* § 10 al.3 of the Electricity Act.
172. In case of an Opt-out Notification or an adaptation thereof after the notification of the prequalification results, ELIA notifies to the CRM Actor the prequalification results adapted accordingly with the Opt-out Volume within one Working Day starting from the reception by ELIA of this (adapted) Opt-out Notification and no later than the date of the Bid submission deadline defined in article *7undecies*, § 10, para. 3, of the Electricity Act.

### **5.4.2.1.2 Specific Prequalification Process**

173. A CRM Actor cannot declare an Opt-out Volume for a VCMU.

### **5.4.2.1.3 Fast Track Prequalification Process**

174. For a CMU following the Fast Track Prequalification Process, the CRM Actor declares a “full opt-out” and submits an Opt-out Notification when submitting the Prequalification File (or its change) (section 5.2.3.3).

An Opt-out Notification is also subject to an annual renewal as part of the Prequalification File renewal defined in section 5.6.1.

## **5.4.2.2 Classification of Opt-out Volumes**

175. The purpose of the classification of Opt-out Volumes is to determine whether these volumes will contribute to adequacy during the Delivery Period to which the Opt-out Notification relates. Opt-out Volumes that are considered to contribute to adequacy are classified as ‘IN’, while Opt-out Volumes that are not considered to contribute to adequacy are classified as ‘OUT’.
176. The consequences of the classification of Opt-out Volumes are described in the relevant chapters. Volume corrections with a view to determining the volume to be auctioned are described in section 6.3.1. Secondary Market implications are described in section 10.4.8.2.

### **5.4.2.2.1 Y-4 Auction**

177. An Opt-out Volume related to a Y-4 Auction is classified as ‘OUT’ in case the Opt-out Notification submitted by the CRM Actor indicates that:
- the volume concerns additional capacity consisting of an electricity production or storage facility as part of a “full opt-out”, for which no Connection Contract was signed with ELIA or with the DSO, as applicable; or
  - the volume concerns additional capacity consisting of an electricity production or storage facility as part of a “full opt-out” and based on the information available in the Connection Contract signed with ELIA or with the DSO, as applicable, it appears that the capacity will not be available by the start of the Delivery Period to which the Opt-out Notification relates; or
  - the volume concerns a “full opt-out” of a New Build CMU; or

- the volume is associated with a definitive decommissioning or definitive structural reduction of capacity notification, in accordance with article 4bis of the Electricity Act during the Delivery Period to which the Opt-out Notification relates; or
- the volume is indicated as not contributing to adequacy during the Delivery Period to which the Opt-out Notification relates, being associated to the non-firm capacity as part of a connection with flexible access, referred to in Article 170 of the Federal Grid Code; or
- the volume relates to a CMU that is associated to an SLA category, to the extent the capacities part of the CMU do not have an obligation to submit a Prequalification File as described in article 7undecies, §, 8 al. 2 of the Electricity Act and complemented by the description in § 100, second alinea.

178. Opt-out Volumes related to a Y-4 Auction that are associated to volumes for which it is indicated in an EDS related to another CMU that these need to be decommissioned as a prerequisite for the realization of this other CMU, are classified as 'OUT' conditional upon the selection of a Bid related to this other CMU. As long as the aforementioned condition is not fulfilled, these Opt-out Volumes are classified as 'IN'.

179. Opt-out Volumes related to a Y-4 Auction that are the subject of a "partial opt-out" for a New Build CMU are classified as 'IN' on condition that the Bid for this CMU is selected. If this condition is not fulfilled, these Opt-out Volumes are classified as 'OUT'.

180. All other Opt-out Volumes related to a Y-4 Auction are classified as 'IN'.

#### **5.4.2.2.2 Y-1 Auction**

181. An Opt-out Volume related to a Y-1 Auction is classified as 'OUT' in case the Opt-out Notification submitted by the CRM Actor indicates that:

- the volume concerns additional capacity consisting of an electricity production or storage facility as part of a "full opt-out", for which no Connection Contract was signed with ELIA or with the DSO, as applicable; or
- the volume concerns additional capacity consisting of an electricity production or storage facility as part of a "full opt-out" and based on the information available in the Connection Contract signed with ELIA or with the DSO, as applicable, it appears that the capacity will not be available by the start of the Delivery Period to which the Opt-out Notification relates; or
- the volume concerns a "full opt-out" of a New Build CMU; or
- the volume is associated with a definitive decommissioning or definitive structural reduction of capacity notification in accordance with article 4bis of the Electricity Act during the Delivery Period to which the Opt-out Notification relates; or
- the volume is associated with a temporary decommissioning or temporary structural reduction of capacity notification in accordance with article 4bis of the Electricity Act during the Delivery Period to which the Opt-out Notification relates; or
- the volume relates to a CMU that is associated to an SLA category as part of a "partial opt-out"; or
- the volume related to an Energy Constrained CMU with Daily Schedule as part of a "partial opt-out"; or

- the volume is indicated as not contributing to adequacy during the Delivery Period to which the Opt-out Notification relates, being associated to the non-firm capacity as part of a connection with flexible access, referred to in Article 170 of the Federal Grid Code; or
  - the volume is indicated as not contributing to adequacy during the Delivery Period to which the Opt-out Notification relates, provided that a motivational letter to support this indication is provided by the CRM Actor as part of its Opt-out Notification.
182. Opt-out Volumes related to a Y-1 Auction that are associated to volumes for which it is indicated in an EDS related to another CMU that these need to be decommissioned as a prerequisite for the realization of this other CMU, are classified as 'OUT' conditional upon the selection of a Bid related to this other CMU. As long as the aforementioned condition is not fulfilled, these Opt-out Volumes are classified as 'IN'.
183. Opt-out Volumes related to a Y-1 Auction that are the subject of a "partial opt-out" for a New Build CMU, are classified as 'IN' on condition that the Bid for this CMU is selected. If this condition is not fulfilled, these Opt-out Volumes are classified as 'OUT'.
184. All other Opt-out Volumes related to a Y-1 Auction are classified as 'IN'.

### **5.4.3 Reference Power**

185. The Reference Power of a CMU is communicated by ELIA to the CRM Actor as part of the prequalification results notification.
186. ELIA may reduce the Reference Power of a CMU that is associated with a definitive decommissioning or definitive structural reduction of capacity notification in accordance with article 4bis of the Electricity Act, if this information is not included in an Opt-out Notification related to this CMU.
187. ELIA does not calculate a Reference Power for:
- VCMUs because the CRM Candidate declares an Eligible Volume (as per section 5.4.4.2); and
  - CMUs that go through the Fast Track Prequalification Process, the Opt-out Volume being automatically equal to the Nominal Reference Power ("full opt-out") and the Reference Power being therefore equal to zero.

### **5.4.4 Eligible Volumes**

#### **5.4.4.1 Standard Prequalification Process**

188. The Eligible Volume results from the application of a Derating Factor on the Reference Power of the CMU.

This Derating Factor is characterized as follows:

- the category (among the derating categories or the SLA categories) is provided by the CRM Candidate as part of his Prequalification File in accordance with § 91 and is related to the Derating Factor excluding the Associated Delivery Point(s); and
- the choice of category leads to two values: one value to determine the Eligible Volume for the participation in a Y-1 or LCT Auction and another to determine the Eligible Volume for the participation in a Y-4 Auction.

189. For an Aggregated CMU with one (or more) Associated Delivery Point(s), the Associated Eligible Volume corresponds to the result of the application of a Derating Factor on the Reference Power of the CMU, minus the Eligible Volume of this CMU.

This Derating Factor is characterized as follows :

- the category (among the derating categories or the SLA categories) is provided by the CRM Candidate as part of his Prequalification File in accordance with § 91 and is related to the Derating Factor including the Associated Delivery Point(s); and
  - the choice of category leads to two values: one value to determine the Associated Eligible Volume for the participation in a Y-1 or LCT Auction and another one to determine the Associated Eligible Volume for the participation in a Y-4 Auction.
190. Two Eligible Volumes as well as two Associated Eligible Volumes (in case the CMU is an Aggregated CMU with one (or more) Associated Delivery Point(s)), may be communicated by ELIA as part of the prequalification results notification (as detailed in section 5.5):
- one Eligible Volume and, if applicable, one Associated Eligible Volume for a participation in a Y-1 or LCT Auction are communicated by ELIA as part of the prequalification results notification in case there is not yet a Transaction related to the CMU with a Transaction Period that (partially) overlaps with the Delivery Period to which the Auction relates; and
  - one Eligible Volume and, if applicable, one Associated Eligible Volume for a participation in a Y-4 Auction are communicated by ELIA as part of the prequalification results notification in case there is not yet a Transaction related to the CMU with a Transaction Period that (partially) overlaps with the Delivery Period to which the Auction relates.

#### **5.4.4.2 Specific Prequalification Process**

191. A CRM Candidate who is prequalifying a VCMU shall declare an Eligible Volume as part of the Prequalification File submission.

#### **5.4.4.3 Fast Track Prequalification Process**

192. There is no Eligible Volume to determine for a CMU that follows a Fast Track Prequalification Process.

#### **5.4.5 Remaining Eligible Volumes**

193. The Remaining Eligible Volume is determined by ELIA whenever there is a Transaction related to the CMU with a Transaction Period that (partially) overlaps with the Delivery Period to which the Auction relates

In this case, the Remaining Eligible Volume defines the maximum volume that can be contracted in an Auction.

194. The Remaining Eligible Volume is calculated as follows:

- For Non-energy Constrained CMUs:

*Remaining Eligible Volume*

*= Maximum{0; Eligible Volume*

*– maximum Total Contracted Capacity over the Delivery Period to which the Auction relates}*

- For Energy Constrained CMUs

*Remaining Eligible Volume*

*= Maximum {0; Eligible Volume*

*– maximum Total Contracted Capacity over the Delivery Period to which the Auction relates*

*×  $\frac{\text{Derating Factor excluding Associated Delivery Points in accordance with § 91}}{\text{Derating Factor}(CMU, t)}$*

With Derating Factor(CMU,t) equal to the weighted average Derating Factor of all Transactions in Annex A of the CMU's Capacity Contract that constitute the maximum Total Contracted Capacity over the Delivery Period to which the Auction relates, calculated in accordance with the definition in chapter 3.

195. Two Remaining Eligible Volumes may be communicated by ELIA as part of the prequalification results notification (as detailed in section 5.5): one for a participation in a Y-1 Auction and another one for a participation in a Y-4 Auction, in case there is already a Transaction related to the CMU with a Transaction Period that (partially) overlaps with the Delivery Period to which the respective Auction relates.

## 5.4.6 Secondary Market (Remaining) Eligible Volume

196. The Secondary Market (Remaining) Eligible Volume of a CMU is only determined for Prequalified CMUs which are Existing CMUs.
197. As detailed in section 5.5, the Secondary Market Eligible Volume is communicated by ELIA to the CRM Candidate as part of the prequalification results notification. The Secondary Market Remaining Eligible Volume is not notified as part of the prequalification results notification but is made available for the CRM Actor in the CRM IT Interface.
198. The Secondary Market Eligible Volume for a specific period of time equals the Secondary Market Remaining Eligible Volume for this period of time as long as no Transaction (via the Primary Market or the Secondary Market) has been made for a Transaction Period corresponding to (or overlapping) that same period of time.

More information on the determination of the Secondary Market (Remaining) Eligible Volume can be found in section 10.4.8.

## 5.4.7 Fast Track Volume

199. The Fast Track Volumes result from the application of a Derating Factor on the Nominal Reference Power of the CMU.

As two values will be associated to the category chosen for a Derating Factor, there are two Fast Track Volumes: one volume related to the Y-1 Auction and another one related to the Y-4 Auction.

Such volumes are communicated by ELIA as part of the prequalification result notification (section

5.5).

## 5.5 PREQUALIFICATION RESULTS NOTIFICATION

200. The results of the Prequalification Process (including the status of each Prequalification File submitted) are communicated by ELIA to the CRM Candidate, via the CRM IT Interface, at the latest by the deadline defined in article 7undecies § 8 last alinea of the Electricity Act by:

- September 1 if an Investment File was submitted to the CREG;
- September 15 if no Investment File was submitted to the CREG;
- Within seventy Working Days starting from the submission of the Prequalification File in case the CRM Candidate wants to participate to the Secondary Market only.

201. In case of an "approved" Prequalification File, the notification contains at least the following data depending on the CMU's status and the type of procedure in which the CMU is participating:

	Fast Track Prequalification Process	Standard Prequalification Process		Specific Prequalification Process
		Existing CMU	Additional CMU	
The Nominal Reference Power of the CMU	X	X	X	
The Reference Power of the CMU		X	X	
The Opt-out Volumes of the CMU		X	X	
The Eligible Volumes and/or Remaining Eligible Volumes of the CMU		X	X	X
The Secondary Market Eligible Volume of the CMU		X		
The Fast Track Volumes of the CMU	X			

Table 4: Information communicated during the prequalification results notification

202. If the status of the Prequalification File or the status of the CMU, as per § 149, is still "provisionally rejected" by the Prequalification results notification deadline then it is "rejected".

203. A "rejected" Prequalification File or a "rejected" status for the CMU does not give any access to the Primary Market or the Secondary Market.

204. In the event of an Aggregated CMU with one (or more) Associated Delivery Point(s), the Associated Eligible Volumes of the CMU will also be appended to the prequalification results notification.

205. From the moment one of its CMUs having participated to a Standard Prequalification Process or to a Specific Prequalification Process is successfully prequalified (meaning that the related Prequalification File is "approved" and the prequalification results have been communicated to the CRM Candidate), the CRM Candidate becomes a "Prequalified CRM Candidate" with access to the Primary Market and the Secondary Market (only as Seller of Obligation for an Additional CMU and a Virtual CMU).

206. The prequalification results notification for a CMU participating to a Fast Track Prequalification Process does not grant the CMU nor the CRM Candidate with a "prequalified" status. No access is given for this CMU to the Primary Market or the Secondary Market.



207. A notification indicating the results of the submission of a Prequalification File for a CMU is sent by ELIA to the CRM Actor whatever the results of such process.
208. If the CRM Actor wishes to contest the prequalification results, he must use one of the recourse methods described in chapter 14.

## 5.6 EVOLUTION IN TIME OF THE INFORMATION SUBMITTED

### 5.6.1 Renewal of CMU's Prequalification File

209. Each year, five Working Days after the publication of the Functioning Rules (in application of article *7undecies* § 12 al. 4 of the Electricity Act), as a reminder to potentially renew the Prequalification File, ELIA sends a notification to each CRM Actor with one or more CMUs:
- for which a Prequalification File has been submitted the previous year via one of the three types of Prequalification Processes that was prequalified, approved or rejected; and/or
  - that are related to a Transaction with a Transaction Period that (partially) overlaps with the Delivery Period to which the respective Auction(s) relate(s).
210. CRM Actors are expected to renew a CMU's Prequalification File towards an upcoming Auction by submitting a new or updated Prequalification File with the required data and documents in accordance with section 5.2.3 whenever:
- the CRM Actor wants to participate to an upcoming Auction with the (Remaining) Eligible Volume determined for the respective CMU;
  - the CRM Actor does not want to participate to an upcoming Auction with the CMU but the capacity falls under the obligation to introduce a Prequalification File in accordance with article *7undecies* § 8 al. 2 of the Electricity Act:
    - in case the CMU is related to a Transaction with a Transaction Period that (partially) overlaps with the Delivery Period to which the Auction relates, the CRM Actor remains in the Standard Prequalification Process, updates relevant volume related information, if applicable, and if necessary submits an Opt-out Notification to notify an Opt-out Volume such that the Remaining Eligible Volume is equal to zero MW (no other updates to the Prequalification File are required);
    - in all other cases, the CRM Actor follows the Fast Track Prequalification Process.
211. CRM Actors are expected to renew a CMU's Prequalification File towards a Secondary Market transaction for a future Delivery Period as the buyer of an obligation by submitting a new or updated Prequalification File with the required data and documents in accordance with section 5.2.3 whenever there has been a new publication of the Functioning Rules (in application of article *7undecies* § 12 al. 4 of the Electricity Act) since the last notification of the prequalification results for this CMU in accordance with section 5.5 by ELIA.

However, CRM Actors are not expected to renew a CMU's Prequalification File towards a Secondary Market transaction for the ongoing Delivery Period as the buyer of an obligation since for the ongoing Delivery Period the CMU remains prequalified regardless of whether there has been a new publication of the Functioning Rules (in application of article *7undecies* § 12 al. 4 of the Electricity Act) since the last notification of the prequalification results for this CMU in accordance

with section 5.5 by ELIA.

## **5.6.2 Automatic updates performed by ELIA**

212. ELIA automatically updates some information in a Prequalification File in the situations described below, if applicable, upon the notification by the relevant entity or publication of the changes referred to by these situations.
213. In case of automatic update, ELIA will notify the CRM Actor of said update within five Working Days of the update.
214. The change becomes valid for the or any forthcoming Transaction(s) only if the CRM Actor does not raise any contestation against this change within ten Working Days as of the notification. If the CRM Actor contests the change, he must use one of the recourse methods described in chapter 14.
215. Regardless of the automatic updates that can be performed by ELIA, it remains the CRM Actor's sole responsibility to timely update the required data of his Prequalification File and to maintain the compliance of his Prequalification File with the legislation in force.
216. An automatic update to a Prequalification File performed by ELIA does not impact the obligations linked to a Contracted Capacity nor their associated parameters listed in the annex A of the Capacity Contract.
217. The automatic updates performed by ELIA do not impact existing Capacity Contracts.

### **5.6.2.1 Capacity Category and Capacity Contract Duration update**

218. When CREG reclassifies the CMU into a lower Capacity Category (in the event that the Capacity Provider entered into a Capacity Contract Duration covering more than one Delivery Period), in application of the Royal Decree on "Investment Thresholds", the Capacity Category and the Capacity Contract Duration are adapted accordingly within three Working Days after the updated Capacity Category has been communicated by CREG to ELIA.

## **5.6.3 Updates performed by the CRM Actor**

### **5.6.3.1 Evolution of CRM Actor's application form**

219. A CRM Actor is entitled, at any time to modify data or documents as initially provided in his application form. To do so, the CRM Actor cannot do it via the CRM IT Interface but is asked to directly contact ELIA by e-mail ([customer.crm@elia.be](mailto:customer.crm@elia.be)).

### **5.6.3.2 Evolution of CRM Actor's Prequalification File**

#### **5.6.3.2.1 General principles**

220. Any change of the Prequalification File submitted by a CRM Actor is provided with a date of entry into force. If the CRM Actor does not provide a date of entry into force to ELIA, the change enters into force at the prequalification results notification date.

221. Any change to an Aggregated CMU with respect to the set of Delivery Points of which the CMU consists (as per section 5.6.3.2.2.1), has to apply as of the moment of the change, i.e. for the current – if applicable – as well as for all future Delivery Periods.

In case the CRM Actor wants to change the set of Delivery Points of an Aggregated CMU as from a future Delivery Period only, or equivalently, submit a Prequalification File for a Delivery Period with a specific set of Delivery Points that cannot be considered for all other Delivery Periods, the CRM Actor creates another CMU.

222. The CRM Actor may make – within the limitations set beneath – all types of Prequalification File changes as long as the requirements of section 5.2.3 are met.

223. In the event that a CMU is related to a Capacity Contract, those changes will not affect under any circumstances the obligations (linked to the Contracted Capacity and the associated parameters listed in annex A to the Capacity Contract) and respect the following requirements:

- a Delivery Point can only be added to the CMU if it is an Existing Delivery Point; and
- the declaration of "Energy Constrained CMU" (or "Non-energy Constrained CMU") by the Capacity Provider in the related Prequalification File remains valid and is not influenced by the new Delivery Point.

224. No Delivery Point can be added to a CMU that is related to a Capacity Contract Duration covering more than one Delivery Period (cf. Royal Decree on "Investment Thresholds").

225. A Delivery Point can replace another one into an Aggregated CMU that is linked to a Capacity Contract Duration covering more than one Delivery Period as long as:

- the Capacity Category of this replacement Delivery Point is not lower than the remaining Capacity Contract Duration of the Contracted Capacity at the time of the change submission; and
- the replacement Delivery Point is not the subject of a current Capacity Contract; and
- the CO<sub>2</sub> emission of the new Aggregated CMU does not exceed the CO<sub>2</sub> Emissions Cap calculated (in accordance with Annex 18.1.6) for the related CMU during the Prequalification Process; and
- the current status of the CMU is not subject to change.

226. A Delivery Point can replace another one into an Aggregated CMU as long as it does not change the status of the CMU from "Existing" to "Additional".

227. To participate in the forthcoming Auction, the deletion of one or more Delivery Point(s) that is/are part of the Aggregated CMU for which an Investment File has already been submitted to CREG is only possible if introduced by the CRM Candidate prior to August 20 of the year of Auction.

In this situation, the CRM Actor may also submit to ELIA one (or more) new Prequalification File(s), including only the deleted Delivery Point(s)<sup>12</sup>, until August 25 of the year of Auction. ELIA will finalize the Prequalification Process of this(those) new file(s) within a maximum of five

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<sup>12</sup> In case the deleted Delivery Points are legally obliged to pre-qualify (cf. article 7*undecies*, § 8, al. 2 of the Electricity Act), ELIA gives the CRM Actor the possibility to submit one (or several) new Prequalification File(s) including this(those) Delivery Point(s).

Working Days, starting from the submission date(s) of the new Prequalification File(s).

228. No change is accepted by ELIA on an on-going contract related to a VCMU.
229. Without prejudice to the rules to renew a CMU's prequalification in section 5.6.1 it is the responsibility of the CRM Actor, for each CMU that is engaged in a Transaction until the end of the Transaction Period:
- to maintain the compliance of this CMU with the law in force; and
  - to ensure the accuracy and the relevancy over time of all general information included in the related Prequalification File in accordance with §§ 81, 91 and 101.

It is up to the CRM Actor to take due account of the modifications of official documents that can have an impact on the Prequalification File.

### 5.6.3.2.2 Possible types of changes

#### 5.6.3.2.2.1 Update linked to a Delivery Point

230. A CRM Actor asks for an update of the information in his Prequalification File linked to a Delivery Point, whenever needed as long as he respects the requirements of Table 1 and section 5.6.3.2.1.
231. The possible updates for a Delivery Point are the following:
- **Delivery Point addition:** Without prejudice to the rules set out in section 5.6.3.2.1, the CRM Actor can add one or more Delivery Point(s) into a CMU, regardless of its status (Existing Delivery Point or Additional Delivery Point).
  - **Delivery Point deletion:** Without prejudice to the rules set out in section 5.6.3.2.1, the CRM Actor can delete one or more Delivery Point(s) from a CMU, regardless of its status (Existing Delivery Point or Additional Delivery Point). However, in the event that the CMU is related to a Capacity Contract, the deletion of all Delivery Points which are part of this CMU does not lead to a deletion of the related Prequalification File.
  - **Delivery Point transfer:** In the event a CRM Actor plans to transfer his Delivery Point to another CRM Actor or to another of his CMUs, the Delivery Point in question is added to the CMU of its new holder or to the CMU in question after having been deleted from the initial CMU. The transfer is therefore the combination of two actions: first the Delivery Point deletion from a Prequalification File and then his re-creation in a new one<sup>13</sup>.
  - **Delivery Point data modification:** Without prejudice to the rules set out in section 5.6.3.2.1, the CRM Actor may modify the data related to a Delivery Point. The data that may be edited are those listed in the Table 1 for Standard Prequalification Files and the Table 3 for Fast Track Prequalification Files. In the context of the modification of a Delivery Point, the CRM Actor can also trigger the re-calculation of a Nominal Reference Power<sup>14</sup> in accordance with the 1<sup>st</sup> or 2<sup>nd</sup> method.

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<sup>13</sup> ELIA reserves also the right to delete a Delivery Point – following an agreement with the concerned Grid User – if the deletion by the initial user was not done within reasonable timings.

<sup>14</sup> The adaptation of a Nominal Reference Power is triggered by the CRM Actor himself. There is no automatic and periodic re-calculation planned by ELIA. However, if ELIA (or the DSO) observes significant differences between the parameters of a Prequalification File and the reality, the correction of these data can be requested to the CRM Actor.

#### 5.6.3.2.2 Update linked to a CMU

232. A CRM Actor may ask for an update of the information in his Prequalification File linked to the CMU, whenever needed, as long as he respects the conditions of the Table 2 and section 5.6.3.2.1.

233. The possible updates for a CMU are the following:

- **CMU archiving:** The CRM Actor has the possibility to archive a CMU by archiving the Prequalification File of the CMU, regardless of its status (Existing CMU, Additional CMU or Virtual CMU). An archiving can be performed even during the review of the Prequalification File by ELIA to interrupt a Prequalification Process. In the event that the CRM Actor archives his CMU because he does not want to participate in the Service anymore, he follows a Fast Track Prequalification Process with the related CMU if necessary to comply with the requirement mentioned in article 7undecies, § 8, al. 2 of the Electricity Act . If a CMU is linked to an ongoing Capacity Contract, its related Prequalification File cannot be archived for the purposes of the pre-delivery control during the Pre-delivery Period and the Availability Monitoring during the Delivery Period. A "rejected" Prequalification File specifically can also be archived by ELIA if no action has been registered by the CRM Candidate during the six months starting from the first Prequalification File submission date.
- **CMU transfer:** In the event a CRM Actor plans to transfer its Prequalified CMU to another CRM Actor, the latter is required to restart a new Prequalification Process once the CMU has been archived by its original holder. The transfer is therefore the combination of two actions: first the CMU archiving from a Prequalification File and then its re-creation in a new file.
- **CMU data modification:** The CRM Actor may modify the data related to a CMU in a Prequalification File. The CRM Actor also has the possibility to do a Fast Track Prequalification Process with a (Prequalified) Existing CMU or with a (prequalified) Existing Delivery Point. As the Fast Track Prequalification Process can only include one Delivery Point, each Delivery Point part of the CMU that follows the Fast Track Prequalification Process is split into different Prequalification Files. A CMU which followed a Fast Track Prequalification Process can also follow a Standard Prequalification Process. To do so, the CRM Candidate archives his fast track Prequalification File and creates a new CMU following the Standard Prequalification Process.

#### 5.6.3.3 Review of the information submitted

234. ELIA reviews the change(s) by following the same procedure as for the review of the information submitted for a new Prequalification File (as detailed in section 5.3.2).

#### 5.6.3.4 Volumes determination

235. In parallel with the review of the information submitted in the Prequalification File in accordance with the rules set out in section 5.3.2, ELIA proceeds with the volumes determination process as follows:

- for a CMU related to a **Standard Prequalification Process or to a Fast Track Prequalification Process**, if applicable, the volumes are determined as per section 5.4;
- for a CMU related to a **Specific Prequalification Process**, as there is no volume to calculate for a VCMU, this process does not apply.

### 5.6.3.5 Prequalification results notification

236. ELIA notifies the results of the change(s) by following the same procedure as for the prequalification results notification for a new Prequalification File (as detailed in section 5.5).

237. From this notification, the change(s) come(s) into effect from either:

- the prequalification results notification in case no date of entry into force was submitted by the CRM Actor; or
- the date of entry into force in case a date of entry into force was submitted by the CRM Actor.

The new volumes are effective for the future Transactions taking place after the change has entered into force.

## 5.7 NOTIFICATION TO THE CREG AND THE FEDERAL PUBLIC SERVICE ECONOMY

238. If the CRM Candidate notified ELIA of his intention to introduce an Investment File, ELIA communicates specific information to the CREG at the following times:

- from the submission date of the Prequalification File in which it is indicated that the CMU is linked to one (or more) investment file(s); and
- from the notification to the CRM Candidate of the rejection of his Prequalification File; and
- from the notification of the final Nominal Reference Power of each Delivery Point part of the CMU to the CRM Candidate; and
- from the results notification of the Prequalification Process by ELIA to the CRM Candidate – and no later than September 1 of the year in which an Auction is organized for a Prequalification File submitted at the latest on June 15 of the same year.

239. In case of problems with the automatic data exchange between CREG and ELIA, ELIA communicates the required information per email, within three Working Days starting from the four moments defined in the previous § 238.

The information communicated by ELIA per CMU are summarized in the following table:

	From the Prequalification File submission date	From the Prequalification File rejection date	From the final Nominal Reference Power notification	From the prequalification results notification
ID of the CRM Candidate	X	X	X	X
Legal status of the company	X			
Company name / CRM Candidate name	X			

Company address / CRM Candidate address	X			
Contact details (the person who will be the point of contact for the CREG)	X			
Project ID	X	X	X	X
CMU ID	X	X	X	X
Delivery Point(s) ID	X	X	X	X
EAN code of the Delivery Point(s)	X			
The Declared Nominal Reference Power of each Additional Delivery Point of the CMU	X			
The Expected Nominal Reference Power of each Existing Delivery Point of the CMU	X			
The Nominal Reference Power of each Existing Delivery Point of the CMU			X	X
The prequalification results		X		X
Remaining number of Delivery Periods for a Capacity Contract Duration (compared to the initial Capacity Category allocated by the CREG) <sup>15</sup>	X			

Table 5: Information communicated by ELIA to CREG during the Prequalification Process

240. At the latest ten Working Days after the Prequalification File submission deadline referred to in article 7undecies, § 8, last alinea, of the Electricity Act, ELIA sends an overview of the following information to the Federal Public Service Economy, per CMU:

- ID of the CRM Candidate;
- Legal status of the company;
- Company name / CRM Candidate name;
- Contact details (the person who will be the point of contact for the CREG);
- CMU ID;
- Delivery Point(s) ID;

<sup>15</sup> The number of remaining years for a Capacity Contract Duration corresponds to the difference between the Capacity Category allocated by the CREG and the number of years for which the Delivery Point has already been contracted.

- EAN code of the Delivery Point(s);
- The Declared Nominal Reference Power of each Additional Delivery Point of the CMU;
- The Expected Nominal Reference Power of each Existing Delivery Point of the CMU.

241. At the end of the Prequalification Process, ELIA communicates the following information to the CREG no later than five Working Days following the prequalification results notification deadline referred to in article 7undecies, § 8, last paragraph, of the Electricity Act:

- A list of prequalified CMUs and, for each one, the below information:
  - the CMU-ID;
  - the name of the Delivery Point;
  - the type of CMU (Existing/Additional/Virtual/New Build);
  - the type of CMU (individual/Aggregated/Associated, with the name of the CMU with which it is associated);
  - the CRM Actor;
  - the technology of the DP;
  - the Nominal Reference Power;
  - the applicable Derating Factor;
  - the Grid (ELIA, DSO, CDS) and, if applicable, the name of the DSO or CDSO;
  - the correction made to the Demand Curve;
  - if applicable, the waiver of any operating aid;
  - in a separate document, for the aggregated CMUs, the relevant information included above for each Delivery Point;
- a list of CMUs that have opted for the Fast Track Prequalification Process, with the below information for each of them:
  - the CMU-ID;
  - the name of the Delivery Point;
  - the type of CMU (Existing/Additional/Virtual/New Build);
  - the technology of the DP;
  - the Nominal Reference Power;
  - the applicable Derating Factor;
  - the Opt-out classification ("IN" or "OUT");
  - the Grid (ELIA, DSO, CDS) and, if applicable, the name of the DSO or CDSO;
  - the correction made to the Demand Curve;
- a complete list of all Capacities considered to be "eligible" and "non-eligible", enabling Elia to adjust the Demand Curve transparently and correctly;
- insofar as possible, a description of Grid Constraints identified.



## 6 AUCTION PROCESS

### 6.1 INTRODUCTION

*In accordance with article 7undecies, §10 of the Electricity Act, ELIA organizes two Auctions for each Delivery Period:*

*A first Auction four years ahead of the Delivery Period (hereafter referred to as "Y-4 Auction");*

*A second Auction one year ahead of the Delivery Period (hereafter referred to as "Y-1 Auction").*

*The purpose of the Auction process is to determine the capacities to be contracted through the Primary Market, by means of the selection of Bids submitted in the Auction by Prequalified CRM Candidates for their respective Prequalified CMU(s).*

*This chapter is structured around three sections.*

*Section 6.2 elaborates on the modalities of the submission of Bids, describing the Bid compliance conditions, the process for Bid submission via the CRM IT Interface and the (Remaining) Eligible Volume requirement.*

*Section 6.3 specifies the clearing of the Auction. After defining the parameters and grid constraints that serve as input to an Auction, the section defines the Auction clearing methodology and the Bid remuneration methodology.*

*Section 6.4 elaborates on the Auction results.*

### 6.2 BID SUBMISSION

242. Each Bid is indivisible, meaning that it can only be selected in its entirety or not at all.
243. Subject to the conditions as detailed in §§ 265 and 266, a Prequalified CRM Candidate can label a Bid as being part of a set of Linked Bids together with one or more of its other Bids when the Bids refer to CMUs that form Linked Capacities, specified in accordance with § 81 during the Prequalification Process. In such case, these Bids are automatically bundled together and designated as part of the same set of Linked Bids.
244. Bids that are part of a set of Linked Bids can only be selected jointly.
245. A Prequalified CRM Candidate can, for an Aggregated CMU including Associated Delivery Points, submit one or more Bids (in accordance with § 249) for the Prequalified CMU and the same number of Joint Bids linked to the Associated Eligible Volume. A Joint Bid can only be selected if a Bid for the CMU has been selected.
246. Subject to the conditions as detailed in § 267, a Prequalified CRM Candidate can label a Bid or a set of Linked Bids as being part of a set of mutually exclusive Bids together with one or more of its other Bids. In such case, the Bids are automatically bundled together and designated as part of the same set of mutually exclusive Bids.
247. From a set of mutually exclusive Bids, only one Bid or one set of Linked Bids can be selected.

## 6.2.1 Bid compliance conditions

### 6.2.1.1 Bid compliance conditions for all Bids

248. A Bid relates to a single Prequalified CMU.

249. A maximum of five Bids per Auction may be submitted for one CMU.

250. No Bid submitted during a Y-1 Auction may relate to a Virtual CMU.

251. A Bid includes:

- one single Bid Price, expressed in EUR/MW/year with a precision of 0,01 EUR/MW/year, subject to the conditions specified in §§ 253 and 254; and
- one single positive volume, expressed in MW with a precision of 0,01 MW, subject to the conditions specified in §§ 256 to 259; and
- one single positive Capacity Contract Duration, expressed in number of Delivery Periods with a precision of one Delivery Period, subject to the conditions specified in §§ 262 and 264.

252. Bids can be submitted for a CMU in a Y-1 and Y-4 Auction – or a LCT and Y-4 Auction – that are organised in the same year, as long as these Bids:

- include a Capacity Contract Duration of one or more than one Delivery Period in one of the two Auctions, and a Capacity Contract Duration of one Delivery Period in the other Auction; and
- do not have overlapping Transaction Periods; and
- are independent of the (non-)selection of the Bid(s) in the other Auction.

#### 6.2.1.1.1 Bid Price

253. The Bid Price is less than or equal to the Global Auction Price Cap.

254. In the event that an application is made for an intermediate Price Cap derogation, in accordance with article 22 of the *[placeholder to amendment of Royal Decree on Methodology]*, the Bid Price is less than or equal to the missing money included in the derogation application, in accordance with article 22, § 2, 5° of the *[placeholder to amendment of Royal Decree on Methodology]* when:

- the submitted Intermediate Price Cap derogation application is approved by the CREG in accordance with article 22, § 11 of the *[placeholder to amendment of Royal Decree on Methodology]*; or
- the submitted Intermediate Price Cap derogation application is rejected by the CREG but the derogation applicant undertakes to file, within the time period referred to in article 29quater of the Electricity Act, an appeal against the CREG decision.

255. The Bid Price is less than or equal to the Intermediate Price Cap, in case this Bid is related to a CMU that is not assigned by the CREG to a Capacity Category covering more than one Delivery Period and for which

- no Intermediate Price Cap derogation application is submitted; or

- the submitted Intermediate Price Cap derogation application is declared inadmissible by ELIA in accordance with article 22, § 3 of the *[placeholder to amendment of Royal Decree on Methodology]* ; or
- the submitted Intermediate Price Cap derogation application is rejected by the CREG and the derogation applicant has not undertaken to file, within the time period referred to in article 29quater of the Electricity Act, an appeal against the CREG.

### **6.2.1.1.2 Bid volume**

256. The volume of a Bid is greater than or equal to the minimum participation threshold in MW as determined in the Royal Decree on "Eligibility Criteria".
257. The volume of a Bid is less than or equal to the Eligible Volume of the CMU or, if a Transaction on the Primary Market or a transaction on the Secondary Market already took place previously for this CMU, the Remaining Eligible Volume.
258. The volume of a Joint Bid is less than or equal to the Associated Eligible Volume of the CMU.
259. A Prequalified CRM Candidate offers in the Auction at least once the entire Eligible Volume of its Prequalified CMUs or, if a Transaction on the Primary or Secondary Market already took place previously for these CMUs, the Remaining Eligible Volume. To comply with this requirement, the maximum volume that can be selected from all his Bids with the status "submitted" at the Bid submission deadline as described in § 284, needs to be equal to the Eligible Volume of a CMU or, if a Transaction on the Primary or Secondary Market already took place previously for this CMU, the Remaining Eligible Volume.
260. The CMUs that do not respect the requirement set out in the previous paragraph, and for which no Bid is submitted during the Auction, are considered as having notified a "full Opt-out".
261. The Opt-out Volumes are classified as "IN", except if:
- for an Auction Y-4:
    - the volume is linked to a New Build CMU; or
    - the volume is associated with a definitive decommissioning or a definitive structural reduction in capacity notification in accordance with article 4bis of the Electricity Act for the Delivery Period concerned;
  - for an Auction Y-1:
    - the volume is linked to a New Build CMU; or
    - the volume is associated with a definitive decommissioning or a definitive structural reduction in capacity notification in accordance with article 4bis of the Electricity Act for the Delivery Period concerned;
    - the volume is associated with a temporary decommissioning or a temporary structural reduction in capacity notification in accordance with article 4bis of the Electricity Act during the Delivery Period concerned.

In the cases listed above, these Opt-out Volumes are classified as "OUT".

### **6.2.1.1.3 Capacity Contract Duration**

262. For CMUs that are assigned by the CREG to a Capacity Category associated with a Capacity Contract for up to three, eight or fifteen Delivery Periods, the Capacity Contract Duration of a Bid

is less than or equal to the maximum number of Delivery Periods that correspond to the concerned Capacity Category. In other cases, the Capacity Contract Duration of a Bid is equal to one Delivery Period.

263. The Capacity Contract Duration of a Joint Bid is equal to one Delivery Period.

264. The Capacity Contract Duration of a Bid that is related to a Virtual CMU is equal to one Delivery Period.

### **6.2.1.2 Complementary Bid compliance conditions for Linked Bids and mutually exclusive Bids**

265. Bids that are part of a set of Linked Bids:

- do not relate to the same CMU; and
- relate to CMUs of the same Prequalified CRM Candidate; and
- relate to the same Auction; and
- have the same Bid Price.

266. A Bid can only be part of one set of Linked Bids.

267. Bids that are part of a set of mutually exclusive Bids relate to CMUs of the same Prequalified CRM Candidate and relate to the same Auction.

### **6.2.1.3 Complementary Bid compliance condition for Bids related to Additional CMUs subject to a technical agreement**

268. A Bid or set of Linked Bids related to one or more Additional CMUs that are subject to a technical agreement in accordance with the connection process as defined in the applicable Federal Grid Code or Regional Grid Code, has to comply with the technical configuration as specified in a related EDS that is the subject of the technical agreement.

## **6.2.2 Bid submission via CRM IT Interface**

269. The Prequalified CRM Candidates use the CRM IT Interface for the submission of their Bid(s). To that end, the Prequalified CRM Candidates have access to the CRM IT Interface as from September 1 9:00.

270. ELIA integrates a compliance check in the CRM IT Interface as an automatic process that verifies whether Bids are compliant. A Bid is compliant when it respects all conditions listed in section 6.2.1.

### **6.2.2.1 Bid status**

271. In the CRM IT Interface, a Bid can have the following statuses: "saved", "submitted", "canceled" or "selected".

#### **6.2.2.1.1 Status "saved"**

272. A Prequalified CRM Candidate can save Bids in the CRM IT Interface from September 1 9:00 until the Bid submission deadline referred to in § 284.
273. Bids that are saved in the CRM IT Interface get the status "saved".
274. From the moment a Bid gets the status "saved", the Bid Price is encrypted until after the clearing of the Auction. As an exception, a decryption key is provided to the IT processes that execute compliance checks referred to in § 270 or that perform the clearing of the Auction as described in section 6.3.
275. A Prequalified CRM Candidate can initiate a compliance check as referred to in § 270, of its Bids with the status "saved". Upon finalization of the compliance check, it will be indicated in the CRM IT Interface whether these Bids have successfully passed the compliance check. In case Bids do not pass the compliance check, the Prequalified CRM Candidate is informed about the reason(s) for non-compliance via the CRM IT Interface.

#### **6.2.2.1.2 Status "submitted"**

276. From 9:00 on the first Working Day after September 15 and until the Bid submission deadline referred to in § 284, a Prequalified CRM Candidate may submit Bids in the CRM IT Interface with the status "saved". Upon submission of the Bids in the CRM IT Interface a compliance check as described in § 270 is performed.
277. Submitted Bids that successfully pass the compliance check get the status "submitted".
278. Submitted Bids that don't pass the compliance check keep the status "saved". In that case, the Prequalified CRM Candidate is informed about the reason(s) for non-compliance via the CRM IT Interface.
279. Each time a Bid of a Prequalified CRM Candidate gets the status "submitted" in the CRM IT Interface, ELIA provides by email an overview to this Prequalified CRM Candidate of all its Bids with the status "submitted".
280. From the first Working Day after September 15 until the Bid submission deadline referred to in § 284, ELIA performs a compliance check as referred to in § 270 of all Bids in the CRM IT Interface with the status "submitted" on a daily basis. In case Bids don't pass the compliance check, the Bids get the status "saved", or "canceled" in case the situation described in § 282 applies. The Prequalified CRM Candidate is informed of the reason(s) for this non-compliance via the CRM IT Interface.
281. ELIA determines, for each Prequalified CMU, the maximum volume that can be selected from all Bids related to this CMU with the status "submitted" at the Bid submission deadline as referred to in § 284, taking into account the constraints that arise from the mutual exclusivity relationship between Bids.

#### **6.2.2.1.3 Status "canceled"**

282. Bids with the status "saved" or "submitted" for which ELIA notes during a compliance check conducted in application of §§ 275, 276 or 280 that they relate to a CMU that has meanwhile been archived in accordance with § 233, get the status "canceled". In that case, the Prequalified CRM Candidate is informed by email.

#### **6.2.2.1.4 Status "selected"**

283. Following the Auction clearing described in section 6.3, Bids may get the status "selected".

### 6.2.2.2 Bid submission deadline

284. The Bid submission deadline is set at September 30 17:00, unless the fallback procedure as described in section 15.4.1 applies.
285. Only Bids with the status "submitted" at the Bid submission deadline as described in § 284, are considered during the clearing of the Auction, as described in section 6.3.
286. ELIA automatically reminds Prequalified CRM Candidates about the upcoming Bid submission deadline at least twice, once one week and once twenty-four hours before the Bid submission deadline.
287. The fallback procedure described in section 15.4.1 applies in the event of a problem attributable to ELIA which makes it impossible for a Prequalified CRM Candidate to submit its Bid(s) within the deadline referred to in § 284.

## 6.3 AUCTION CLEARING

288. As of the Bid submission deadline as described in § 284, ELIA proceeds with the clearing of the Auction according to the methodology described in section 6.3.3.

### 6.3.1 Adaptations and corrections of the Demand Curve

289. The volume to be purchased in an Auction must be corrected in order to take account of information that could not be taken into account when determining the Demand Curve as described in the *[placeholder to amendment of Royal Decree on Methodology]*.

There are three types of corrections:

- **downward volume corrections** of the Demand Curve that result in a reduction of the volume to be contracted, implemented by shifting the Demand Curve to the left before the clearing of the Auction (section 6.3.1.1);
- **upward volume corrections** of the Demand Curve that result in an increase of the volume to be contracted, implemented by shifting the Demand Curve to the right before the clearing of the Auction (section 6.3.1.2);
- **conditional volume corrections** of the Demand Curve that result in a reduction or an increase of the volume to be purchased depending on the selection of Bids during the Auction clearing, implemented through conditional volume correction Bids that are considered during the clearing of the Auction (section 6.3.1.3).

The conditional volume correction Bids have no Bid Price, do not result in any contractual obligation for any Prequalified CRM Candidate and are not linked to any Capacity Contract duration.

#### 6.3.1.1 Downward volume corrections of the Demand Curve

290. The total volume of downward volume corrections of the Demand Curve towards an Auction is equal to the sum of the following elements:
  - capacities of Energy Constrained CMUs that are engaged in a Transaction with a Transaction Period that (partially) overlaps with the Delivery Period to which the Auction relates for which

the Derating Factor has improved (Derating Factor as indicated by the CRM Candidate in § 91 higher than Derating Factor(CMU,t)), calculated as:

$$\frac{\text{average Total Contracted Capacity over the Delivery Period to which the Auction relates}}{\text{Derating Factor(CMU,t)}} * [\text{Derating Factor as indicated by the CRM Candidate in § 91} - \text{Derating Factor(CMU,t)}];$$

With Derating Factor(CMU,t) equal to the weighted average Derating Factor of all Transactions in Annex A of the CMU's Capacity Contract that constitute the Total Contracted Capacity over the Delivery Period to which the Auction relates, calculated in accordance with the definition in chapter 3.

- capacities that indicate not willing to participate to the auction via an Opt-out Notification, but that can be expected to stay in the market, calculated as the sum of the derated Opt-out Volumes related to this Auction classified as "IN". For each CMU the derated Opt-out Volume is calculated by multiplying the Opt-out Volume with the Derating Factor applicable to the CMU and determined during the Prequalification process in accordance with §§ 91 or 101 for the Auction to which the Opt-out Notification relates;
- capacities that are to be considered as non-eligible but that were not yet considered as such during the calibration of the Demand Curve, calculated as the sum of the derated not successfully prequalified capacities of the list referred to in § 292 that are according to the list not considered as non-eligible and that did not meanwhile provide a definitive closure or definitive structural capacity reduction notification in accordance with article 4bis of the Electricity Law. The values used in the list referred to in § 292 are used for the calculation;
- capacities with an obligation to submit a Prequalification File as described in article 7undecies, §, 8 al. 2 of the Electricity Act and complemented by the description in § 100, second alinea, that cannot participate to the auction because the Prequalification File was rejected by ELIA or archived by the CRM Candidate. If these capacities did not submit an Opt-out Notification, were not converted into a Prequalification File in another Prequalification Process, were not archived in the context of a CMU transfer and did not meanwhile provide a definitive closure or definitive structural capacity reduction notification in accordance with article 4bis of the Electricity Law, their derated capacity will be considered as a downward volume correction of the Demand Curve. To calculate the derated capacity, the most recent and accurate available information will be used.

### 6.3.1.2 Upward volume corrections of the Demand Curve

291. The total volume of upward volume corrections of the Demand Curve towards an Auction is equal to the sum of the following elements:

- capacities of Energy Constrained CMUs that are engaged in a Transaction with a Transaction Period that (partially) overlaps with the Delivery Period to which the Auction relates for which the Derating Factor has deteriorated (Derating Factor as indicated by the CRM Candidate in § 91 lower than Derating Factor(CMU,t)), calculated as

$$\frac{\text{average Total Contracted Capacity over the Delivery Period to which the Auction relates}}{\text{Derating Factor(CMU,t)}} * [\text{Derating Factor(CMU,t)} - \text{Derating Factor as indicated by the CRM Candidate in § 91}];$$

With Derating Factor(CMU,t) equal to the weighted average Derating Factor of all Transactions in Annex A of the CMU's Capacity Contract that constitute the Total Contracted Capacity over the Delivery Period to which the Auction relates, calculated in accordance with the definition in chapter 3.

- capacities that were considered as non-eligible during the determination of the Demand Curve, but which are related to CMUs that nevertheless successfully prequalified or that have meanwhile been decommissioned, calculated in accordance with the rest of this section.

292. Prior to the determination of the Demand Curve, based on a list of individually considered CHP, waste and biomass production units that is determined by ELIA and that minimally contains the name of the unit, a presumed Nominal Reference Power, the technology and a related Derating Factor, the Federal Public Service Economy indicates for each unit whether it is expected to receive subsidies and therefore should be considered non-eligible during the Delivery Period to which the Auction relates. During the Prequalification Process, ELIA will map the participating capacities to this list.

293. For successfully prequalified capacities (as part of successfully prequalified CMUs) that were mapped to the list referred to in § 292 and that are according to the list considered as non-eligible, the contribution to the upward volume correction of the Demand Curve is calculated as the product of the presumed Nominal Reference Power and the applicable Derating Factor of the unit, in accordance with the values used in the list.

Not successfully prequalified units of the list referred to in § 292 that are according to the list considered as non-eligible, and that have meanwhile provided a definitive closure or definitive structural reduction notification in accordance with article 4bis of the Electricity Law, are also considered to contribute to the upward volume correction of the Demand Curve. Their contribution is determined by multiplying the volume implied in the aforementioned article 4bis notification and the applicable Derating Factor in accordance with the value assumed for the unit in the list.

294. Successfully prequalified capacities that could not be mapped to the list referred to in § 292 contribute to the upward volume correction of the Demand Curve if their selected Technology is CHP, waste, biomass, solar, onshore wind or offshore wind. Their contribution to the upward volume correction of the Demand Curve is calculated as the product of the Nominal Reference Power of the related Delivery Point and the Derating Factor related to the technology as used in the assumptions during the calibration of the Demand Curve.

295. In case an aggregated volume of more than 20 MW of capacities that have contributed to the upward volume correction of the Demand Curve in accordance with §§ 292 to 294 is not selected during the clearing of the Auction, a new clearing of the Auction is initiated, with the following updated inputs:

- the upward volume correction of the Demand Curve is decreased by the above-mentioned aggregated volume; and
- the CMUs related to the above-mentioned aggregated volume are forcibly rejected during the new clearing; and
- all Opt-out Volumes associated to the CMUs related to the above-mentioned aggregated volume are reduced to 0 MW, possibly resulting in changes to the downward and/or conditional volume corrections of the Demand Curve.

296. This process is repeated for as long as an aggregated volume of more than 20 MW of capacities that have contributed to the upward volume correction of the Demand Curve in accordance with §§ 292 to 294, is not selected during the clearing of the Auction.



### **6.3.1.3 Conditional volume corrections of the Demand Curve**

297. A conditional volume correction Bid is created by ELIA for each Auction and for each Opt-out Volume that falls under the descriptions provided in §§ 178, 179, 182 or 183, whose volume is equal to the Opt-out Volume multiplied by the Derating Factor applicable to the CMU for the Auction to which the Opt-out Notification relates. Its treatment ("IN" or "OUT") depends on the clearing of the Auction and is further described in § 335, second and third bullet.
298. Before the clearing of the Auction, the conditional Opt-out Volumes that are related to §§ 178 and 182 are considered as "IN".
299. Before the clearing of the Auction, the conditional Opt-out Volumes that are related to §§ 179 and 183 are considered as "OUT".

## **6.3.2 Grid constraints**

### **6.3.2.1 Definitions**

300. In accordance with article *Tundecies* §12, al. 2, 4° of the Electricity Act this section defines the grid constraints and the methodology for their calculation and application applicable for Y-4, Y-1 and LCT Auctions.
301. Grid constraints are limitations on the feasibility of a CMU or a combination of CMUs requiring additional connection capacity within the CRM- or LCT framework and mentioned by the CRM Candidate in its Prequalification File. These constraints are based on the expected grid infrastructure and its operating conditions as determined by the reference scenario used to calibrate the Demand Curve in order to ensure compliance with applicable Belgian and European regulations.
302. The grid constraints applicable to a CMU that requires additional connection capacity, are determined by ELIA during the Prequalification Process of that CMU. The grid constraints applicable to a combination of multiple CMUs requiring additional connection capacity is only verified during the calculation phase of grid constraints.
303. External grid constraints are grid constraints on third party grids (Fluxys or (C)DSOs), other than those calculated by ELIA. External grid constraints are notified by Fluxys or (C)DSO to ELIA when a combination of multiple CMUs requiring additional connection capacity within the CRM-or LCT framework, as mentioned by the CRM Candidate in its Prequalification File, could, based on the potential outcome of the Auction clearing, generate an outcome that would not be feasible taking into account the expected development of these third party grids.

### **6.3.2.2 Process**

#### **6.3.2.2.1 Calculation phase**

304. The calculation phase for grid constraints starts on June 15 and ends on September 15 of the year in which the Auction takes place.
305. During this calculation phase, ELIA identifies the ELIA Grid constraints to be taken into account during the Auction clearing based on the factors described in section 6.3.2.4 and using calculation methodology described in section 6.3.2.3.

306. During the calculation phase, ELIA is, where necessary, notified of external grid constraints by a third party (DSO, Fluxys or (C)DSOs), in accordance with the procedures specified in section 6.3.2.5.
307. In a year in which both a Y-1 and Y-4 Auction – or a LCT and Y-4 Auction – are organized, ELIA determines the separate grid constraints for each Auction. ELIA also takes into account the CMU(s) of the Y-1 or LCT auction for the calculation of the Y-4 auction grid constraints and keeps only the relevant grid constraints for the Y-4 auction clearing, based on the selected CMU(s) of the Y-1 or LCT auction.

#### **6.3.2.2.2 Application phase**

308. The application phase starts on September 15 and ends on October 15 of the year in which the Auction takes place.
309. During the application phase, ELIA applies the ELIA Grid constraints and external grid constraints and implements those into the Auction algorithm used for the Auction clearing in order to ensure that the unacceptable combinations of CMUs are not retained.

As soon as possible after September 15 but no later than September 30 of the year in which the Auction takes place, ELIA submits the ELIA Grid constraints and external grid constraints via the combination matrix as referred to in § 328 to the CREG and the concerned regional regulatory authorities as well as, where appropriate, to the Capacity Market Auditor. Only the external grid constraints that were received within the time period referred to in § 326 and which respect the grid constraint format defined in § 328 are included in the combination matrix.

#### **6.3.2.3 Calculation methodology for ELIA Grid constraints**

310. ELIA does not calculate grid constraints for CMU(s) with existing grid connections i.e. for which a final operational notification within the meaning of article 2, 62° of EU Regulation 2016/631 establishing a network code on requirements for grid connection of generators exists at the time the Prequalification Process starts.
311. ELIA does not calculate grid constraints for CMU(s) with connection capacity allocated following the signing of a connection agreement for which the Fast Track Prequalification Process was followed.
312. In order to determine grid constraints, ELIA applies a three-step methodology.

##### **6.3.2.3.1 First step : determination of reference grid**

313. Grid constraints are determined based on information that ELIA has concerning future conditions of the reference grid, i.e. the expected state of the ELIA Grid, relevant to the Auction and CMU concerned.
314. In order to determine the reference grid, ELIA uses the electricity flows determined by the reference scenario to calibrate the volume to be purchased through the Auction, as defined in the *[placeholder to amendment of Royal Decree on Methodology]*. ELIA will take into account as specific sensitivity on this reference scenario a change in electricity flows if required to reflect the impact of the location, size and technology of the specific CMU combinations being assessed compared to the CMU combination considered in the reference scenario or to ensure that the Auction clearing will not negatively impact the compliance of the ELIA Grid with EU Regulation 2019/943.

315. ELIA takes account of definitive decommissioning or definitive capacity reductions of power production facilities, as referred to in article 4bis of the Electricity Act, if those are notified prior to June 15 of the year of the Auction concerned, or if there are any other legal requirements for decommissioning or phase-out of existing power units.
316. In case specific conditions are imposed on a CMU in its technical agreement, ELIA takes into account those conditions in the reference grid for determination of grid constraints.
317. ELIA uses the most recent status and anticipation (as known on June 15 of the year of the Auction concerned) of the planned and approved grid infrastructure projects as listed in the latest Federal Development Plan & Regional Investment Plans, including new Grid Users in line with the Federal Grid Code. In this measure, the reference grid for determination of grid constraints can hence deviate from the reference grid used for the reference scenario to determine the volume to be procured through the Auction, as defined in *[placeholder to amendment of Royal Decree on Methodology]* .
318. Prior to the calculation phase as per § 304, ELIA provides to the CREG, if applicable, for information a list of all grid infrastructure projects relevant to the grid constraints for which there is a risk that the delay or advance relative to the planning indicated in the latest Federal Development Plan would affect the grid constraints applicable to the reference grid.
319. In case a grid infrastructure project presents a delay known prior to the calculation phase as per § 304, such that this infrastructure risks not being available at the start of the Capacity Delivery Period of the considered Auction a CMU combination cannot be selected during the Auction if the availability of this infrastructure is a necessary condition of this CMU combination.
320. In case a grid infrastructure project presents a delay known prior to the calculation phase as per § 304 but the availability at the start of the Delivery Period of the Auction concerned of this grid infrastructure is not be a necessary condition for CMUs combination, such combination can be selected during the Auction clearing for as long as the feasibility of the delayed grid infrastructure project itself in a later stage remains warranted, even when the aforementioned CMU combination would then be selected.

#### **6.3.2.3.2 Second step : verification of the feasibility of the combination of CMUs**

321. ELIA applies a combinatory methodology which consists of verifying the feasibility of all relevant combinations of Prequalified CMUs requiring additional connection capacity in the reference grid for the Auction concerned. ELIA applies this methodology in accordance with the grid constraint factors referred to in section 6.3.2.4 and following the connection process as defined in the Federal Grid Code and the relevant Regional Grid Code(s) applicable. ELIA assesses these CMU combinations one by one to derive which CMU combinations are infeasible.

#### **6.3.2.3.3 Third step: establishment of a matrix of the grid constraints**

322. ELIA sets up a combination matrix with Prequalified infeasible CMU combinations in the smallest set possible in order to avoid redundant information. For each infeasible combination, Elia indicates the technical reason based on section 6.3.2.4 in the combination matrix. The combination matrix summarizes and combines all information from each individual grid constraint (both those calculated by ELIA and potentially received from Fluxys or (C)DSO) in accordance with the table included in § 328.

#### 6.3.2.4 ELIA Grid constraint factors

323. The first category of ELIA Grid constraint factors is system security. ELIA applies rules to ensure security of the overall electricity grid without structurally requiring re-dispatch while respecting all applicable European and Belgian legislation.
324. The second category of ELIA Grid constraint factors concerns the physical spacing limitation. ELIA determines any known limitations related to available physical space within the available terrains at the relevant substations necessary for the connection of the Additional Capacity envisaged.

#### 6.3.2.5 External grid constraints

325. ELIA accommodates in the Auction the external grid constraints to the extent they comply with the legal and regulatory framework applicable to Fluxys and (C)DSOs and where they are notified by the third party system operator within the required time period and following the format specified in § 328.
326. Third parties (Fluxys or (C)DSOs) notify the external grid constraints, previously approved by the competent regulatory authority at the latest before June 15 of the year where the considered Auction takes place.
327. ELIA shall not be liable for the correctness of the content of these external grid constraints, nor for their calculation. ELIA does not bear any liability for the calculation methodology, the calculated results or their application in the Auction algorithm during the application phase. ELIA is only responsible for the correct application of the received information.

#### 6.3.2.6 Grid constraints format

328. A grid constraint, including an external grid constraint, shall take the form of a combination of a number of defined CMUs that would lead to an unacceptable Auction result. The table below illustrates the case, listing the non-acceptable combinations for three CMUs:

CMU 1	CMU 2	CMU 3	Reason for non-acceptability of combination
1	1	0	For example, overload of line X
1	0	1	For example, no sufficient space at substation X

*Table 6: Illustration which summarizes 2 grid constraints for 3 CMUs in a table format*

The grid constraints presented in this table are combined into a combination matrix as referred to in § 322.

### 6.3.3 Auction clearing methodology

329. The Auction clearing methodology consists of two phases. The optimization phase as detailed in section 6.3.3.1, is performed in any case. The tie-breaking rules as detailed in section 6.3.3.2 are applied only in case multiple equivalent combinations of Bids result from the optimization phase.
330. In a year in which a Y-1 and Y-4 Auction – or LCT and Y-4 Auction – are organized, ELIA first applies the Auction clearing methodology for the Y-1 or LCT Auction and afterwards for the Y-4 Auction.
331. In a year in which a Y-1 and Y-4 Auction – or LCT and Y-4 Auction – are organized, the downward volume correction of the Y-4 Demand Curve also considers the sum of the volumes of the Bids

with a Capacity Contract Duration covering more than three Delivery Periods that have been selected in the Y-1 or LCT Auction.

332. The Auction clearing is only performed if point B of the corrected Demand Curve, as referred to in article 9, § 1 of the *[placeholder to amendment of Royal Decree on Methodology]*, has a volume that is strictly positive. Otherwise, no Auction clearing is performed and no Bid is selected.

### **6.3.3.1 Optimization phase**

333. The corrected Demand Curve is used as input for the optimization phase, which is the Demand Curve after consideration of the necessary corrections and adaptations as described in section 6.3.1. Where necessary, ELIA approximates the values to achieve a precision of 0,01 EUR/MW/year and 0,01 MW.

334. The optimization phase identifies the combination of Bids or multiple equivalent combinations of Bids that best meet the objective as described in sections 6.3.3.1.1 and 6.3.3.1.2 respectively, depending on whether it concerns a Y-4, or Y-1 or LCT Auction.

335. ELIA only considers combinations of Bids that respect the following requirements:

- the combination of Bids includes the conditional volume correction Bids described in § 297 related to opt-outs as described in § 178 or § 182, when no Bid is included in the combination related to another CMU with an EDS in which the conditionality as described in § 178 or § 182 is incorporated;
- the combination of Bids includes the conditional volume correction Bids described in § 297 related to opt-outs as described in § 179 or § 183 when at least one Bid is included in the combination related to the CMU to which also the partial Opt-out as described in § 179 or § 183 relates;
- the combination of Bids – for a Y-4 Auction following a Y-1 or LCT Auction in the same year, including the Bids related to Additional CMUs that are subject to a technical agreement that have been selected in the Y-1 or LCT Auction – does not violate any grid constraint, the grid constraints being determined according to section 6.3.2;
- the sum of the volumes of the Bids related to Virtual CMUs included in the combination of Bids is not higher than the maximum volume of Unproven Capacity determined by the Minister in accordance with article 7undecies, § 6 of the Electricity Act.

336. In case the optimization phase results in one unique combination of Bids that is superior to all other considered combinations of Bids, the Auction clearing is finished and all Bids within this combination of Bids are selected.

#### **6.3.3.1.1 Y-4 Auction**

337. In a Y-4 Auction, ELIA pursues the combination of Bids with maximal social welfare. Social welfare is calculated as the difference between:

- the integral of the corrected Demand Curve over the capacity volume interval  $[0,x]$  with  $x$  equal to the minimum of the sum of the Bid volumes of all Bids considered in the combination and the capacity volume related to point C of the corrected Demand Curve, as referred to in article 9, § 1 of the *[placeholder to amendment of Royal Decree on Methodology]*; and
- the cost for selecting the Bids considered in the combination, calculated as the Bid volume multiplied by the Bid Price, summed over all Bids considered in the combination.

338. In case multiple combinations of Bids are equivalent in terms of social welfare, ELIA pursues the combination of Bids that results in the highest capacity volume calculated as the sum of the volumes of all Bids considered in the combination.

#### **6.3.3.1.2 Y-1 or LCT Auction**

339. In a Y-1 or LCT Auction, ELIA pursues the combination of Bids with minimal cost, for which the sum of the Bid volumes of all Bids considered in the combination covers at least the volume to be procured in accordance with the corrected Demand Curve. The cost is calculated as the Bid volume multiplied by the Bid Price, summed over all Bids considered in the combination.

340. In case there is no combination of Bids for which the sum of the Bid Volumes covers at least the volume to be procured in accordance with the corrected Demand Curve, ELIA pursues the combination of Bids that results in the highest capacity volume calculated as the sum of the volumes of all Bids considered in the combination. In case more than one combination of Bids results in the highest capacity volume, the combination of Bids with minimal costs is pursued.

#### **6.3.3.2 Tie-breaking rules**

341. The following tie-breaking rules apply sequentially, until one unique combination of Bids is retained. When a unique combination is found, the Auction clearing is finished and all Bids within this combination of Bids are selected.

##### **6.3.3.2.1 Tie-breaking rule 1: Carbon dioxide emissions**

342. Preference is given to the combination of Bids that is characterized by the lowest carbon dioxide emissions (CO<sub>2</sub>), calculated as the Bid volume weighted average of the emission factors (in gCO<sub>2</sub>/kWh) of the CMUs to which the Bids considered in the combination relate.

##### **6.3.3.2.2 Tie-breaking rule 2: Capacity Contract Duration**

343. Preference is given to the combination of Bids that is characterized by the shortest Capacity Contract Duration, calculated as the Bid volume weighted average of the Capacity Contract Durations (in number of Delivery Periods) of the Bids considered in the combination.

##### **6.3.3.2.3 Tie-breaking rule 3: First come, first served**

344. The "first come, first served" rule applies as follows:

- a) all unique Bids within all remaining combinations of Bids are sorted according to their Bid submission time;
- b) based on the sorted list of Bids, from the first submitted Bid to the last submitted Bid:
  - i. ELIA discards the combination(s) of Bids that do not include the first submitted Bid.
  - ii. ELIA continues the process of discarding combinations of Bids with the next submitted Bids until only one combination of Bids remains.

#### **6.3.4 Bid remuneration methodology**

345. ELIA applies a "pay-as-bid" Bid remuneration methodology, meaning that the price allocated to a selected Bid is equal to its Bid Price.

346. The price allocated to a selected Bid shall not be indexed nor revised over the course of the Capacity Contract Duration.

## 6.4 AUCTION RESULTS

347. In order to enable the CREG to effectively exercise its power of validation of results of the Auction, in accordance with the Royal Decree on "Monitoring", ELIA shall send to the CREG, no later than three Working Days after the Bid submission deadline as referred to in § 284, the following information relating to the Bids submitted:

- The CMU-ID;
- The Bid volume;
- The Bid Price;
- Any link with an Investment File;
- The requested duration of the Capacity Contract;
- The type of Bid (usually exclusive Bid, Joint Bid, Linked Bid, individual Bid) as well as, if applicable, the identification of the Bids concerned;
- Where applicable, the Opt-out volume per CMU that submitted a Bid;

348. Upon finalization of the Auction clearing and at the latest by October 15, ELIA submits the list of selected Bids to the CREG for validation.

This notification contains, for each selected Bid, the following information:

- The CMU-ID;
- The Bid volume;
- The Bid Price;
- Any link with an Investment File;
- The requested duration of the Capacity Contract;
- The type of Bid (Mutually Exclusive Bid, Joint Bid, Linked Bid, individual Bid) as well as, if applicable, the identification of the Bids concerned;
- Where applicable, the Opt-out volume per CMU selected;
- Where applicable, in relation to Additional CMUs, the additional connection capacity to be developed;
- Any application to the CMU linked to the selected Bid of a grid constraint, indicating whether the selection of the CMU gave rise to the exclusion of one or more other CMUs, with the identification of these CMUs.

In its notification, ELIA shall also mention whether the tie breaking rules were applied and whether an excess volume was selected.

349. In addition, the notification referred to in the previous § contains the final Demand Curve as well as all information relating to corrections made to the initial Demand Curve, in particular:
- the corrections relating to the Fast Track Volumes;
  - the corrections relating to the prequalified Capacities that waive the operating aid with the ID of the CMUs concerned;
  - the corrections relating to the Opt-out volumes with the ID of the CMUs concerned;
  - the non-selected capacities that gave rise to a correction of the demand curve.
350. Once the CREG has validated the results, ELIA informs each Prequalified CRM Candidate who submitted at least one Bid from the selection or not from its Bid(s). Selected Bids get the status "selected" in the CRM IT Interface.
351. Auction results are published as described in section 16.4.
352. Each contestation of the results of the Auction is done in accordance with articles 29bis and 29quater of the Electricity Act.
353. The fallback procedure as described in section 15.4.3 applies in case of IT issues at ELIA preventing the determination of the Auction results.



## 7 CAPACITY CONTRACT SIGNATURE

354. When a Transaction is confirmed, either consecutive to a selection of a Bid in the Auction or following a validation of a transaction on the Secondary Market, a Capacity Contract needs to be signed between the CRM Actor and ELIA. If a Capacity Contract has already been concluded for this CMU, the confirmation of a Transaction subsequent to the date of the conclusion of the contract will require that the Contract be amended.
355. The Capacity Contract to be signed corresponds to the latest version of the standard capacity contract approved by the CREG and published on the Transaction Validation Date.
356. Upon signing a new or amending an existing Capacity Contract, the Derating Factor contractually associated with the concerned Transaction is determined as:
- In case it concerns a Primary Market Transaction, the Derating Factor applied for the Eligible Volume of the associated Bid, in accordance with § 188 or § 189 (as applicable); or
  - In case it concerns a Secondary Market Transaction, the Last Published Derating Factor, in accordance with section 10.4.8.3.
357. Upon signing a new or amending an existing Capacity Contract, in case a Bid is selected for a multi-year Capacity Contract Duration related to a CMU for which the CRM Candidate has indicated a degradation over time as described in § 93, the Contracted Capacity per Delivery Period is determined by multiplying the Contracted Capacity with the specified degradation percentage for that Delivery Period.
358. The signature of a Capacity Contract by the Prequalified CRM Candidate for a Primary Market Transaction occurs either:
- within twenty Working Days from the moment of the signature of the Connection Contract, if the signature of the Connection Contract is required under the prerequisites in accordance with § 360; or
  - within forty Working Days from the Transaction Validation Date, if the signature of a Connection Contract is not required as pre-requisite; or
359. The signature of a Capacity Contract by the CRM Actor for a Secondary Market Transaction occurs in accordance with the procedure foreseen in section 10.6.
360. The signature of a Connection Contract is a prerequisite for the signature of the Capacity Contract for an Additional CMU in the following cases:
- when the connection applicant has for an Additional CMU an agreement with ELIA on the technical solution, in accordance with articles 153 and 160 of the Federal Grid Code;
  - when the connection applicant does not yet have for an Additional CMU an agreement with ELIA on the technical solution.
- In both cases, the Connection Contract must be signed no later than sixty Working Days after the Transaction Validation, such that the Capacity Contract must be signed no later than eighty Working Days after the Transaction Validation.
361. An annex to the Capacity Contract contains, where necessary, a table listing all of the Associated Delivery Points linked to an Aggregated CMU that have been selected pursuant to an Auction. This annex shall be amended for each Supply Period.

362. In the case of a Primary Market Transaction, the signature of the Capacity Contract by ELIA occurs within thirty Working Days, after reception of the Capacity Contract signed by the Prequalified CRM Candidate. ELIA notifies the Capacity Provider per e-mail as soon as the Capacity Contract is signed by ELIA. The date of said notification is considered to be the date on which the Capacity Contract was signed.
363. In the case of a Primary Market Transaction, if the Capacity Contract is not signed by the Prequalified CRM Candidate within the timing detailed in § 360, ELIA applies to the Prequalified CRM Candidate concerned a penalty of €10,000 per MW selected for which no Capacity Contract is signed. The application of this penalty does not exempt the prequalified CRM Candidate from his obligation to sign the Capacity Contract, or his liability as under chapter 13.
364. The possible Actions for ELIA consecutive to the non-payment of the financial penalty referred to in § 363 are described in chapter 11.

## 8 PRE-DELIVERY CONTROL

### 8.1 INTRODUCTION

*The purpose of the pre-delivery control is to ensure that a CMU's Total Contracted Capacity becomes effectively available (if the Total Contracted Capacity is associated to an Additional or Virtual CMU) or remains effectively available (if the Total Contracted Capacity is associated to an Existing CMU) as of the start of the Transaction Period.*

*Pre-delivery controls are performed by ELIA during the Pre-delivery Period (defined in section 8.2), based on 15 minutes measurement data (when available), on information provided by the Capacity Provider through its quarterly reports or on updated prequalification results. Pre-delivery control abides with the modalities described in section 8.3 and follows a four step process that may vary in function of the status of the CMU (existing, additional or virtual).*

*As a first step, ELIA determines the Capacity Provider's Pre-delivery Obligation (section 8.4.1). It is then compared to the Pre-delivery Measured Power (when 15 minutes measurement data is available), to the information shared with ELIA through the quarterly reports (section 8.3.4) or to updated prequalification results which indicate a Missing Volume (section 8.4.2). A Missing Volume leads to financial penalties (section 8.4.3.1) and may also impact the initial Transaction Period(s) (section 8.4.3.3). Finally, the Pre-delivery control results are communicated to the Capacity Provider (section 8.4.4).*

### 8.2 PRE-DELIVERY PERIOD DEFINITION

365. In the context of the pre-delivery control, Y represents the Delivery Period concerned.
366. A Pre-delivery Period always relates to one Delivery Period. A Pre-Delivery Period starts with the publication of the Y-4 Auction results for the corresponding Delivery Period and ends with the start of the Delivery Period.
367. There are as many Pre-delivery Periods as there are Delivery Periods.
368. Each Pre-delivery Period contains two phases. Phase 1 starts with Delivery Period Y-4 auction result notification and ends on August 31 Y-2. Phase 2 starts with the end of Phase 1 and ends at the start of the Delivery Period, on October 31 of year Y.
369. Taking into consideration the possible impact of a pre-delivery control on an initial Transaction Period (see section 8.4.3.3), one Additional CMU may end up in more than one Pre-delivery Period. As a consequence, it becomes subject to more than one pre-delivery control in phase 1, and may face related penalties each time (up to the penalty cap detailed in section 8.4.3.2). To illustrate this principle, an example is provided in Annex 18.2.2.
370. The CMUs for which a Capacity Contract is concluded following a Y-1 Auction or upon validation of a Transaction on the Secondary Market are subject to all control modalities that still remain for the Pre-delivery Period linked to the Delivery Period concerned.

### 8.3 PRE-DELIVERY CONTROL MODALITIES

### 8.3.1 Moments of control

371. Per Pre-delivery Period, ELIA performs its pre-delivery control for each CMU separately or on a combination of CMUs in case of Linked Capacities. Such control occurs on two occasions:
- at the end of Pre-delivery Period phase 1 (hereafter moment of control  $t_{control\ 1}$  or  $t_{control\ 1}$ ), on August 31 Y-2; and
  - at the end of Pre-delivery Period phase 2 (hereafter moment of control  $t_{control\ 2}$  or  $t_{control\ 2}$ ), on October 31 of year Y.

An example of determination of moments of control is given in Annex 18.2.1.

### 8.3.2 Total Contracted Capacity

372. ELIA verifies, through a pre-delivery control, whether the Total Contracted Capacity of a CMU remains (if the Total Contracted Capacity is associated to an Existing CMU) or becomes (if the Total Contracted Capacity is associated to an Additional CMU or a Virtual CMU) effectively available as from start of the corresponding Delivery Period.
373. The Total Contracted Capacity of a CMU subject to a pre-delivery control (hereafter *Total Contracted Capacity (CMU, DP)*) corresponds to the sum of the CMU's Contracted Capacities that respects the following conditions:
- the corresponding Transaction Validation Date is prior to the start of the Delivery Period; and
  - the corresponding Transaction Period covers partially or totally the Delivery Period; and
  - the corresponding Transaction Period has not started at the moment of the pre-delivery control ( $t_{control\ 1}$  or  $t_{control\ 2}$ ); and
  - in case of a Transaction Period that covers multiple Delivery Periods: the moment of control relates to the first Delivery Period of the Transaction Period.
374. Transactions resulting from both the Primary Market and from the Secondary Market are considered in the determination of a CMU's Total Contracted Capacity.

Transactions on the Secondary Market are only considered if they have been approved prior to the moment of control as per 10.5.4.1.

375. To illustrate the determination of a CMU's Total Contracted Capacity, several examples are given in annex 18.2.1.

### 8.3.3 Permit reports

376. For Existing CMUs the Capacity Provider sends a permit report to ELIA through the CRM IT Interface within the period from August 15 to August 31 of year Y-2.
377. One permit report covers one CMU or a combination of CMUs in case of Linked Capacities.
378. The permit report is aimed at enabling ELIA to verify whether the Capacity Provider has been granted, in the last administrative instance, all relevant permits required for the Delivery Period(s) part of the Transaction Period.

379. In the event that the Capacity Provider holds all relevant permits required, he includes a copy of said permits.
380. In the event that the Capacity Provider does not hold all the relevant permits required, he indicates in the permit report the permits that he does not have and includes a mitigation plan to cope with this situation, as well as a copy of the permits that the Capacity Provider does hold.
381. A permit report template is available in annex 18.2.4.
382. In the event that ELIA did not receive the permit report by the deadline defined in § 376, ELIA sends a reminder to the Capacity Provider via the CRM IT Interface within three Working Days starting from the end of the time period defined in § 376. The Capacity Provider then provides the permit report to ELIA no later than seven Working Days starting from the aforementioned reminder.

### 8.3.4 Quarterly reports

383. For both Additional CMUs and Virtual CMUs, the Capacity Provider sends quarterly reports to ELIA through the CRM IT Interface<sup>16</sup>, only within the following periods of time and throughout the entire Pre-delivery Period:
- From January 30 to February 14;
  - From April 30 to May 14;
  - From July 30 to August 14;
  - From October 30 to November 14.
384. The first quarterly report is sent by the Capacity Provider in the second period following the first Transaction Validation Date of one of the Transactions taken into account in the determination of the Total Contracted Capacity in accordance with § 373.
385. One quarterly report covers one CMU or several CMUs in case of Linked Capacities, and applies to its Total Contracted Capacity as determined per § 373. A quarterly report contains a single document which evolves over time. Each time it is provided to ELIA, it includes at least the following information:
- an update of the project execution plan (including the update of the dates for the key milestones provided as part of the Prequalification File (see Annex 18.1.4). The update of the project execution plan respects the same requirements as the original project execution plan itself, in accordance with section 5.2.3<sup>17</sup>;
  - an identification of the delay(s) – if any – along with a mitigation plan containing the detailed measures to cope with this(these) delay(s);
  - an identification of the residual delay, if any, within the meaning of § 390;
  - when relevant, a follow-up of the Infrastructure Works that could influence the on-going project realization and timing as identified in the project execution plan communicated in the

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<sup>16</sup> As the module of the CRM IT Interface for the pre-delivery control has not yet been implemented, the CRM Actor is invited to send the quarterly reports via e-mail to operations.crm@elia.be.

<sup>17</sup> In particular, Additional New Build CMUs have to follow the template provided in annex 18.1.4.3

Prequalification File (see annex 18.1.4), supported by a dated written confirmation from the concerned infrastructure operator, if other than ELIA (Fluxys or the DSOs).

The quarterly report includes all project updates that occurred between the last quarterly report sent to ELIA and a maximum of five Working Days before the report submission date.

386. The quarterly report also enables Elia to verify whether the Capacity Provider has been granted, in the last administrative instance, all relevant permits required for the Delivery Period(s) part of the Transaction Period.
387. In the event that a Capacity Provider holds all relevant permits required, he includes a copy of said permits in the quarterly report.
388. In the event that the Capacity Provider does not hold all the relevant permits required, he indicates in the quarterly report the permits that he does not have and includes a mitigation plan to cope with this situation, as well as a copy of the permits that the Capacity Provider does hold.
389. A delay is identified by the Capacity Provider in his quarterly report when:
  - it concerns a Project Works or an Infrastructure Works; and
  - it concerns a volume higher or equal to one MW; and
  - it leads to an Unavailable Capacity for at least two months, starting from the first day of the Delivery Period.
390. If a Capacity Provider aims to resolve a delay as described in § 389 via a Secondary Market transaction but has not yet concluded said transaction, he includes in its mitigation plan as explained in § 385, second bullet point, a declaration of both the Buyer and the Seller of the Secondary Market transaction that they reached a bilateral agreement for a potential upcoming Secondary Market transaction.
391. A residual delay is any delay in the project execution plan, with the exception of any delay linked to Infrastructure Works, for which no mitigation plan has been presented by the Capacity Provider, or which the mitigation plan is not, according to ELIA, able to resolve.
392. When the Capacity Provider declares a residual delay in its quarterly report, he also declares to which Transaction(s) (among the transactions used to determine the Total Contracted Capacity as per § 373) it is related to.
393. Based on the elements provided by the Capacity Provider in his quarterly reports, ELIA may request any relevant additional information, explanation or details from the Capacity Provider to best assess a CMU's situation. Such request is sent by ELIA via the CRM IT Interface within twenty Working Days following submission of the quarterly report and is handled by the Capacity Provider within a period of twenty Working Days starting from ELIA's request. In the event that the Capacity Provider does not respond to ELIA's request, ELIA will consider, at one of the moments of control  $t_{control\ 1}$  or  $t_{control\ 2}$ , that the Missing Volume (as defined in sections 8.4.2.2 and 8.4.2.3) is equal to the Pre-delivery Obligation.
394. In the event that ELIA did not receive a quarterly report within the time period defined in § 383, ELIA sends a reminder to the Capacity Provider via the CRM IT Interface within a period of three Working Days starting from the expiry date of the deadline concerned. The Capacity Provider then sends the quarterly report to ELIA within a period of seven Working Days from the aforementioned reminder.

395. If the Capacity Provider fails to send the quarterly report at the end of the periods mentioned in the previous §, ELIA applies to the Capacity Provider, per Working Day of delay after the last day of the deadline mentioned in the previous §, a financial penalty equal to:

$$100 \left( \frac{\text{€}}{\text{MW}} \right) \times \text{Total Contracted Capacity (MW)}$$

396. The procedure described in §§ 394 and 395 can only be applied two times for the same CMU or for a combination of CMUs in case of Linked Capacities. After these two applications, if the Capacity Provider does not send its quarterly report in accordance with the deadlines indicated in § 383, ELIA applies to the Capacity Provider, per Working Day of delay after expiration of the deadline mentioned in § 383, a financial penalty equal to:

$$100 \left( \frac{\text{€}}{\text{MW}} \right) \times \text{Total Contracted Capacity (MW)}$$

397. Elia duly notifies the Capacity Provider when any of the penalties mentioned in § 395 and § 396 are applied.

398. Penalties that are determined following § 395 and § 396 are to be paid at the first moment of control following the deadline for which the quarterly report was due. They are included in the pre-delivery activity report as per section 8.4.4.

399. If the CRM Actor wishes to contest the penalties referred to in §§ 395 or 396, it uses one of the methods of appeal described in section 8.4.4.

400. The minimum elements that need to be included in a quarterly report can be found in annex 18.2.3. Elia verifies the completeness of the quarterly reports according to section 8.4.2.2.

## 8.4 PRE-DELIVERY CONTROL PROCESS

### 8.4.1 Step 1 - Pre-delivery Obligation

#### 8.4.1.1 Pre-delivery Obligation on Existing CMUs and Additional CMUs

401. For both Existing CMUs and Additional CMUs, the determination of the Pre-delivery Obligation depends on whether the CMU is an Energy Constrained CMU or not.

402. For Existing CMUs and Additional CMUs in both phase 1 (at the moment of control  $t_{control1}$ ) and phase 2 (at the moment of control  $t_{control2}$ ), the Pre-delivery Obligation corresponds to:

- the Total Contracted Capacity as determined per paragraph 373 if the CMU is a Non-energy Constrained CMU; or
- the Total Contracted Capacity as determined per paragraph 373 divided by the Derating Factor if the CMU is an Energy Constrained CMU. This is represented by the formula below:

$$[\text{PreDelivery Obligation}] = \left( \frac{\text{Total Contracted Capacity (CMU, DP)}}{\text{Derating Factor (CMU, t)}} \right)$$

Each element of the formulas above is defined as follows:

- *Derating Factor (CMU, t)* is the weighted average Derating Factor of all Transactions in Annex A of the CMU's Capacity Contract that constitute the *Total Contracted Capacity (CMU, DP)* over the Delivery Period at the moment of  $t_{control1}$ , calculated in accordance with the definition in Chapter 3;
- *Total Contracted Capacity (CMU, DP)* is the Total Contracted Capacity over the Delivery Period.

### 8.4.1.2 Pre-delivery obligation for a Virtual CMU

403. For a Virtual CMU, the Pre-delivery Obligation evolves according to the moment of control ( $t_{control1}$  or  $t_{control2}$ ):

- at moment of control  $t_{control1}$ , the Pre-Delivery Obligation is equal to seventy-five percent of the Total Contracted Capacity of the Virtual CMU; and
- at moment of control  $t_{control2}$ , the Pre-Delivery Obligation is equal to one hundred percent of the Total Contracted Capacity of the Virtual CMU.

## 8.4.2 Step 2 - Missing Volume

### 8.4.2.1 Missing Volume on Existing CMUs

404. To determine a Missing Volume on Existing CMUs, ELIA follows a three-step process: at first, ELIA calculates the Pre-delivery Measured Power of each Delivery Point part of the Existing CMU (section 8.4.2.1.1). Then, ELIA sums each Delivery Point Pre-delivery Measured Power to determine the CMU Pre-delivery Measured Power (section 8.4.2.1.2). Finally, ELIA determines the Missing Volume (section 8.4.2.1.3).

405. Notwithstanding the rules listed in sections 8.4.2.1.1 to 8.4.2.1.3, in the event that a Capacity Provider does not send the permit report within the time period referred to in § 382, ELIA will consider the Missing Volume of the CMU of this Capacity Provider as equal to the Pre-delivery Obligation.

406. Notwithstanding the rules listed in sections 8.4.2.1.1 to 8.4.2.1.3, ELIA will consider the Missing Volume of the CMU of this Capacity Provider as equal to the Pre-delivery Obligation, if the permit report referred to in § 377 shows that the Capacity Provider was not granted all the relevant permits required in the last administrative instance for the Delivery Period(s) part of the Transaction Period.

By way of derogation from the above, the Missing Volume is only determined based on the rules listed in sections 8.4.2.1.1 to 8.4.2.1.3 if:

- The Capacity Provider shows in its mitigation plan referred to in § 377 that at the moment of control  $t_{control1}$ , it could not yet legally submit an application to the competent authority with a view to the granting of the relevant permits required; or
- The Capacity Provider shows in its mitigation plan referred to in § 376 that at the moment of control  $t_{control1}$ , it could legally submit an application to the competent authority with a view to the granting of the relevant permits required, but having submitted it with all due diligence, it was not legally able to have them granted given the time required by the competent authority to process its application;



- The Capacity Provider has provided a mitigation plan accepted by ELIA in support of its permit report.

#### **8.4.2.1.1 Delivery Point Pre-Delivery Measured Power**

407. The Pre-delivery Measured Power of a Delivery Point results from the analysis of the quarter-hourly measurements of the Delivery Point. Therefore, to determine it, ELIA uses one of the two following methods: the use of historical data (method 1) or the organization of a pre-delivery test (method 2).
408. If the Nominal Reference Power of the CMU has been determined following either methods in section 5.4.1.1.1.1 in the framework of any Prequalification process since the last publication of the CRM Functioning Rules, the results of such volumes determination are valid as pre-delivery measured power as well and no further measurements are needed. This includes the volumes determination to evolve from an Additional CMU to Existing CMU as per section 8.6.1.
409. By way of derogation of the above, if the results from previous volumes determination are available but the Capacity Provider does not want to make use of these, he duly notifies Elia by e-mail at the latest one month before the moment of control. In that case, the volume is determined anew following the method described in 8.4.2.1.1.1 and 8.4.2.1.1.2.

##### **8.4.2.1.1.1 Method 1 – Use of historical data**

410. The determination of the Pre-delivery Measured Power based on historical data follows the same modalities as described in section 5.4.1.1.1.1.1.
411. When the use of this method is impossible to determine the Pre-delivery Measured Power of a Delivery Point (e.g.: in absence of historical quarter-hourly measurements), ELIA applies method 2 as per section 8.4.2.1.1.2.

##### **8.4.2.1.1.2 Method 2 – Organization of a pre-delivery test**

412. The determination of the Pre-delivery Measured Power based on a pre-delivery test follows the same modalities as described in section 5.4.1.1.1.1.2.

#### **8.4.2.1.2 CMU Pre-delivery Measured Power**

413. The Pre-delivery Measured Power of the CMU corresponds to the sum of the Pre-Delivery Measured Power of each Delivery Point, as illustrated in the formula below:

$$[PreDelivery\ Measured\ Power]_{CMU} = \sum_{i=1}^n PreDelivery\ Measured\ Power_i$$

Where  $i$  is the number of Delivery Points, including the Associated Delivery Point(s), for the CMU.

414. In case of DSO-connected Delivery Points or CDS-connected Delivery Points when the CDS is connected to the DSO Grid, ELIA communicates to the DSO at the latest one month before the moment of control the Delivery Points for which the Pre-delivery Measured Power needs to be determined.

The DSO provides ELIA with the result of the Pre-delivery Measured Power determination for these Delivery Points at the latest 10 Working Days after the moment of control.

### 8.4.2.1.3 Determination of the Missing Volume

415. The pre-delivery Missing Volume corresponds to the maximum between zero and the difference between the Pre-delivery Obligation determined per section 8.4.1 and the Pre-Delivery Measured Power of the CMU determined in section 8.4.2.1.2, and is represented by the following formula:

$$\begin{aligned} & \text{Pre – Delivery Missing Volume} \\ & = \text{Max} (0 ; ([\text{PreDelivery Obligation}]_{\text{CMU}} - [\text{PreDelivery Measured Power}]_{\text{CMU}})) \end{aligned}$$

### 8.4.2.2 Missing Volume on Additional CMUs

416. At the moment of control  $t_{\text{control } 1}$ , ELIA determines the pre-delivery Missing Volume based on the last quarterly report to be sent by the Capacity Provider in accordance with the deadlines defined in § 383. A Missing Volume represents the part of the Total Contracted Capacity determined as per § 373 for which a residual delay (as defined per § 390) is identified by the Capacity Provider.

417. In order to perform the determination of any potential Missing Volume as per § 416, Elia also performs a more thorough compliance check of the quarterly report at the moment of control. To that extent, the quarterly report must at least include the elements that are listed in Annex 18.2.3 and be duly justified.

In the absence of any of the elements listed in Annex 18.2.3 Elia will follow the procedure in § 393 to request additional information.

418. In the event that the Capacity Provider fails to send the quarterly report at the moment of control  $t_{\text{control } 1}$ , Elia will consider the Missing Volume of this CMU as equal to the Pre-delivery Obligation, after having sent a reminder to the Capacity Provider explicitly mentioning the consequences of failing to send the concerned quarterly report.

419. When a Missing Volume is determined based on the absence of the quarterly report, a financial penalty following §§ 394 - 396 for that particular quarterly report is not applied.

420. At the moment of control  $t_{\text{control } 2}$ , ELIA uses the available quarter-hourly measurements – upon the condition that they are gathered from validated metering devices (as described in annex 18.1.1) – to determine the pre-delivery Missing Volume. This approach allows Additional CMU to prove the availability of a part of their Pre-delivery Obligation, even though the whole CMU has not finished the entire Prequalification Process yet. The methodology followed is identical to the one applicable to Existing CMUs (as per section 8.4.2.1).

421. In absence of any validated metering devices, the Missing Volume corresponds to the Pre-delivery Obligation of the Additional CMU.

### 8.4.2.3 Missing Volume on Virtual CMUs

422. The pre-delivery Missing Volume of a Virtual CMU corresponds to the maximum between zero and the Pre-delivery Obligation (as determined per section 8.4.1.2), reduced by the total amount of the initial Contracted Capacity (on the VCMU) that has been fully prequalified and transferred to one (or more) Existing CMU(s) via a transaction on the Secondary Market (following the process of section 8.6.2) prior to the moment of control.

In this way, at the moment of control the Missing Volume corresponds to:

$$\begin{aligned} & \text{Pre – delivery Missing Volume} \\ & = \text{Max} (0 ; [\text{PreDelivery Obligation} - \text{Contracted Capacity}(\text{ies})_{\text{Existing CMUs}}]) \end{aligned}$$

423. It is the Capacity Provider's responsibility to ensure that, when requesting ELIA to validate the change from a virtual CMU to one (or more) Existing CMU(s), ELIA is given sufficient time for such validation in order for it to be effective at the time of control. ELIA cannot be held liable in case the change has not become effective before the moments of control.

The change is considered effective once the Transaction on the Secondary Market has been validated as per 10.5.4.1.

424. From the moment an Existing CMU has been prequalified and linked to this Virtual CMU (as per section 8.6.2), the concerned CMU is subject to the pre-delivery control of an Existing CMU. This control is performed by ELIA at the moments of control, at the same time as the Pre-delivery control of the Virtual CMU.

#### **8.4.2.4 Missing Volume on Energy Constrained CMUs**

425. Without prejudice to the determination of Missing Volumes in section 8.4.2.1 to 8.4.2.3, any Missing Volume for Energy Constrained CMUs that is used for the determination of potential penalties as per section 8.4.3 is calculated by multiplying the aforementioned Missing Volume with the relevant Derating Factor, where the latter is equal to the one used in § 402, second bullet point.

### **8.4.3 Step 3 - Pre-delivery control penalties**

#### **8.4.3.1 Financial penalties**

426. In case of Missing Volume determined for an Existing CMU (as per section 8.4.2.1), ELIA applies during each moment of control ( $t_{control\ 1}$  and  $t_{control\ 2}$ ), the following financial penalty:

$$Financial\ penalty\ (in\ EUR) = \alpha \left( \frac{\text{€}}{MW} \right) \times Missing\ Volume(MW)$$

427. During the moment of control  $t_{control\ 1}$  the parameter  $\alpha$  used in the formula detailed in the previous § represents an amount fixed based on the following scenarios:

- It is equal to 3,000€/MW if the Capacity Provider has not been granted the relevant permits required in a last administrative instance covering the Delivery Period(s) part of the Transaction Period, but shows in its mitigation plan that it has made all reasonable efforts to obtain these permits;
- It is equal to 6,250 €/MW if:
  - The Capacity Provider shows in its permit report that it was granted, in a last administrative instance, all relevant permits required for the Transaction Period;
  - The Capacity Provider was not granted the relevant permits required in a last administrative instance covering the Delivery Period(s) part of the Transaction Period but, due to the justifications provided in its mitigation plan as referred to in § 406, alinea 2, the Missing Volume is not considered as equal to the Pre-delivery Obligation but is determined pursuant to sections 8.4.2.1.1 to 8.4.2.1.3;
- it is equal to 10,000 €/MW if the Capacity Provider:
  - has not sent its permit report within the time period required in accordance with § 382;
  - has not been granted the relevant permits required in a last administrative instance and

does not show in the mitigation plan that it falls under one of the situations referred to above enabling a lesser or no penalty to be applied to it.

- During the moment of control  $t_{control 2}$ , the parameter  $\alpha$  used in the formula detailed in § 426 is equal to 6,250 €/MW.

428. In case of Missing Volume determined on an Additional CMU at the moment of control  $t_{control 1}$ , ELIA applies the following financial penalty:

$$Financial\ penalty\ (in\ EUR) = \frac{1}{2} \times \beta \left( \frac{\text{€}}{MW} \right) \times Missing\ Volume(MW)$$

429. In case of Missing Volume determined on an Additional CMU at the moment of control  $t_{control 2}$ , ELIA applies the following financial penalty:

$$Financial\ penalty\ (in\ EUR) = \beta \left( \frac{\text{€}}{MW} \right) \times Missing\ Volume(MW)$$

430. The parameter  $\beta$  used in formulas detailed in §§ 428 and 429, represents an amount that depends on the type of CMU in question and the information provided in the quarterly reports:

- It is equal to 15,000 €/MW for a New Build CMU if the Permitting Milestone is:
  - either relevant for the concerned project and already reached by the Capacity Provider at the moment of control;
  - or not relevant for the concerned project;
- It is equal to 20,000 €/MW for a New Build CMU if the Permitting Milestone is relevant for the concerned project and not reached yet at the moment of control.
- It is equal to 10,000 €/MW for a New Build CMU if the Permitting Milestone is relevant for the project concerned and has not yet been reached at the moment of control, but the Capacity Provider shows Elia that it has made all reasonable efforts to reach the Permitting Milestone;
- It is equal to 11,000 €/MW for any Additional CMU that is not a New Build CMU if the Permitting Milestone is:
  - either relevant for the concerned project and already reached by the Capacity Provider at the moment of control;
  - or not relevant for the concerned project;
- It is equal to 15,000 €/MW for any Additional CMU that is not a New Build CMU if the Permitting Milestone is relevant for the concerned project and not reached yet at the moment of control;
- It is equal to 7,500 €/MW, for any Additional CMU that is not a New Build CMU if the Permitting Milestone is relevant for the concerned project and not reached yet at the moment of control, but the Capacity Provider shows Elia that all reasonable efforts have been made to reach the Permitting Milestone.

431. In case of Missing Volume determined on a Virtual CMU, ELIA applies during each moment of control ( $t_{control 1}$  and  $t_{control 2}$ ), the following financial penalty:

$$Financial\ penalty\ (in\ EUR) = 20,000 \left( \frac{\text{€}}{MW} \right) \times Missing\ Volume(MW)$$

### 8.4.3.2 Penalty cap

432. The financial penalty of an Additional CMU at the moment of control  $t_{control\ 1}$  can be applied by ELIA for a maximum of three consecutive times on the same Total Contracted Capacity of the CMU. The possibilities for contract termination in this context are detailed in the Capacity Contract.

### 8.4.3.3 Reduction of Transaction Period of Total Contracted Capacity(ies)

433. In addition to the financial penalty calculated as per section 8.4.3.1, a Missing Volume may also impact the Transaction Period of a Contracted Capacity(ies).

434. If a Missing Volume is identified on an Additional CMU at the moment of control  $t_{control\ 1}$ , the Contracted Capacity of the initial Transaction(s) is(are) reduced by the Missing Volume for the entire duration of the first Delivery Period covered by this(these) Transaction(s).

The Transaction(s) subject to this reduction of Transaction Period is(are) identified by the Capacity Provider as per paragraph 392.

The Capacity Contract is therefore adapted accordingly.

435. If a Missing Volume is identified on a Virtual CMU at the moment of control  $t_{control\ 1}$ , the initial Transaction Period is reduced by the Missing Volume for the entire duration of the Delivery Period. This reduction is applied to the Transactions that are still associated to the Virtual CMU at the moment of control.

436. In the specific situation where the Transaction Period left – prior to the application of the mechanism described in §§ 434 and 435 – is equal to one year and if the Missing Volume corresponds to the Pre-delivery Obligation, the Capacity contract is terminated.

437. The Transaction Period of a Contracted Capacity(ies) is (are) not impacted if a Missing Volume (on an Existing CMU, Additional CMU or Virtual CMU) is identified during the second moment of control.

## 8.4.4 Step 4 - Pre-delivery activity reports issuance and contestation

### 8.4.4.1 Pre-delivery activity report issuance

438. A pre-delivery activity report is established by ELIA after each moment of control and contains at least the following information, per CMU:

- The Pre-delivery Obligation;
- The financial penalties (if any) caused by tardy submission of quarterly reports, determined following the modalities of §§ 394 - 396;
- The Missing Volume (if any), including the intermediate calculations applied by ELIA during the Missing Volume determination process as explained in section 8.4.2;
- The financial and / or contractual penalties (if any), determined following the modalities of sections 8.4.3.1, and/or 8.4.3.3.

439. The pre-delivery activity report is sent per email to the Capacity Provider within the timeframe set in the Capacity Contract.
440. After each moment of control, Elia also sends a report to the CREG containing all the Missing Volumes determined, the CMUs concerned, as well as all relevant information, in particular the reasons for the determination of the Missing Volume. An anonymized copy of this report is sent to the Federal Public Service Economy.

#### **8.4.4.2 Contestation**

441. The pre-delivery control results are deemed final if no contestation is raised by the Capacity Provider within twenty Working Days as from the pre-delivery activity report notification date.
442. In case of contestation, the Capacity Provider notifies it to ELIA through the CRM IT Interface<sup>18</sup>. Any contestation is supported by a detailed justification. In such a case, the Capacity Provider and ELIA enter into negotiations in order to reach an amicable agreement within sixty Working Days as of the date of notification of contestation by the Capacity Provider. ELIA and the Capacity Provider may, if necessary, request additional information from each other on the parameters in the pre-delivery activity report.

In case a partial or total amicable agreement is reached between the parties within sixty Working Days, this agreement gives rise, where applicable, to a credit note for the amount in the agreement in accordance with the Capacity Contract.

If within sixty Working Days no partial or total agreement is reached, the disputed amount or part of the disputed amount of the penalties is the subject of a separate credit note in accordance with the Capacity Contract and, at the same time, both parties continue to seek an amicable solution within the sixty Working Days following the end of the first period of sixty Working Days.

In case an amicable agreement is reached between the parties in the second sixty Working Days, this agreement will give rise, where applicable, to a corrective invoice related to the amount that was the subject of the separate credit note, in accordance with the Capacity Contract.

If within sixty Working Days such agreement has still not been reached, the parties commence the litigation procedure in accordance with chapter 14.

443. Consecutive to this contestation and depending on its content, the organization of an additional pre-delivery control may be required<sup>19</sup>. Such additional control is agreed between ELIA and the Capacity Provider and follows the rules of the second method (organization of a pre-delivery test, section 8.4.2.1.1.2), based on a proposed test date that is set no later than ten Working Days as from the contestation notification date.

If no additional pre-delivery control is required, ELIA updates (if relevant) the pre-delivery activity report within twenty Working Days from the contestation date and sends it to the Capacity Provider.

If an additional pre-delivery control is agreed upon as per § 443, the updated pre-delivery control

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<sup>18</sup> As the module of the CRM IT Interface for the pre-delivery control has not yet been implemented, the CRM Actor is invited to send the quarterly report via e-mail to [operations.crm@elia.be](mailto:operations.crm@elia.be).

<sup>19</sup> The organization of a new pre-delivery control is only accepted if a Pre-delivery Measured Power has been calculated by ELIA at the second moment of control.

results – if more favorable to the Capacity Provider than the initial ones – are considered final and notified to the Capacity Provider within forty Working Days as from the initial pre-delivery report notification date. If the updated pre-delivery control results are less favorable than the initial ones, the latter remain valid. The final results of the additional Pre-delivery control are sent to the Capacity Provider via the pre-delivery activity report.

444. If he wishes to contest the final results of the additional pre-delivery control, the Capacity Provider follows the dispute resolution mechanism set out in chapter 14.

## 8.5 DELAYS ON INFRASTRUCTURE WORK

445. This section describes the fallback procedure applicable when ELIA (or the relevant system operator, via the Capacity Provider's project execution plan), identifies a delay in Infrastructure Work impacting already contracted Capacities.

### 8.5.1 Trigger

446. The procedure described in this section is only applicable to delays on Infrastructure Works, upon the following conditions:

- the Infrastructure Work causing the delay was identified during the Prequalification Process as part of the project execution plan and the technical agreement(s); and
- the delay influences the possible start of delivery of capacity for an already Contracted Capacity(ies) by more than two months; and
- the CMU(s) associated to the impacted Contracted Capacity(ies) is (are) Additional CMU(s).

447. If the delay has an impact of two months or less on the possible start of the delivery of capacity for one or more Capacity(ies) already contracted, the Capacity Provider may request the application of the operational procedure in order to create a shift of one year for the Delivery Period(s) covered by the Capacity Contract in accordance with § 452, last bullet point.

### 8.5.2 Operational procedure applicable

448. A delay on an Infrastructure Work can occur between the signing of a Capacity Contract (after the publication of the Auction results) and the start of the Delivery Period the related Capacity has been contracted for.

449. As soon as a delay in Infrastructure Work is identified by the system operator concerned, it notifies the Capacity Provider(s) concerned by the delay and specifies the potential impact of this delay on the Capacity Delivery start date. It provides the Capacity Provider(s) concerned with any additional information requested by the Capacity Provider(s).

The Capacity Provider(s) notifies ELIA via the quarterly report as per section 8.3.4.

Based on the information provided by the Capacity Provider(s), ELIA may request additional information from the Capacity Provider(s) and/or the concerned system operator.

450. The system operator concerned keeps the Capacity Provider(s) concerned duly informed about developments with regard to the delay.

The Capacity Provider(s) duly informs ELIA about developments with regards to the delay via the quarterly reports as per section 8.3.4.

451. If a delay on Infrastructure Work is identified or confirmed at the moment of control  $t_{control\ 1}$ , the following procedure applies:
- ELIA notifies the CREG about the identified delay, including its justification;
  - ELIA determines the impact of this delay on the initial Contracted Capacity;
  - ELIA adapts the impacted Capacity Contract(s) and postpones by one year the Delivery Period(s) covered by the Capacity Contract. The last Delivery Period covered by the Contract is correspondingly postponed by one year.
452. If a delay on Infrastructure Work is identified after the moment of control  $t_{control\ 1}$  and confirmed three months after its identification and no later than the moment of control  $t_{control\ 2}$ , the procedure listed in § 451 applies.
453. If the delay on the Infrastructure Work is identified before finalisation by ELIA of the report referred to in article 7undecies, § 3, al. 1, of the Electricity Act, ELIA takes into account, in this report, the unavailability for the Delivery Period concerned of the corresponding volume identified in § 451 above.

### **8.5.3 Participation to Secondary Market**

454. Independent of the postponement of the Delivery Period(s) covered by the Capacity Contract, a Capacity Provider to which a delay in Infrastructure Work applies is allowed to participate to the Secondary Market from the moment its Contracted Capacity(ies) become "existing" as per procedure described in section 8.6.1 and provided that the Infrastructure Works concerned are completed.

### **8.5.4 Penalties**

455. A delay in Infrastructure Work does not give rise to the application of pre-delivery penalties.

## **8.6 PROCESS TO CHANGE FROM ADDITIONAL CMU OR VIRTUAL CMU TO EXISTING CMU**

### **8.6.1 From Additional CMU to Existing CMU**

456. To evolve from Additional CMU to Existing CMU, the Capacity Provider finalizes the Prequalification Process described in chapter 5. Access to the Prequalification File related to the Additional CMU is made via the CRM IT interface.
457. As Existing Delivery Points part of an Additional CMU are considered as already complete and do not require additional information, the Capacity Provider only needs to take care of each Additional Delivery Point part of the Additional CMU and complete it (them) with required information and documentation as required for Existing Delivery Points in accordance with section 5.2.3.1.
458. In order to evolve from Additional CMU to Existing CMU in time (before the moment of control  $t_{control\ 2}$ ), the Capacity Provider submits a Prequalification File to ELIA via the CRM IT Interface by the Prequalification File submission deadline as referred to in article 7undecies, § 8 of the Electricity Act earlier that year. ELIA reviews the introduced modifications following the same process and timing as defined in chapter 5.



459. ELIA reviews the Prequalification File and starts a Nominal Reference Power determination process, in accordance with sections 5.3.2 and 5.4.1. The Nominal Reference Power of each Delivery Point that becomes Existing, and the Nominal Reference Power of the CMU, are determined and updated in accordance with the process described in section 5.4.1.
460. The Secondary Market (Remaining) Eligible Volume is then determined by ELIA following the rules of section 5.4.6.
461. The prequalification result notification to the Capacity Provider respects the rules and timing of section 5.5.
462. ELIA cannot be held liable in the event that the Capacity Provider does not have the possibility to finalize this process prior to the moment of control  $t_{control 2}$ .

## 8.6.2 From Virtual CMU to Existing CMU(s)

463. To evolve from a Virtual CMU to an Existing CMU (or several Existing CMUs) and transfer the corresponding Contracted Capacity(ies), the Capacity Provider prequalifies this (these) Existing CMU(s) during the Pre-delivery Period.

No Additional CMU can be used in this context. The Capacity Provider follows the Standard Prequalification Process and timings (as per chapter 5) to prequalify its Existing CMU(s).

464. The link between the newly prequalified Existing CMU and the Virtual CMU is notified by the Capacity Provider during the Prequalification Process of the Existing CMU, as part of the first Prequalification File submission date. Such identification allows ELIA:
- not to request a Financial Security for the Existing CMU(s) as one was already submitted by the Capacity Provider on the initial Virtual CMU and;
  - to select as Derating Factors applicable to this(these) Existing CMU(s), the Derating Factors defined in the Ministerial Decree for the Delivery Period during which the Contracted Capacity(ies) on the Virtual CMU were selected.
465. Once the Existing CMU(s) is (are) prequalified, the Capacity Provider uses the Secondary Market (following the rules of Chapter 10) to transfer the Contracted Capacity initially allocated to the Virtual CMU on this(these) Existing CMU(s).
466. The evolution from Virtual CMU to Existing CMU(s) is considered complete from the moment the transaction(s) on the Secondary Market is (are) approved by ELIA as per 10.5.4.1.
467. ELIA cannot be held liable in the event that the Capacity Provider does not have the possibility to finalize this process prior to the moment of control  $t_{control 1}$  and  $t_{control 2}$ . It is the Capacity Provider's responsibility to start the process to become existing taking into consideration the timing foreseen for each step.

## 8.7 PROCESSES TO FOLLOW PRIOR THE START OF ANY TRANSACTION PERIOD

468. In addition to the Pre-delivery controls described above, a Capacity Provider needs to provide during the Pre-delivery Period two additional parameters to ELIA: his Declared Day-ahead Price, to be used by ELIA during the Availability Monitoring Process on CMUs not subject to Daily

Schedule (section 9.4.3.2.3), and the identification of the NEMO to be used as reference in the context of the Payback Obligation.

### **8.7.1 Declared Day-ahead Price**

469. The Declared Day-ahead Price is only relevant to CMUs not subject to the obligation to submit a Daily Schedule (such obligation is known as the individual MW schedule).
470. An initial Declared Day-ahead Price can be communicated by the Capacity Provider to ELIA through the CRM IT interface from the moment the CMU is an Existing CMU and at the latest before the start of the Delivery Period. ELIA acknowledges receipt of it by notifying back the Capacity Provider.

In case no Declared Day-ahead Price is communicated by the Capacity Provider to ELIA prior to the start of the Transaction Period of a CMU, ELIA sends a reminder to the Capacity Provider within a period of three Working Days after the expiration of the aforementioned deadline.

Once the initial Declared Day-ahead Price has been correctly received by Elia the Capacity Provider can update Declared Day-ahead Price following the modalities of section 9.4.2.1.2.

As long as no Declared Day-Ahead Price is provided to ELIA, the corresponding Contracted Capacity is considered as unavailable (section 9.5).

### **8.7.2 NEMO**

471. The NEMO indicates the market operator in which the Reference Price is observed in the Day-ahead Market (DAM). It is provided by the Capacity Provider to ELIA via the CRM IT Interface on CMU level, regardless the status of such CMU (existing CMU, virtual CMU or additional CMU), at the latest before the start of the Delivery Period.

## 9 AVAILABILITY OBLIGATION

### 9.1 INTRODUCTION

This chapter contains the rules relating to the Availability Obligation of the Capacity Providers for their CMUs, which aim to ensure the availability of the CMU's Contracted Capacity, resulting from a Transaction in the Primary Market or in the Secondary Market, during the Delivery Period.

Section 9.2 contains general provisions applying to the Availability Obligation.

Section 9.3 describes the obligation for a Capacity Provider to notify ELIA of temporary limitations on the capacity of their CMUs, as well as the modalities for this notification.

Section 9.4 describes the Availability Monitoring. It comprises the identification of the precise moments during the Delivery Period relevant for this mechanism as well as how ELIA verifies whether the Capacity Provider complies with the obligation.

Section 9.5 describes the Availability Tests, as a complementary tool to the Availability Monitoring to verify whether the Capacity Provider has committed to the obligation.

Section 9.6 describes the Unavailability Penalty applicable if the Capacity Provider has violated its Availability Obligation.

### 9.2 GENERAL PROVISIONS

472. In this chapter, a "CMU" refers to a CMU having Contracted Capacity.
473. In this chapter, a "market segment" refers to a settlement period for the associated market (day-ahead, intraday, or balancing).
474. ELIA verifies whether the Capacity Provider complies with the Availability Obligation, through either Availability Monitoring (section 9.4) or Availability Tests (section 9.5). Both take into account Unavailable Capacity declared by the Capacity Provider (section 9.3). ELIA notifies the Capacity Provider of any failure to comply with the Availability Obligation and consequential Unavailability Penalties (as detailed in section 9.6).
475. As part of the Availability Obligation, the Capacity Provider is responsible for the provision of correct, complete and up to date information to ELIA. ELIA is not liable for penalties incurred by the Capacity Provider as a result of incorrect, incomplete or out of date information.

### 9.3 UNAVAILABLE CAPACITY

476. In case the Capacity Provider is aware of a limitation on the Capacity relative to the Nominal Reference Power (i.e. without accounting for Opt-out Volumes or Derating Factors) of his CMU during the Delivery Period, the Capacity Provider notifies ELIA of such Unavailable Capacity via the CRM IT Interface by providing the following information:
- the CMU ID; and
  - the Remaining Maximum Capacity; and

- the start date and time of the unavailability; and
- the end date and time of the unavailability; and
- the reason for the unavailability, being one of the following:
  - planned outage; or
  - Forced Outage; or
  - other limitation, with a description provided by the Capacity Provider; and
- whether the Capacity Provider wishes to apply Announced Unavailable Capacity

477. ELIA only accepts such a notification if:

- it contains all above information; and
- the Remaining Maximum Capacity does not surpass the updated Nominal Reference Power of the CMU, according to section 5.6; and if
- in case it is notified after 11:00 am the day before the start date of the unavailability, it does not state a higher Remaining Maximum Capacity than the last notified Remaining Maximum Capacity; and
- it is submitted at the latest ten Working Days after the start date of the unavailability.

478. If the notification fails to meet any one of these conditions, ELIA rejects it. The Capacity Provider submits a new notification.

479. ELIA informs the Capacity Provider of the acceptance or rejection of the notification within five Working Days from the date of the notification via the CRM IT Interface.

480. For any date and time  $t$  during the Delivery Period "Y" and for any CMU, ELIA applies the Remaining Maximum Capacity communicated in the last accepted notification by the Capacity Provider applying to a period in which date and time  $t$  resides. In case no limitation applying to date and time  $t$  were declared, the Remaining Maximum Capacity is equal to the Nominal Reference Power of the CMU.

481. For the Unavailable Capacity to be registered as Announced Unavailable Capacity, the Capacity Provider has to confirm they wish for it to apply in the notification according to § 476 and performs the notification as soon as possible and at the latest at 11:00 the day before the start date of the unavailability. ELIA determines the Announced Unavailable Capacity as equal to the last updated Nominal Reference Power minus the Remaining Maximum Capacity stated in the last accepted notification submitted before 11:00 the day before the start date of the unavailability. This is represented by the following formula:

$$P_{Announced,Unavailable}(CMU, t) = NRP(CMU, t) - P_{Max,Remaining}(CMU, t)$$

Where:

- $P_{Max,Remaining}(CMU, t)$  is the Remaining Maximum Capacity stated in the last accepted notification submitted before 11:00 the day before the start date of the unavailability
- $NRP(CMU, t)$  is the last updated Nominal Reference Power for the CMU

- $t$  represents any date and time within the Delivery Period and between the start and end date stated in the notification.

482. Every day during the Delivery Period, Elia notes the last accepted Remaining Maximum Capacity notified before 11:00 for each CMU as Remaining Maximum Capacity DA(CMU,t) for the following day. This parameter is used for the settlement of the Payback Obligation (as detailed in chapter 12).
483. A Capacity Provider can declare an Announced Unavailability for a maximum of seventy-five calendar days cumulatively per Delivery Period, of which cumulatively a maximum of twentyfive calendar days during the Winter Period. Once this limit is reached, the obligation to notify limitations on the Capacity persists but ELIA no longer determines any Announced Unavailable Capacity. The Announced Unavailable Capacity is equal to zero MW as of this point for the remainder of the Delivery Period.
484. ELIA monitors the declaration of Announced Unavailable Capacity for a CMU with respect to indicators of presence in the market, such as provision of other services to ELIA, including but not limited to Ancillary Services and Redispatching Services, or the CMU's scheduling information.
485. In case of evidence that the CMU was present in the market, in contradiction with the Announced Unavailable Capacity, ELIA notifies the Capacity Provider and requests explanation for the inconsistency. ELIA notifies the CREG of the evidence and response of the Capacity Provider.
486. In case the Capacity Provider becomes aware of any limitations on their CMU's Capacity after 11:00 the day before the start date of the unavailability, the Capacity Provider notifies ELIA immediately. Missing Capacity as a result of such a limitation is determined as Unannounced Missing Capacity according to section 9.6.1.

## 9.4 AVAILABILITY MONITORING

487. The Availability Monitoring aims to determine whether the Capacity Provider complies with its Availability Obligations.
488. Elia uses this mechanism exclusively during AMT Moments, composed of AMT Hours, identified by ELIA according to the rules set out in section 9.4.1 and during the Delivery Period.
489. ELIA verifies during AMT Moments if the Available Capacity equals the Obligated Capacity for each CMU. Section 9.4.2 describes the procedure to determine the Declared Market Price and the Required Volume, which are parameters used for the Availability Monitoring. Section 9.4.3 describes the procedure that ELIA applies to determine the Available Capacity and the Obligated Capacity.

### 9.4.1 AMT Moments

#### 9.4.1.1 AMT Moments and AMT Hours determination

490. AMT Moments are a string of consecutive AMT Hours, which are triggered when the Day-ahead Market Price exceeds the AMT Price (according to section 9.4.1.2).
491. An AMT Moment is either a single AMT Hour or a set of consecutive AMT Hours. Two consecutive AMT Hours cannot be considered as two different AMT Moments unless they are not occurring the same calendar day.

### **9.4.1.2 AMT Price determination**

492. ELIA determines the AMT Price for Delivery Period "Y" based on the latest reference scenario defined in the *[placeholder to amendment of Royal Decree on Methodology]* to set the Auction Parameters for the Y-1 Auction applying to Delivery Period "Y".
493. Before determining the AMT Price, Elia adapts the aforementioned reference scenario by replacing hypotheses on the type of capacity installed in the reference scenario for the Y-1 Auction with the CMUs awarded Contracted Capacity for the Delivery Period in the Y-1 Auction. If the Ministerial Decree "Volume and Parameters" instructs ELIA to contract a zero volume for Y-1 Auction, this step is omitted.
494. ELIA applies the simulation used to establish the TSO report intended in article 7undecies §2 of the Electricity Act. This simulation is applied to a "set of simulation years", as referred to in article 10, §6 of the *[placeholder to amendment of Royal Decree on Methodology]* .
495. ELIA determines the AMT Price based on the simulated prices obtained from the scenario obtained after § 494, as the minimum of:
- the median value of the price in each simulation year that is surpassed during hundred hours;
  - the tenth percentile lowest value of the price in each simulation year that is surpassed during twenty hours.
496. ELIA publishes the value of the AMT Price for Delivery Period "Y" on its website by May 15 prior to the Delivery Period. Prior to every Delivery Period, the Capacity Provider is responsible for taking note of the AMT Price.

### **9.4.1.3 Publication of AMT Hours and AMT Moments**

497. After every last Day-ahead Market gate closure time of the NEMOs composing the Day-ahead Market Price, ELIA verifies for every hour of the concerned day if the Day-ahead Market Price exceeds the AMT Price.
- if the Belgian Day-ahead Market Price is equal to or exceeds the AMT Price, the concerning market segment is identified by ELIA as an AMT Hour.
  - if the Belgian Day-ahead Market Price does not exceed the AMT Price, the concerning market segment is not identified as an AMT Hour.
498. ELIA publishes identified AMT Hours and AMT Moments on their website before 15:00 the day before the occurrence of the AMT Moments or no later than 18:00 in case a fallback procedure for the Day-ahead Market clearing applies (as provided in section 15.6).
499. The Capacity Provider is responsible for inquiring about the identified AMT Hours and AMT Moments, according to the publication modalities described above, and cannot contest them.

### **9.4.1.4 Application of Availability Monitoring during AMT Moments**

500. The Capacity Provider ensures an Available Capacity (determined according to section 9.4.3.2) equaling at least its Obligated Capacity (determined according to section 9.4.3.1) for any AMT Hour and each of his CMUs during the Delivery Period.

501. ELIA verifies the compliance to this rule on an ad hoc basis, each time over a complete AMT Moment and for all CMUs. ELIA selects the AMT Hours to be verified according to a procedure approved by the CREG. The procedure is not disclosed publically.

ELIA submits this procedure to CREG for approval at the latest at the time of submission of the Functioning Rules for the Y-1 Auction in 2024 for Delivery Period 2025-2026.

The internal selection procedure includes provisions to avoid selecting AMT Hours to be verified on days with a particularly low risk of adequacy issues.

502. The total number of AMT Moments during which Elia verifies the Availability Obligation cannot exceed thirty for a single Delivery Period.

## **9.4.2 Declared Market Price and Required Volume for CMUs without Daily Schedule**

503. For any AMT Hour, ELIA determines the Declared Market Price (DMP) and the Required Volume (according to sections 9.4.2.3.3 and 9.4.2.3.2 respectively) of a CMU without Daily Schedule, based on all Declared Prices and Associated Volumes declared by the Capacity Provider (according to sections 9.4.2.1.2 and 9.4.2.2.2), as well as the reference electricity market prices for the concerned AMT Hour.

504. The Required Volume or  $V_{req}$  is the volume required to be supplied in reaction to the electricity market prices. ELIA determines it by comparing the Associated Volumes with the corresponding (Partial) Declared Price(s). This parameter is applied to establish Available Capacity during AMT Hours as defined in section 9.4.2.3.2.

505. Finally, the Declared Market Price (DMP) is determined according to section 9.4.2.3.3. The Declared Market Price (DMP) represents the price among the (Partial) Declared Day Ahead Price(s) of the CMU that has been surpassed by the corresponding market price reference for the corresponding AMT Hours and for which the Associated Volume (according to sections 9.4.2.1.3 and 9.4.2.2.3) is the highest. In case the Required Volume is determined as an average of Associated Volumes in response to the Intraday or Balancing Market occurring within a single AMT Hour, the Declared Market Price is a weighted average of several (Partial) Declared Day Ahead Price(s). The Declared Market Price (DMP) is used for settlement of the Payback Obligation for CMUs without Daily Schedule according to chapter 12.

### **9.4.2.1 Declared Prices and Associated Volumes**

#### **9.4.2.1.1 Main principles**

506. The Capacity Provider notifies Declared Prices to ELIA for CMU(s) without Daily Schedule whenever he identifies a need to update this information, via the CRM IT Interface.

A Declared Price relates to one of the three price references:

- Reference Price; and
- intraday reference price; and
- positive imbalance price.

The Declared Price related to:

- the Reference Price is called the “Declared Day-ahead Price” (DDAP),
- the intraday reference price is called the “Declared Intraday Price” (DIDP).
- the positive imbalance price is called the “Declared Balancing Price” (DBALP).

The Capacity Provider can either declare one Declared Price per abovementioned price reference, or a set of  $n$  prices for each, where  $n$  corresponds to the amount of market segments for that reference in one day. ELIA then applies each value of the set only during the corresponding market segment indicated by the Capacity Provider (according to section 9.4.2.1.2).

Otherwise, in case of a single value per price reference, Elia applies the price value over the entire day.

507. ELIA includes, at the latest in the Functioning Rules approved before the Y-1 Auction in 2024 for Delivery Period 2025-2026, the intraday reference price(s) which a Capacity Provider is able to select as the reference for their Declared Intraday Price.

#### **9.4.2.1.2 Declaration modalities**

508. For each CMU without Daily Schedule, the Capacity Provider has to declare before the start of a Delivery Period “Y” at least one DDAP or set of DDAPs to ELIA.

509. In case the Capacity Provider fails to provide such a price to ELIA before the start of a Delivery Period “Y”, ELIA applies a Remaining Maximum Capacity of zero MW for the CMU, superseding any declarations made by the Capacity Provider according to section 9.3, until a (set of) DDAP(s) has been provided by the Capacity Provider for the CMU. No Announced Unavailable Capacity applies during this period.

510. The Capacity Provider includes in the notification of (an update of) Declared Prices:

- the CMU ID to which the communicated (Partial) Declared Price(s) applies; and
- for each Declared Price, the single value of the price in €/MWh with 0.01 €/MWh precision; and
- in case of a set of  $n$  prices, where  $n$  corresponds to the amount of market segments (DA/ID/BAL, as applicable) for that reference in one day, the start and end time of the market segment for every Declared Price in the set of  $n$ .

The notification can contain one or more (sets of) Declared Price(s) provided that it contains the complete information for each of these prices. ELIA accepts the notification under the following conditions:

- all above required information is present in the notification; and
- DDAP does not exceed the price cap applying to the Reference Price at the time of submission; and
- DIDP does not exceed the price cap applying to the intraday reference at the time of submission; and
- DBALP does not exceed the price cap applying to the positive imbalance price at the time of submission; and



- in case of a set of prices, there are precisely  $n$  values listed in the notification, where  $n$  corresponds to the amount of market segments (DA/ID/BAL, as applicable) for that reference in one day.

In case of acceptance, the Capacity Provider automatically receives a notification of acceptance.

In case of rejection, the Capacity Provider automatically receives a notification of rejection along with the reasons for rejection. ELIA does not apply the rejected values.

511. For any future AMT Hour, ELIA applies the last accepted value(s) of (the set of) Declared Day-ahead Price(s) notified before 9:00 the day before the occurrence of the AMT Hour.
512. For any future AMT Hour, ELIA applies the last accepted value(s) of (the set of) Declared Intraday or Balancing Price(s) notified more than two hours before the start of the AMT Hour.
513. With the exception of the DDAP, the Capacity Provider may request, when they deem it relevant, ELIA to terminate the application of any of the above Declared Prices.

### **9.4.2.1.3 Associated Volume**

514. ELIA considers the Associated Volume of any Declared Price(s) as follows:

- for the DDAP, the Associated Volume for one Day-ahead Market segment is the last updated Nominal Reference Power of the CMU, according to section 5.6 ;
- for the DIDP or DBALP, the Associated Volume for one quarter hour market segment is the last updated Nominal Reference Power of the CMU, according to section 5.6.

## **9.4.2.2 Partial Declared Price and Associated Volume**

### **9.4.2.2.1 Main Principles**

515. Partial Declared Prices can be declared via the CRM IT Interface, continuously and according to their need, by the Capacity Provider. They complement the Declared Prices and are not used as a substitute.
516. Multiple Partial Declared Prices (per below-mentioned reference) are allowed for one CMU.
517. A Partial Declared Price is related to one of the three following references:
  - Reference Price;
  - the reference intraday price;
  - positive imbalance price.
518. The (set of) Partial Declared Price of CMU related to :
  - the Reference Price and with an Associated Volume  $v$  is registered as a Partial Declared Day-ahead Price (pDDAPv).
  - the reference intraday price and with an Associated Volume  $x$  is registered as a Partial Declared Intraday Price (pDIDPx).

- the positive imbalance price and with an Associated Volume  $y$  is registered as a Partial Declared Balancing Price (pDBALPy).

519. The Capacity Provider can either declare multiple prices per abovementioned electricity market, or multiple sets of  $n$  prices, where  $n$  corresponds to the amount of market segments for that reference in one day, on the condition that each of these prices meets the conditions in § 521.

In case of a set of  $n$  prices, ELIA applies each value of the set only during the corresponding market segment during the day as indicated in the set by the Capacity Provider (according to section 9.4.2.2.2).

Otherwise, Elia applies the price value(s) over the entire day.

520. ELIA includes at the latest in the Functioning Rules approved before the Y-1 Auction in 2024 for Delivery Period 2025-2026 the intraday reference price(s) a Capacity Provider is able to select as the reference for their Partial Declared Intraday Price(s).

#### **9.4.2.2.2 Declaration modalities**

521. The Capacity Provider includes in the notification of (an update of) Partial Declared Prices:

- the identity of the CMU to which the communicated the Partial Declared Price(s) applies; and
- for each Partial Declared Price(s), the single value of the price in €/MWh with 0.01 €/MWh precision; and
- for each Partial Declared Price(s), the single value of the Associated Volume to this price, which represents a part of the CMU's capacity, in MW with 0.01 MW precision; and
- in case of a set of  $n$  prices, where  $n$  corresponds to the amount of market segments (DA/ID/BAL, as applicable) for that reference in one day, the start and end time of the market segment for every Declared Price in the set of  $n$ .

The Capacity Provider may include one or more (sets of) Partial Declared Price(s) in the notification provided that it contains the complete information for each of these prices. ELIA accepts the notification under the following conditions:

- every stated Partial Declared Price has a stated Associated Volume; and
- none of the stated Associated Volumes exceed the Nominal Reference Power of the CMU; and
- for any Partial Declared Price, the Capacity Provider has notified, prior to or along with the concerned notification, a Declared Price for the CMU and for the corresponding reference; and
- for the same reference, the stated Partial Declared Price is not greater than or equal to its Declared Price for that reference; and
- for the same reference, two stated Partial Declared Prices do not have the same Associated Volume; and
- for the same reference, two stated Partial Declared Prices are not equal; and
- for the same reference, one stated Partial Declared Price is greater than another previously notified or stated Partial Declared Price only if the former's Associated Volume is greater; and

- for any pDIDP or pDBALP, the CMU has a stated or previously notified pDDAP with the same Associated Volume; and
- for every stated set of Partial Declared Prices, there are  $n$  values stated in the set, where  $n$  corresponds to the amount of market segments (DA/ID/BAL, as applicable) for that reference in one day.
- for every stated set of  $n$  prices, each price within the set corresponds to a single Associated Volume.

In case of acceptance, the Capacity Provider automatically receives a notification of acceptance.

In case of rejection, the Capacity Provider automatically receives a notification of rejection along with the reasons for rejection. ELIA does not apply the rejected values.

For any future AMT Hour, Elia applies the last accepted value(s) of (sets of) Partial Declared Day-ahead Price(s) notified before 9:00 am the day before the occurrence of the AMT Hour.

522. For any future AMT Hour, Elia applies the last accepted value(s) of (sets of) Partial Declared Intraday or Balancing Price(s) notified more than two hours before the start of the AMT Hour.
523. At any moment, the Capacity Provider may request ELIA to terminate the application of any of the above Partial Declared Prices. By exception, for (sets of) Partial Declared Day-ahead Prices that still have a (set of) Partial Intraday or Partial Declared Balancing Price(s) for the same Associated Volume, the Capacity Provider terminates the latter prices jointly with or after the termination of the (set of) Partial Declared Day-ahead Price(s).

#### **9.4.2.2.3 Associated Volume**

524. ELIA considers the Associated Volume of any (set of) Partial Declared Price(s) as follows:

- for the pDDAP, the Associated Volume for one AMT Hour is the volume listed in the last accepted notification from the Capacity Provider ;
- for the pDIDP or pDBALP, the Associated Volume for one Intraday or Balancing market segment is the volume listed in the last accepted notification from the Capacity Provider ;

The Associated Volume always refers to the total capacity of the CMU the Capacity Provider is prepared to dispatch. It is not an incremental volume in relation to a different Partial Declared Price and Associated Volume.

### **9.4.2.3 Determination of the Declared Market Price and of the Required Volume**

#### **9.4.2.3.1 Inputs**

525. ELIA determines the DMP and the Required Volume of a CMU for each AMT Hour. In order to do so, ELIA considers the required parameters as follows:

- for (Partial) Declared Price(s), ELIA uses the last accepted value(s) according to the timings in sections 9.4.2.1.2 and 9.4.2.2.2; and
- the CMU's Reference Price, in application at the time of the AMT Hour; and

- the values of the CMU's choice of intraday reference price occurring within the AMT Hour; and
- the values of the positive imbalance price as published on ELIA's website, occurring within the AMT Hour; and
- the Associated Volumes, according to sections 9.4.2.1.3 and 9.4.2.2.3.

### **9.4.2.3.2 Required Volume determination**

526. For a given AMT Hour, ELIA determines the Required Volume as the highest volume that is expected to react to the different reference price signals occurring over the AMT Hour. ELIA does so according to the following procedure:

- i. For each Balancing Market segment occurring within the AMT Hour, ELIA retains the highest Associated Volume for which the positive imbalance price surpassed its (Partial) Declared Balancing Price (or zero MW if no such price was surpassed). This results in a set of "x" volumes, where "x" is the number of Balancing Market segments within an AMT Hour. Each volume relates to a specific Balancing Market segment.
- ii. For the "x" volumes determined in step i, ELIA calculates the average volume within each Intraday Market segment occurring within the AMT Hour. This results in a set of "y" volumes, where "y" is the number of Intraday Market segments within an AMT Hour. Each volume relates to a specific Intraday Market segment.
- iii. For each Intraday Market segment occurring within the AMT Hour, ELIA retains the maximum between the volume determined in step ii and the highest Associated Volume for which the intraday reference price surpassed the (Partial) Declared Intraday Price (or zero MW if no such price was surpassed). This results in a set of "y" volumes, where "y" is the number of Intraday Market segments within an AMT Hour. Each volume relates to a specific Intraday Market segment.
- iv. ELIA calculates the average over all volumes in the set determined in step iii. This results in one value.
- v. The Required Volume is the maximum between the volume determined in step iv and the highest Associated Volume for which the Reference Price surpassed their (partial) Declared Day-ahead Price during the AMT Hour (or zero MW if no such price was surpassed).

ELIA uses the Required Volume for Availability Monitoring during AMT Hours where a Payback Obligation occurs.

### **9.4.2.3.3 Declared Market Price determination**

527. For a given AMT Hour, ELIA determines the Declared Market Price as the Declared Price for the Day-ahead Market with an Associated Volume corresponding to the Required Volume.

528. If the Required Volume is equal in value to an Associated Volume of a Partial Declared Day-ahead Price or the Declared Day-ahead Price, the Declared Market Price is the associated price.

If the Required Volume equals zero MW, the Declared Market Price is not applicable.

In all other cases, the Declared Market Price is a composition of (Partial) Declared Day-Ahead Prices associated by the same Associated Volume to (Partial) Declared Intraday or Balancing Prices. ELIA then determines it by applying the following procedure:

- i. For each Balancing Market segment occurring within the AMT Hour, ELIA retains the "x" (Partial) Day-Ahead Price(s) corresponding to the "x" Associated Volumes obtained in step

i for determining the Required Volume in section 9.4.2.3.2.

- ii. For the "x" prices determined in step i, ELIA calculates the volume-weighted average price within each Intraday Market segment occurring within the AMT Hour. This results in a set of "y" prices, where "y" is the number of Intraday Market segments within an AMT Hour. Each price relates to a specific Intraday Market segment. Each price is associated with the corresponding volume in the set of "y" volumes obtained in step ii for determining the Required Volume in section 9.4.2.3.2.
- iii. ELIA retains the "y" prices corresponding to the "y" volumes obtained in step iii for for determining the Required Volume in section 9.4.2.3.2.
- iv. ELIA determines the Declared Market Price as the volume-weighted average over all prices in the set obtained in step iii.

529. ELIA applies the Declared Market Price for a CMU and an AMT Hour  $t$  ( $DMP(CMU,t)$ ) to determine the Payback Obligation (see chapter 12).

530. ELIA notifies to the CREG any declared prices and evolution thereof that could trigger doubts on anti-competitive behavior. Such behaviors can be, but are not limited to, a behavior aiming to avoid Payback Obligations or a consistent declaration of Declared or Partial Intraday or Balancing Prices lower than their day-ahead counterpart.

## 9.4.3 Obligated Capacity and Available Capacity determination

### 9.4.3.1 Determination of the Obligated Capacity

#### 9.4.3.1.1 General provisions

531. The CMU has to provide Available Capacity at least equal to the Obligated Capacity at every AMT Hour individually.

532. The method for determining Obligated Capacity depends on whether the CMU is a Non-Energy Constrained or Energy Constrained CMU.

533. ELIA applies the Availability Monitoring to compare such Obligated Capacity with the measured Available Capacity (according to section 9.4.3.2).

534. ELIA assesses any differences between Obligated and Available Capacity (Missing Capacity) that result(s) in an Unavailability Penalty (according to section 9.6).

#### 9.4.3.1.2 Non-energy Constrained CMU

535. For Non-energy Constrained CMUs, the Obligated Capacity for every AMT Hour is equal to the Total Contracted Capacity<sup>20</sup> applying to the AMT Hour.

The Total Contracted Capacity includes all Contracted Capacities for the CMU, be it acquired via

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<sup>20</sup> Without prejudice to the applied formula, this capacity consists of a 'derated' quantity for ex-ante Transactions and a 'non-derated' quantity for ex-post Transactions.

the Primary or Secondary Market.

### **9.4.3.1.3 Energy Constrained CMU**

536. Energy Constrained CMUs have to provide the Service in accordance with their Service Level Agreement (SLA), that is:

- for the duration of the hours specified by the CMU's SLA ; and
- for one activation per day.

The hours for one day during which the CMU provides its capacity in accordance with its SLA are defined as SLA Hours.

ELIA determines these hours for each day for which an Availability Monitoring Trigger occurs as:

- hours not exceeding the above-mentioned SLA's constraints; and
- hours during which ELIA observes (ex-post) that the CMU has shown to have dispatched its capacity; and
- hours for which the dispatching is in accordance with the (Partial) Declared Prices (applicable only to CMUs without Daily Schedule Obligation) according to section 9.4.2.

#### **9.4.3.1.3.1 Determination of SLA Hours for CMUs with Daily Schedule**

537. Daily schedule CMUs do not declare a Day-ahead Market Price (according to section 9.4.2). The determination of SLA Hours for CMUs with Daily Schedule occurs on the basis of:

- when, during the day, an AMT Hour occurred; and
- when, during the AMT Hours, Measured Power has the highest value.

538. ELIA, in doing so, retains a set of hours that does not exceed the number of hours  $N$  specified in the CMU's SLA and does not impose more than one activation per day. ELIA applies the following procedure to select the SLA Hours for a given day:

- i. ELIA selects all AMT Hours occurring on the concerning day;
- ii. From the hours selected in step i, ELIA retains
  - all hours if their number is lower than  $N$ ; or
  - the  $N$  hours with highest Measured Power, where  $N$  is the number of hours specified in the CMU's SLA;

If the hours obtained in step ii:

- completely cover one or more AMT Moment(s), ELIA retains only the AMT Hours comprising the AMT Moment with highest average Measured Power within the AMT Moment as SLA Hours; or
- do not cover any AMT Moment completely, ELIA retains all hours selected in step ii as SLA Hours.

#### **9.4.3.1.3.2 Determination of SLA Hours for CMUs without Daily Schedule**

539. CMUs without Daily Schedule declare Declared Prices (see section 9.4.2) and potentially Partial Declared Prices. The selection of SLA Hours occurs on the basis of:

- when, during the day, an AMT Hour occurred; and
- when Active Volume (according to section 9.4.3.2.3.1) has the highest value; and
- when at least one (Partial) Declared Price was surpassed on its respective market.
- if no Declared Price was surpassed during any AMT Hour within the concerning day, the CMU is expected to be Unproven Available for all AMT Hours (according to section 9.4.2).

ELIA retains a set of hours that does not exceed the number of hours  $N$  specified in the CMU's SLA and does not impose more than one activation per day. ELIA applies the following procedure to select the SLA Hours for a given day:

- i. ELIA selects all AMT Hours occurring on the concerning day;
- ii. If none of the CMU's (Partial) Declared Prices were surpassed during any AMT Hours occurring within the concerning day, ELIA retains all hours selected in step i as SLA Hours;
- iii. If at least one of the CMU's (Partial) Declared Prices was surpassed during at least one AMT Hour occurring within the concerning day, ELIA retains all AMT Hours for which at least one (Partial) Declared Price was surpassed;
- iv. From the hours selected in step iii:
  - ELIA retains all hours if their number is lower than  $N$ ; or
  - ELIA retains the  $N$  hours with highest Active Volume (according to section 9.4.3.2.3.1), where  $N$  is the number of hours specified as the constraint in the CMU's SLA.
- v. If the hours determined in step iv
  - cover at least one complete set of consecutive AMT Hours selected in step iv, ELIA retains only the complete set of consecutive AMT Hours with highest Measured Power averaged over the set as SLA Hours; or
  - cover no complete set of consecutive AMT Hours selected in step iv, ELIA retains all hours selected in step iv as SLA Hours.

#### **9.4.3.1.3.3 Determination of Obligated Capacity for Energy Constrained CMUs**

540. ELIA determines the Obligated Capacity for every Energy-Constrained CMU for its SLA Hours as a non-derated quantity. This is obtained by dividing the ex-ante Total Contracted Capacity by the Derating Factor. ELIA equally takes into account ex-post acquisitions and sales of obligations on top of the ex-ante contracted SLA service (according to section 10.4.8.2.2), without derating. This is defined by the following formula:

$$P_{Obligated}(CMU, t) = \frac{\text{Total Contracted Capacity}_{ex-ante}(CMU, t)}{\text{Derating Factor}(CMU, t)} + \text{Contracted Capacity}(CMU, t)_{ex-post}$$

Where:

- $t$  is a measure for time expressed as an AMT Hour; and

- *Total Contracted Capacity*<sub>ex-ante</sub>(CMU, t)<sup>21</sup> is the Total Contracted Capacity established at the time of closure for the ex-ante Secondary Market trades; and
- *Contracted Capacity*(CMU, t)<sub>ex-post</sub> is the sum of Contracted Capacities bought or sold in ex-post on the Secondary Market, where sales count negatively and acquisitions count positively; and
- *Derating Factor* (CMU, t) is the weighted average Derating Factor of all Transactions in Annex A of the CMU's Capacity Contract that constitute the *Total Contracted Capacity*<sub>ex-ante</sub>(CMU, t) during AMT Hour t, calculated in accordance with the definition in chapter 3 .

541. On AMT Hours which are Non-SLA Hours, ELIA takes into account each obligation sold or purchased by the CMU on the Secondary Market *ex post*, permitted according to 10.4.8.2.3. The Obligated Capacity outside of SLA Hours is equal to the *Contracted Capacity*(CMU, t)<sub>ex-post</sub><sup>22</sup> where:

- t is a measure for time expressed as an AMT Hour; and
- *Contracted Capacity*(CMU, t)<sub>ex-post</sub> is the sum of Contracted Capacities bought or sold ex-post on the Secondary Market, where sales count negatively and acquisitions count positively.

### 9.4.3.2 Determination of the Available Capacity

#### 9.4.3.2.1 General Principles

542. This section establishes the rules for determining Available Capacity. The information ELIA receives from CMUs with and without Daily Schedule differs. ELIA therefore applies different methods to determine Available Capacity for both CMU types.

When determining Available Capacity it can be either Proven or Unproven Availability. For each component in Available Capacity, this section explicitly states whether it counts as Proven or Unproven Availability. Both types are considered of equal value for the determination of Available Capacity, but ELIA uses this distinction when identifying the need for Availability Tests on CMU's (according to section 9.5).

#### 9.4.3.2.2 Determination of the Available Capacity for CMU with Daily Schedule

543. ELIA determines Available Capacity for CMUs with Daily Schedule based on the information provided in their Daily Schedule. An exception applies for Energy-Constrained CMU's outside of their SLA Hours, where proof is required that they effectively delivered beyond their SLA. This information is not present in the Daily Schedules, but measured in the Delivery Point.

##### 9.4.3.2.2.1 Available Capacity for Non-energy Constrained CMUs with Daily Schedule

544. For a Non-energy Constrained Daily Schedule CMU, ELIA determines the Available Capacity as the minimum of:

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<sup>21</sup> Without prejudice to the applied formula, this capacity represents a 'derated' quantity.

<sup>22</sup> Without prejudice to the applied formula, this capacity represents a 'non-derated' quantity.



- the last Pmax stated in the Daily Schedule aggregated at the relevant level for the Non-energy Constrained CMU with Daily Schedule; and
- the last accepted Remaining Maximum Capacity according to 9.3.

Available Capacity established in this way is Proven Availability.

545. If Elia does not receive the Pmax from the Daily Schedule for the CMU for an AMT Hour subject to Availability Monitoring, the Available Capacity is determined as being equal to 0 MW.

#### **9.4.3.2.2 Available Capacity for Energy Constrained CMUs with Daily Schedule**

546. For an Energy Constrained CMU with Daily Schedule during its SLA hours, ELIA determines the Available Capacity as the minimum of:

- the last Pmax stated in the Daily Schedule aggregated at the relevant level for the Non-energy Constrained Daily Schedule CMU; and
- the last accepted Remaining Maximum Capacity according to 9.3.

Available Capacity established in this way is Proven Availability.

547. For an Energy Constrained CMU with Daily Schedule outside of its SLA Hours, Elia determines the Available Capacity as the minimum of:

- the CMU's Measured Power during the concerned AMT Hour; and
- the last accepted Remaining Maximum Capacity according to 9.3.

Available Capacity established in this way is Proven Availability.

548. If Elia does not receive the Pmax from the Daily Schedule for the CMU for an AMT Hour subject to Availability Monitoring, the Available Capacity is determined as being equal to 0 MW.

#### **9.4.3.2.3 Determination of the Available Capacity for CMUs without Daily Schedule**

549. ELIA determines Available Capacity for CMUs without Daily Schedules on the basis of:

- the CMU's (Partial) Declared Prices (according to section 9.4.2); and
- the CMU's last updated Nominal Reference Power, according to section 5.6; and
- the CMU's Measured Power; and
- the CMU's Remaining Maximum Capacity (according to section 9.3); and
- any participation of the CMU's Delivery Points to Ancillary Services or Redispatching Services.

The surpassing of the Declared Day-ahead Price (DDAP) is associated with a delivery of Available Capacity through an Active Volume (according to section 9.4.3.2.3.1). Other Declared Prices do not impose delivery through Active Volume for the CMU, except for AMT Hours where the Reference Price surpasses the Strike Price (see chapter 12).

ELIA performs a stricter Availability Monitoring for AMT Hours with Payback Obligation, relative to the CMUs Declared Prices in order to ensure conformity with the Payback Obligation. This stricter

control comprises a verification on both sufficient Active Volume and Passive Volume.

The Availability Monitoring distinguishes three methods to determine the Available Capacity for CMUs without Daily Schedule, as per §§ 551 - 553.

550. In case one or more Delivery Point(s) and Associated Delivery Point(s) are prequalified in one or several reserved, frequency-related Ancillary Services or intends (on a voluntary or mandatory basis) to offer them for the Redispatching Services, the Capacity Provider identifies them during the Prequalification Process (as part of the Grid User Declaration; see chapter 5) or later via the CRM IT Interface. Under frequency-related Ancillary Services, the following are included:

- Frequency Containment Reserve (FCR)
- Automatic Frequency Restoration Reserve (aFRR)
- Manual Frequency Restoration Reserve (mFRR)

ELIA includes any participation in such services in determining Available Capacity for Delivery Points and Associated Delivery Point(s) for which the Capacity Provider has duly notified ELIA, according to the abovementioned process, of their successful prequalification for these services.

ELIA takes into account participation by the CMU's Delivery Point(s) in Redispatching Services and Ancillary Services, as from:

- the day after the notification of successful prequalification for the Redispatching Services or Ancillary Services, if the notification took place before 9:00; or
- two days after the notification of successful prequalification for the Redispatching Services or Ancillary Services, if the notification took place after 9:00.

ELIA applies the method set out in sections 9.4.3.2.3.1 and 9.4.3.2.3.2 to this end.

551. **Method 1** is applicable for an AMT Hour where the CMU's Declared Day-ahead Price is higher than its Reference Price and the CMU's Reference Price is higher than the lowest Calibrated Strike Price among the CMU's Transactions with a Transaction Period in which the AMT Hour lies.

In this case, the CMU is not expected to dispatch its full Obligated Capacity in reaction to the Reference Price. The Available Capacity of the CMU is determined according to the declaration of Unavailable Capacity (according to 9.3). ELIA applies the following formula to establish Available Capacity:

$$P_{Available}(CMU, t) = P_{Max,Remaining}(CMU, t)$$

Where:

- $t$  is a measure of time expressed as an AMT Hour
- $P_{Max,Remaining}(CMU, t)$  is the Remaining Maximum Capacity defined in section 9.3

Available Capacity established in this way is Unproven Availability.

552. **Method 2** is applicable for an AMT Hour where the CMU's Declared Day-ahead Price is lower than or equal to its Reference Price and the CMU's Reference Price is lower than the lowest Calibrated Strike Price among the CMU's Transactions with a Transaction Period in which the AMT Hour lies.

In this case, the CMU is expected to dispatch its full Obligated Capacity in reaction to the Day-ahead market. The Available Capacity of the CMU is the volume of the CMU's capacity that reacted to the Declared Day-ahead Price, in the form of an Active Volume (according to section 9.4.3.2.3.1). ELIA takes into account Unavailable Capacity communicated by the Capacity Provider (according to 9.3). ELIA applies the following formula to establish Available Capacity:

$$P_{Available} = MIN(P_{Max,Remaining}(CMU, t); V_{Act}(CMU, t))$$

Where:

- $t$  is a measure of time expressed as an AMT Hour;
- $V_{Act}(CMU, t)$  is the Active volume corresponding to the part of the CMU's capacity that effectively reacted to its Reference Price, according to section 9.4.3.2.3.1;
- $P_{Max,Remaining}(CMU, t)$  is the Remaining Maximum Capacity as defined in chapter 3.

553. **Method 3** is applicable for an AMT Hour where the CMU's Reference Price is higher than or equal to the lowest Calibrated Strike Price among the CMU's Transactions with a Transaction Period in which the AMT Hour lies.

In this case, the CMU is expected to dispatch its capacity according to the (Partial) Declared Prices. ELIA verifies:

- whether the CMU has reacted to market price signals by providing an Active Volume or  $V_{Act}$  not exceeding the Required Volume (according to section 9.4.3.2.3.1); and
- whether the CMU has retained sufficient Passive Volume or  $V_{Pas}$  as margin to Nominal Reference Power or Unsheddable Margin that did not react to the market price signals, not exceeding the difference between the Nominal Reference Power and the Required Volume (according to section 9.4.3.2.3.2).

ELIA takes into account Unavailable Capacity communicated by the Capacity Provider (according to section 9.3) and the Nominal Reference Power of the CMU.

ELIA applies the following formula to establish Available Capacity:

$$P_{Available} = MIN(P_{Max,Remaining}(CMU, t); MIN(V_{Act}(CMU, t); V_{req}(CMU, t)) + MIN(V_{Pas}(CMU, t); NRP(CMU, t)) - V_{req}(CMU, t))$$

Where:

- $t$  is a measure of time expressed as an AMT Hour
- $V_{Act}(CMU, t)$  is the Active Volume corresponding to the part of the CMU's capacity that effectively reacted to market price signals, according to section 9.4.3.2.3.1
- $V_{Pas}(CMU, t)$  is the Passive Volume corresponding to the part of the CMU's capacity that did not react to market price signals, according to section 9.4.3.2.3.1
- $V_{req}(CMU, t)$  is the Required Volume according to section 9.4.3.2.3.2
- $P_{Max,Remaining}(CMU, t)$  is the Remaining Maximum Capacity as defined in section 9.3
- $NRP(CMU, t)$  is the CMU's last updated Nominal Reference Power, according to section 5.6

#### 9.4.3.2.3.1 Determination of Active Volume or $V_{act}(CMU,t)$

554. The Active Volume measures the part of the CMU's capacity which has reacted to market price signals, in accordance with its (Partial) Declared Prices in section 9.4.2. The method of determination takes into account whether capacity is provided through reduction in offtake or injection into the electricity grid. The determination of this volume follows four steps:

- i. Establishing the initial Active Volume for all Delivery Points
- ii. Correction for participation in reserved frequency-related Ancillary Services (if applicable)
- iii. Correction for participation in Redispatching Services (if applicable)
- iv. Determining the Active Volume

##### 9.4.3.2.3.1.1 Establishing the initial Active Volume for all Delivery Points

555. First, ELIA establishes the initial Active Volume for each Delivery Point and Associated Delivery Point separately.

556. For a Delivery Point  $i$  providing capacity by the potential for injecting energy into the electricity grid and an AMT Hour  $t$ , it is equal to the injection at the Delivery Point. It is determined according to the following formula:

$$V_{Act,Initial,i}(t) = -P_{measured,i}(t)$$

Where

- $P_{measured,i}(t)$  is the Measured Power for the Delivery Point  $i$  during AMT Hour  $t$ .

557. For a Delivery Point  $i$  providing capacity by the potential for reduction of offtake from the electricity grid and an AMT Hour  $t$ , it is equal to the reduction in offtake at the Delivery Point. It is determined according to the following formula:

$$V_{Act,Initial,i}(t) = P_{Baseline,i}(t) - P_{measured,i}(t)$$

Where:

- $P_{measured,i}(t)$  is the Measured Power for the Delivery Point  $i$  and AMT Hour  $t$
- $P_{Baseline,i}(t)$  is the Baseline for the Delivery Point  $i$  and AMT Hour  $t$ , determined according to section 9.4.3.2.3.3.

558. The CMU's initial Active Volume for AMT Hour  $t$  is established as the sum of the initial Active Volumes in the Delivery Points and the Associated Delivery Points. It is calculated by the following formula:

$$V_{Act,Initial}(CMU, t) = \sum_{i=1}^{n_{DP}} V_{Act,Initial,i}(t)$$

Where:

- $n_{DP}$  is the number of Delivery Points, including the Associated Delivery Point(s), for the CMU.

559. In case of DSO-connected Delivery Points or CDS-connected Delivery Points when the CDS is connected to the DSO Grid, the DSO provides ELIA with the result of the initial Active Volume determination for these Delivery Points for any AMT Hour  $t$  in month  $M$  at the latest on the last day of month  $M + 1$ .
560. During the Availability Monitoring, Elia may cross-check the Active Volume of a Delivery Point located downstream of an Access Point with measurements at :
- the corresponding Access Point for an ELIA Grid-connected Delivery Point
  - the corresponding CDS Market Access Points for a CDS-connected Delivery Point (ELIA Grid-connected CDS)

In case of inconsistencies, Elia may request the Capacity Provider to provide additional explanation.

#### 9.4.3.2.3.1.2 Correction for participation in reserved frequency-related Ancillary Services

561. When a CMU's Delivery Point has been contracted in frequency related Ancillary Services for a defined period, it has committed to be activated at instruction of ELIA up to a defined number of MW's of capacity. This volume of capacity is not expected to react to market price signals, but to an instruction of ELIA. The Active Volume is corrected taking into account the reserved volume and potential activation instructions.
562. In case one or more duly notified – as stated in § 550 – Delivery Point(s) and Associated Delivery Point(s) is (are) reserved in one or several frequency related Ancillary Services for the period covered by the AMT Hour, ELIA considers the participation to Ancillary Service as the minimum of the following parameters:
- the volume of the accepted frequency-related Ancillary Services bid;
  - the maximum volume the Delivery Point is allowed to deliver in these Ancillary Services as established in the related Ancillary Service contractual framework;
  - the Nominal Reference Power of the Delivery Point.
563. The result is registered as  $V_{Pas,AS,i}(t)$  for Delivery Point  $i$  and applying to any AMT Hour  $t$  within the reserved period and is the volume for the Delivery Point which is not supposed to react to market price signals but to an instruction from ELIA.
564. If one or more of the duly notified – as stated in § 550 – and successfully in Ancillary Services contracted Delivery Point(s) and Associated Delivery Points participate in the provision of mFRR and are activated upon instruction of ELIA, ELIA registers  $V_{Act,AS,i}(t)$  as the average power provided for mFRR in Delivery Point  $i$  during the AMT Hour  $t$ . This activation should be counted once, in the  $V_{Pas,AS,i}(t)$ , and thus subtracted from the CMU's initial Active Volume.
565. In total the correction for the CMU's Active Volume as a result of participation to Ancillary Services,  $V_{Act,AS}(CMU, t)$  is determined as the sum of  $V_{Pas,AS,i}(t)$  for all Delivery Points  $i$  for which such a volume was established, diminished with any activations at instruction of ELIA (the sum of  $V_{Act,AS,i}(t)$ ). This total cannot surpass the margin remaining on those Delivery Points, meaning the Active Volume for the Delivery Point compared to its Nominal Reference Power, any activations of mFRR ( $V_{Act,AS,i}(t)$ ) notwithstanding. It is defined by the following formula:

$$V_{Act,AS}(CMU, t) = \min\left(\sum_{i=1}^{n_{DP,AS}} NRP_i(t) - (V_{Act,initial,i}(t) - V_{Act,AS,i}(t)), \sum_{i=1}^{n_{DP,AS}} V_{Pas,AS,i}(t) - \sum_{i=1}^{n_{DP,AS}} V_{Act,AS,i}(t)\right)$$

Where:

- $n_{DP,AS}$  is the number of Delivery Points, including the Associated Delivery Point(s), for the CMU successfully reserved in Ancillary Services for the concerning period ;
- $NRP_i(t)$  is the Nominal Reference Power of the Delivery Point  $i$  ;
- $V_{Act,initial,i}(t)$  is determined according to section 9.4.3.2.3.1.1 ;
- $V_{Act,AS,i}(t)$  as the average power provided for mFRR in Delivery Point  $i$  during the AMT Hour  $t$ .

#### 9.4.3.2.3.1.3 Correction for participation in Redispatching Services (if applicable)

566. When a CMU's duly notified – as stated in § 550 – Delivery Point and associated Delivery Point has committed to Redispatching Services, it has committed to modify the output at the Delivery Point as instructed by ELIA. Upon such an instruction, measurements in the Delivery Point(s) may deviate from the expected reaction to market price signals (according to section 9.4.2).

567. ELIA corrects the CMU's initial Active Volume for any downward supplied Activation of Redispatching Service. The absolute value in MW of the average downward supplied activation for Delivery Point  $i$  is registered as  $V_{Act,RD,i}(t)$  and counted positively. An upward Activation of Redispatching Service does not influence the Active Volume. In total, the CMU's Active Volume is corrected for the sum of  $V_{Act,RD,i}(CMU, t)$  over all Delivery Points. This is described by the following formula:

$$V_{Act,RD}(CMU, t) = \sum_{i=1}^{n_{DP}} V_{Act,RD,i}(t)$$

Where:

- $n_{DP}$  is the number of Delivery Points, including the Associated Delivery Point(s), for the CMU
- $V_{Act,RD,i}(t)$  is absolute value in MW of the average downwards supplied Activation of Redispatching Service, upon instruction by ELIA, for Delivery Point  $i$  and AMT Hour  $t$  as described in this step

#### 9.4.3.2.3.1.4 Determining the Active Volume

568. The CMU's Active Volume is determined as the sum of initial Active Volume from section 9.4.3.2.3.1.1 and the correction components from sections 9.4.3.2.3.1.2 and 9.4.3.2.3.1.3. It is defined by the following formula for the CMU and AMT Hour  $t$  in question:

$$V_{Act}(CMU, t) = V_{Act,Initial}(CMU, t) + V_{Act,AS}(CMU, t) + V_{Act,RD}(CMU, t)$$

Available Capacity as a result of the Active Volume is considered Proven Availability.

#### 9.4.3.2.3.2 Determination of Passive Volume or $V_{pas}(CMU,t)$

569. The Passive Volume measures the part of the CMU's capacity which did not react to market price signals, in accordance with its (Partial) Declared Prices in section 9.4.2. The method of determination takes into account whether capacity is provided through reduction in offtake from or injection into the electricity grid. The determination of this volume follows four steps:

- i. Establishing the initial Passive Volume for all Delivery Points
- ii. Correction for participation in reserved frequency-related Ancillary Services (if applicable)

- iii. Correction for participation in Redispatching Services (if applicable)
- iv. Determining the Passive Volume

#### 9.4.3.2.3.2.1 Initial Passive Volume for all Delivery Points

570. First, ELIA establishes the initial Passive Volume for each Delivery Point and Associated Delivery Point separately.

571. For a Delivery Point  $i$  providing capacity by the potential for injecting energy into the electricity grid and an AMT Hour  $t$ , it is equal to the remaining margin relative to the Nominal Reference Power of the Delivery Point. It is determined according to the following formula:

$$V_{Pas,Initial,i}(t) = NRP_i(t) + P_{measured,i}(t)$$

Where:

- $NRP_i(t)$  is the Nominal Reference Power of the Delivery Point  $i$
- $P_{measured,i}(t)$  is the Measured Power in Delivery Point  $i$  during AMT Hour  $t$

572. For a Delivery Point  $i$  providing capacity by the potential for reduction of offtake from the electricity grid and an AMT Hour  $t$ , it is equal to the difference between the offtake and the Unsheddable Margin at the delivery point. It is determined according to the following formula:

$$V_{Pas,Initial,i}(t) = P_{measured,i}(t) - UM_i(t)$$

Where:

- $P_{measured,i}(t)$  is the Measured Power in Delivery Point  $i$  during AMT Hour  $t$
- $UM_i(t)$  is the Unsheddable Margin for the Delivery Point  $i$

573. The CMU's initial Passive Volume is established as the sum of the initial Passive Volumes in the Delivery Points. It is calculated by the following formula:

$$V_{Pas,Initial}(CMU, t) = \sum_{i=1}^{n_{DP}} V_{Pas,Initial,i}(t)$$

Where:

- $n_{DP}$  is the number of Delivery Points, including the Associated Delivery Point(s), for the CMU.

574. In case of DSO-connected Delivery Points or CDS-connected Delivery Points when the CDS is connected to the DSO Grid, the DSO provides ELIA with the result of the initial Passive Volume determination for these Delivery Points for any AMT Hour  $t$  in month  $M$  at the latest on the last day of month  $M + 1$ .

#### 9.4.3.2.3.2.2 Correction for participation in reserved frequency-related Ancillary Services

575. In case one or more duly notified – as stated in § 550 – Delivery Point(s) and Associated Delivery Point(s) is (are) reserved in one or several frequency related Ancillary Services for the period covered by the AMT Hour, it has committed to be activated at instruction of ELIA up to a defined number of MW's capacity. This volume of capacity is not expected to react to market price signals, but to an instruction of ELIA. The Passive Volume is corrected for activation instructions of mFRR during the AMT Hour.

576. In total, the correction of the CMU's initial Passive Volume as a result of participation to Ancillary Services,  $V_{Pas,AS}(CMU, t)$  is determined as the sum of  $V_{Act,AS,i}(t)$  for all Delivery Points  $i$  for which such a volume was established.

$$V_{Pas,AS}(CMU, t) = \sum_{i=1}^{n_{DP,AS}} V_{Act,AS,i}(t)$$

Where:

- $n_{DP,AS}$  is the number of Delivery Points, including the Associated Delivery Point(s), for the CMU successfully reserved in Ancillary Services for the concerning period
- $V_{Act,AS,i}(t)$  as the average power provided for mFRR in Delivery Point  $i$  during the AMT Hour  $t$ , according to section 9.4.3.2.3.1

#### 9.4.3.2.3.2.3 Correction for participation in Redispatching Services

577. When a CMU's Delivery Point committed to Redispatching Services, it has committed to modify the output at the Delivery Point as instructed by ELIA. Upon such an instruction the measurements at the Delivery Point(s) may deviate from the expected reaction to market price signals (according to section 9.4.2).

ELIA corrects the CMU's initial Passive Volume for any supplied upward Activation of Redispatching Service. The absolute value in MW of the average supplied upward activation over AMT Hour  $t$  for Delivery Point  $i$  is registered as  $V_{Pas,RD,i}(t)$  and counted positively. A downward Activation of Redispatching Service does not influence the Passive Volume. In total, the CMU's Passive Volume is corrected for the sum of  $V_{Pas,RD,i}(t)$  over all Delivery Points. This is described by the following formula:

$$V_{Pas,RD}(CMU, t) = \sum_{i=1}^{n_{DP}} V_{Pas,RD,i}(t)$$

Where:

- $n_{DP}$  is the number of Delivery Points, including the Associated Delivery Point(s), for the CMU
- $V_{Pas,CM,i}(t)$  is the value in MW of the upwards Activation of Redispatching Service, upon instruction by ELIA, for Delivery Point  $i$  and AMT Hour  $t$  as described in this step

#### 9.4.3.2.3.2.4 Determining the Passive Volume

578. The CMU's Passive Volume is determined as the sum of initial Passive Volume from section 9.4.3.2.3.2.1 and the correction components from sections 9.4.3.2.3.2.2 and 9.4.3.2.3.2.3. For the concerning CMU and AMT Hour  $t$ , it is defined by the following formula:

$$V_{Pas}(CMU, t) = V_{Pas,Initial}(CMU, t) + V_{Pas,AS}(CMU, t) + V_{Pas,RD}(CMU, t)$$

Available Capacity as a result of the Passive Volume is considered Unproven Availability.

#### 9.4.3.2.3.3 Baseline for Delivery Points providing capacity through the potential for reduction of offtake from the electricity grids of a CMU

579. The determination of Available Capacity for Delivery Points providing capacity through the potential of reduction of offtake from the grid requires a Baseline.



For every Delivery Point requiring a Baseline, ELIA calculates the Baseline based on historical consumption and injection for the considered Delivery Point. For each AMT Hour in an AMT Moment covering a period "P" on day "A", the steps described in this section are performed.

#### 9.4.3.2.3.3.1 Selection of the reference days

580. ELIA selects a set of X representative days in the past, relative to day "A", which contain the metering data of the Delivery Point used for the determination of the Baseline.

ELIA selects the X reference days among Y representative days. The representative days are the last Y days preceding a day "A" that are of the same category as day "A", except for days that are excluded.

The days that are excluded are:

- the day before day "A";
- days during which an Activation of Redispatching or Ancillary Services upon request of ELIA has been made using this Delivery Point (provided the Delivery Point was duly notified; as stated in § 550);
- the day(s) excluded by the Capacity Provider as described below.

The categories of representative days are:

- category 1: Working Days;
- category 2: week-end days and bank holidays;
- category 3: monday or first Working Day following a holiday. This category is optional. In the absence of explicit request by the Capacity Provider to consider the days of this category as a separate category, Mondays and first Working Day following a holiday are categorized as regular Working Days (category 1).

Depending of the category to which day "A" corresponds, "X" and "Y" for each category of representative days are defined as presented in the table below:

Category of day A	X	Y
<b>Working day</b>	4	5
<b>Weekend day/bank holiday</b>	2	3
<b>Mondays (only applied in case of an explicit request by the Capacity Provider)</b>	2	3

*Table 7 – Selection of representative days*

The Capacity Provider may exclude one or more representative day(s) provided that the request is reasoned and justified by the Capacity Provider by one of the following conditions:

- the Capacity Provider duly notified ELIA of Unavailable Capacity occurring on the day they wish to exclude, according to section 9.3;
- holidays, strike days or a closing period that differ from the past and that have an impact on the injection/offtake profile of the Delivery Point, unless one of those three conditions also applies to Day 'A';
- one of the CMU's (Partial) Declared Prices (according to section 9.4.2) was surpassed.

The X days correspond to the days (out of the “Y” representative days, determined as described above) for which the average net offtake of active power during the period corresponding to the period covered by the AMT Moment P of day A is the highest.

#### **9.4.3.2.3.3.2 Baseline for each quarter hour**

581. The Baseline value for each quarter hour in the AMT Moment(s) of day A is calculated as the average of the X values of active power of the considered Delivery Point, measured at the same quarter hour over the X reference days.

#### **9.4.3.2.3.3.3 Baseline for each AMT hour**

582. The Baseline for each AMT Hour is equal to the average of the quarter-hourly baseline profile values within each AMT Hour.

#### **9.4.3.2.3.3.4 OPTIONAL: Baseline adjustment**

583. The Capacity Provider has the possibility to request, when relevant for them, via the CRM IT Interface, the application of an adjustment in addition to the steps for determining the Baseline described above. It is requested for each Delivery Point individually.

ELIA only accepts such an adjustment under the following conditions.

- the request is reasoned and justified by the Capacity Provider ;
- the Baseline with adjustment gives better results than the Baseline without adjustment during a test period of ninety days prior to the Capacity Provider's request, excluding days during which the CMU's (Partial) Declared Price(s) was (were) surpassed or one of its duly notified – as stated in § 550 – Delivery Points for Redispatching or frequency-related Ancillary Services was activated for this service;

To verify the second condition above, the Root Mean Square Error (RMSE) values for Baseline with and without adjustment are compared on a daily basis for a ninety days period. The RMSE value for a given Baseline method on a given day is calculated as follows:

$$RMSE_{baseline} = \sqrt{\sum_{q=1}^n (bl_q - m_q)^2},$$

Where

- $n$  is the number of quarters of an hour over a period on a given day ;
- $q$  is a given quarter of an hour ;
- $bl_q$  is the value of the Baseline in question obtained for the quarter hour  $q$  ;
- $m_q$  is the measurement of the quarter-hourly power obtained at the Delivery Point in question for the quarter-hour  $q$ .

584. The Baseline with adjustment is considered to give better results than the Baseline without adjustment if the RMSE of Baseline (as defined above) with adjustment is lower than the RMSE of Baseline (as defined above) without adjustment for 75% of the days considered.

ELIA has the possibility to refuse the Baseline adjustment opted by the Capacity Provider with a reasoned justification. ELIA notifies such a refusal to the CREG.

If the request to apply an adjustment is accepted, the adjustment is done by adding a correction

value (positive or negative) to every quarter-hourly value calculated in section 9.4.3.2.3.3.2. This correction value is calculated as the difference between the average measured offtake of the Delivery Point during the adjustment period of day A (referred to as  $P_{adjust,A}$ ), and the average measured offtake of the Delivery Point during the period corresponding period on the X reference days (referred to as  $P_{adjust,X}$ ). The adjustment period is defined as the period of three hours starting six hours before the start of the AMT Moment containing the AMT Hour.

If the adjustment factor is higher than 15%, ELIA can request the Capacity Provider for a sound justification regarding the difference between the average active power measured during the adjustment period and the averaged measured power during period corresponding to the adjustment period during the X reference days. If such a justification is not provided or is insufficient, ELIA may, after notification to the CREG, no longer apply a Baseline adjustment for the concerned Delivery Point and instead apply the Baseline without adjustment as of the day after the date of the AMT Hour during which this deviation was observed. ELIA informs the Capacity Provider of their decision. If he wishes to reinstate the adjustment of the baseline, the Capacity Provider must submit a new request for the concerned Delivery Point.

## 9.5 AVAILABILITY TESTS

### 9.5.1 Modalities

#### 9.5.1.1 Decision to perform an Availability Test

585. ELIA can verify whether a Capacity Provider has committed to the Availability Obligation for any of its CMU's through unannounced Availability Tests.
586. ELIA can test a CMU up to three times successfully during the Winter Period and one time successfully outside of the Winter Period. Additionally, ELIA can test at maximum one time the full duration of the SLA (if any) successfully per Delivery Period. A test is successful if during each quarter hour between the test start and end time, zero MW of Missing Capacity was determined. As long as the limit of successful Availability Tests have not been reached, Elia can continue to perform Availability Tests for this CMU.
587. A CMU is only tested for its full SLA (if any) if it has failed the previous Availability Test in the same Delivery Period.
588. ELIA selects the moment of the Availability Test and the CMUs on which to perform Availability Tests according to an internal procedure, which is not disclosed publicly. The procedure is submitted to and approved by the CREG.

The selection of the CMUs is based on criteria including, but not limited to:

- the amount of Proven Availability of the CMUs relative to all other CMUs subject to a Capacity Contract for the current Delivery Period;
- previously failed Availability Tests by the CMU;
- missing Capacity during Availability Monitoring;
- correlations of the CMUs outputs with the communicated prices according to section 9.4.2.

The internal selection procedure includes provisions to avoid Availability Tests on days with a particularly low risk of adequacy issues.

ELIA submits this procedure to the CREG for approval at the latest at the time of submission of the Functioning Rules for the Y-1 Auction in 2024 for Delivery Period 2025-2026.

589. In parallel with the determination of the AMT Price as described in section 9.4.1.2, Elia performs an analysis of the amount of forecasted scarcity moments in the simulations described in § 494. If no scarcity moments are expected in June, July and August of the simulation, no Availability Tests are carried out during these months of the Delivery Period on a CMU unless Missing Capacity is determined for this CMU during Availability Monitoring in the last twelve months.
590. The Capacity Provider can also request an Availability Test to ELIA in order to meet the conditions for reinstating the original remuneration after downwards revision due to three AMT Moments and/or Availability Tests during which Missing Capacity was established (according to section 9.6). These tests need operational approval by ELIA and follow the same procedure as an Availability Test at the initiative of Elia.
591. Different Availability Tests for the same CMU take place on different calendar days.
592. Any costs of Availability Tests are borne by the Capacity Provider.

### **9.5.1.2 Notification of an Availability Test**

593. ELIA instructs the Capacity Provider to perform an Availability Test via the CRM IT Interface between 15:00 pm and 15:30 pm the day before it is to take place. ELIA includes in their instruction an expected duration of the Availability Test. The expected duration can be one of two options:
- the full SLA duration (if applicable, and only if the conditions of § 587 are fulfilled); or
  - one quarter hour.

The notification contains a start and end time for the Availability Test. Start and end times determine the period during which the Obligated Capacity is verified by ELIA. The start- and end time covers a period of at least twenty-four hours. Within that period of time, the Capacity Provider can freely choose when they deliver the Available Capacity (according to section 9.5.2.2), as long as they provide the Obligated Capacity (according to section 9.5.2.1) for at least the expected duration. This choice is not explicitly stated by the Capacity Provider, but implied by the level of observed Available Capacity.

As from the time of notification, the Capacity Provider is restricted from trading obligations on the CMU in the Secondary Market for Transaction Periods falling within the start and end time of the Availability Test. As a consequence, all transactions on the Secondary Market for the CMU for which the Transaction Date (according to section 10.5.2) later than the time of notification of the Availability Test is rejected (according to section 10.5.4.1).

594. In case the CMU is a Linked Capacity to (a) different CMU(s), Elia simultaneously instructs an Availability Test to each Linked Capacity for the same start and end time and test duration. Linked Capacities receiving a simultaneous instruction for testing are permitted to exchange obligations on the Secondary Market, provided that both Buyer and Seller of the Obligation are one of the Linked Capacities.

Proven Availability for the purpose of determining the Secondary Market Remaining Eligible

Volume, according to section 10.4.8.2, for ex-post trades in the above-mentioned case is equal to the Available Capacity determined in section 9.5.2.2.

## 9.5.2 Determination of the Obligated Capacity and the Available Capacity

### 9.5.2.1 Determination of the Obligated Capacity

595. In case the Availability Test coincides with an AMT Moment, the Capacity Provider is held to the Obligated Capacity for the Availability Test as determined in this section rather than to the Obligated Capacity for the AMT Hours.
596. ELIA tests whether the CMU is able to provide an instantaneous level of capacity that ensures the availability of the Total Contracted Capacity (in accordance with the SLA if applicable), taking into account the applicable Derating Factor<sup>23</sup>. ELIA does not test volumes which are part of Announced Unavailable Capacity (according to section 9.3). The Obligated Capacity is determined by the following formula:

$$P_{Obligated}(CMU, t) = \min(NRP(CMU, t) - P_{Unavailable, Announced}(CMU, t); \frac{Total\ Contracted\ Capacity(CMU, t)}{Derating\ factor(CMU, t)})$$

Where:

- $t$  is a quarter hour within the start and end time of the Availability Test;
- $NRP(CMU, t)$  is the CMU's last updated Nominal Reference Power, according to section 5.6;
- $P_{Unavailable, Announced}(CMU, t)$  is the Announced Unavailable Capacity, determined according to section 9.3;
- $Total\ Contracted\ Capacity(CMU, t)$  is the Total Contracted Capacity for the CMU established at the time of notification of the Availability Test;
- $Derating\ factor(CMU, t)$  is the weighted average Derating Factor of all Transactions in Annex A of the CMU's Capacity Contract that constitute the  $Total\ Contracted\ Capacity(CMU, t)$  during quarter hour  $t$ , calculated in accordance with the definition in chapter 3.

This Obligated Capacity only applies during the consecutive quarter-hours spanning the expected duration of the test with highest Available Capacity (according to section 9.5.2.2) within the start and end time of the Availability Test. All other quarter-hours within start and end time have an Obligated Capacity of zero MW.

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<sup>23</sup> Without prejudice to the applied formula, the resulting capacity represents a 'non-derated' quantity.

## 9.5.2.2 Determination of the Available Capacity

597. Available Capacity during this start and end time is established as the share of the CMU's capacity that responded with delivery of energy to ELIA's test signal. ELIA establishes a contribution for each Delivery Point and associated Delivery Point comprising the CMU.

### 9.5.2.2.1 Establishing the initial Available Capacity

598. For a Delivery Point  $i$  providing capacity by the potential for injecting energy into the electricity grid, it is equal to the injection at the Delivery Point. It is determined according to the following formula:

$$P_{Available,initial,i}(t) = -P_{measured,i}(t)$$

Where

- $P_{measured,i}(t)$  is the 15-minute measurement in Delivery Point  $i$  during quarter hour  $t$ .

For a Delivery Point  $i$  providing capacity by the potential for reduction of offtake from the electricity grid, it is equal to the reduction in offtake at the Delivery Point. It is determined according to the following formula:

$$P_{Available,initial,i}(t) = P_{Baseline,i}(t) - P_{measured,i}(t)$$

Where:

- $P_{measured,i}(t)$  is the quarter-hourly measurement in Delivery Point  $i$  and quarter hour  $t$
- $P_{Baseline,i}(t)$  is the quarter-hourly Baseline for the Delivery Point  $i$  and quarter hour  $t$ , determined in section 9.4.3.2.3.3.2.

599. For the CMU, during a quarter hour  $t$ , the initial Available Capacity is determined as the sum of the Available Capacity for its Delivery Points. This is defined by the following formula:

$$P_{Available,initial}(CMU, t) = \sum_{i=1}^n P_{Available,initial,i}(t)$$

Where:

- $n$  is the number of Delivery Points and Associated Delivery Points comprising the CMU
- $P_{Available,initial,i}(t)$  is Available Capacity for Delivery Point  $i$  during quarter hour  $t$

600. In case of DSO-connected Delivery Points or CDS-connected Delivery Points when the CDS is connected to the DSO Grid, the DSO provides ELIA with the result of the initial Available Capacity determination for these Delivery Points for any quarter hour  $t$  between the start and end times of the Availability Test as per § 593 in month  $M$  at the latest on the last day of month  $M + 1$ .

### 9.5.2.2.2 Correction for participation in reserved frequency-related Ancillary Services and Redispatching Services (if applicable)

601. When applicable, and when the CMU's participation of these services is duly notified, as stated in § 550,  $P_{Available,i}(CMU, t)$  as determined in § 599 is corrected for participations in reserved frequency-related Ancillary Services and Redispatching Services. In that case, the initial Available Capacity will be corrected using the following components:

- $V_{Act,AS}(CMU, t)$  is the correction for the CMU's Available Capacity as a result of participation to Ancillary Services, determined according to section 9.4.3.2.3.1.2;
- $V_{Act,RD}(CMU, t)$  is the correction for the CMU's Available Capacity for any downward Activation of Redispatching Service, determined according to section 9.4.3.2.3.1.3.

### 9.5.2.2.3 Determining the Available Capacity

602. The CMU's Available Capacity is determined as the sum of the initial Available Capacity from section 9.5.2.2.1 and the correction components from section 9.5.2.2.2. It is defined by the following formula for the CMU and hour  $t$ :

$$P_{Available}(CMU, t) = P_{Available,initial}(CMU, t) + V_{Act,AS}(CMU, t) + V_{Act,RD}(CMU, t)$$

603. During an Availability Test, Elia may cross-check the Available Capacity of a Delivery Point located downstream of an Access Point with measurements at :

- the corresponding Access Point for an ELIA Grid-connected Delivery Point; and
- the corresponding CDS Market Access Points for a CDS-connected Delivery Point (ELIA Grid-connected CDS)

In case of inconsistencies, Elia may request the Capacity Provider to provide additional explanation.

## 9.6 MISSING CAPACITY AND UNAVAILABILITY PENALTY

604. The Missing Capacity of a CMU represents the amount of capacity that this CMU fails to make available in contradiction with its Availability Obligation.

ELIA determines a CMU's Missing Capacity based on the information collected during the Availability Monitoring and/or Availability Tests of the CMU (section 9.6.1).

605. The Capacity Provider is sanctioned with an Unavailability Penalty for any Missing Capacity on their CMU(s) (section 9.6.2).

ELIA notifies the Capacity Provider of any Missing Capacity and Unavailability Penalty for its CMU. The Capacity Provider has the right to contest any Unavailability Penalty (section 9.6.3).

606. In case of multiple Unavailability Penalties for the same CMU, ELIA applies an escalating penalties procedure (section 9.6.4).

### 9.6.1 Determination of Missing Capacity

607. The Missing Capacity of a CMU is equal to the positive difference between Obligated and Available Capacity for a given AMT Hour during Availability Monitoring (see section 9.4) or quarter hour during an Availability Test (see section 9.5). The amount of Available Capacity above the Obligated Capacity at any given moment is not taken into consideration in the determination of the Missing Capacity. ELIA does not consider any negative value for the Missing Capacity. The Missing Capacity for time  $t$  is determined by the following formula:

$$MC(CMU, t) = \text{Max}(P_{Obligated}(CMU, t) - P_{Available}(CMU, t); 0)$$

Where:

- $t$  is either an AMT Hour or quarter hour within an Availability Test
- $P_{Obligated}(CMU, t)$  is the Obligated Capacity of the CMU for time  $t$
- $P_{Available}(CMU, t)$  is the Available Capacity of the CMU for time  $t$

After determining the Missing Capacity, ELIA determines the part considered as Announced Missing Capacity, based on both the Missing Capacity for time  $t$ , and the Announced Unavailable Capacity communicated by the Capacity Provider that covers time  $t$ . The following formula defines how this amount is calculated:

$$AMC(CMU, t) = \text{Min}(P_{Unavailable, Announced}(CMU, t); MC(CMU, t))$$

Where:

- $t$  is either an AMT Hour or quarter hour within an Availability Test
- $P_{Unavailable, Announced}(t)$  is the Announced Unavailable Capacity that covers the time  $t$
- $MC(CMU, t)$  is the Missing Capacity of the CMU for time  $t$

ELIA determines the Unannounced Missing Capacity (UMC) based on both the Missing Capacity for time  $t$  and the Announced Missing Capacity for time  $t$  previously calculated. This amount represents the remaining Missing Capacity for time  $t$  and is calculated as follows:

$$UMC(CMU, t) = \text{Max}(MC(CMU, t) - AMC(CMU, t); 0)$$

Where:

- $t$  is either an AMT Hour or quarter hour within an Availability Test
- $MC(CMU, t)$  is the Missing Capacity of the CMU for the moment  $t$
- $AMC(CMU, t)$  is the Announced Missing Capacity for time  $t$

Both values ( $AMC(CMU, t); MC(CMU, t)$ ) are used to calculate the amount of Unavailability Penalty.

## 9.6.2 Unavailability Penalty calculation

608. The Capacity Provider is sanctioned with an Unavailability Penalty for any Missing Capacity on their CMU(s). The Unavailability Penalty of a CMU is determined for the entire AMT Moment or Availability Test duration.

609. To calculate the amount of the Unavailability Penalty of a CMU, ELIA applies the following parameters according to this section:

- the penalty factor to be applied to the Missing Capacity; and
- the weighted average contracted value of the CMU at time  $t$  corresponding to the AMT Hour or quarter hour within the Availability Test during which the Missing Capacity was determined; and



- the number of hours or quarter hours, for AMT Moment and Availability Test expected duration respectively, for which the penalty applies; and
- a constant number, defined as *UP*, equivalent to ELIA's expectation of the number of AMT Moments during which availability is verified by ELIA.

610. ELIA applies the penalty factor depending on the type of Missing Capacity and the time it occurs (time *t*). For both Unannounced and Announced Missing Capacity the penalty factor is set according to the season where the Missing Capacity was detected. The following table summarizes the value of the penalty factor *X*:

	<b>Unannounced Missing Capacity 01/04/20xx – 31/10/20xx</b>	<b>Unannounced Missing Capacity 01/11/20xx- 1 – 31/03/20xx</b>	<b>Announced Missing Capacity 01/04/20xx – 31/10/20xx</b>	<b>Announced Missing Capacity 01/11/20xx-1 – 31/03/20xx</b>
<b>Penalty factor (X)</b>	0,5	1,4	0	0,9

*Table 8 - Value of the Penalty factor (X)*

611. The weighted contracted value of a CMU at time *t* corresponds to the Capacity Remuneration of each Transaction of the CMU with a Transaction Period covering time *t* weighted by the amount of Contracted Capacity in the Transaction. The value expressed in € per MW is determined by the following formula:

$$\text{weighted contracted value(CMU, } t) = \frac{\sum_{i=1}^N (\text{Capacity Remuneration}_i * \text{Contracted Capacity}_i)}{\sum_{i=1}^N \text{Contracted Capacity}_i}$$

Where:

- *N* is the number of Transactions (in Primary or Secondary Market) with a Transaction Period covering time *t*, being the AMT Hour for Availability Monitoring (see section 9.4) or quarter hour during an Availability Test (see section 9.5) during which Missing Capacity was determined.

612. The period of time for which the Unavailability Penalty applies is determined according to the case where Missing Capacity was established:

- in case Missing Capacity was established during an Availability Test, the number of quarter hours spanning the expected duration of the Availability Test (see section 9.5); or
- in case of an Energy-Constrained CMU, the number of SLA Hours; or
- in all other cases, the number of AMT Hours in the considered AMT Moment.

613. ELIA calculates the Unavailability Penalty with the following formula:

$$\begin{aligned} \text{Unavailability Penalty [€]} \\ = \frac{1}{T * UP} \left[ \sum_{t=1}^T (1 + X) * \text{Weighted Contract Value(CMU, } t) * \text{UMC(CMU, } t) \right. \\ \left. + \sum_{t=1}^T (1 + X) * \text{Weighted Contract Value(CMU, } t) * \text{AMC(CMU, } t) \right] \end{aligned}$$

Where:

- T is the number of AMT Hours or quarter hours (as respectively applicable for an AMT Moment or an Availability Test) for which the penalty applies (as described above)
- $X^{24}$  is the penalty factor to be applied to the Missing Capacity for time  $t$  (as in Table 8)
- $UMC(CMU, t)$  is the Unannounced Missing Capacity at time  $t$  according to section 9.6.1
- $AMC(CMU, t)$  is the Announced Missing Capacity for time  $t$  according to section 9.6.1
- $UP$  is the anticipated number of AMT Moments where availability is verified, equal to fifteen. It is an order of magnitude and not a limitation nor a minimum number of AMT Moments during which ELIA effectively verifies availability.
- $Weighted\ Contract\ Value(CMU, t)$  is as described above

614. A limit applies to the total amount of the Unavailability Penalty applicable to a Capacity Provider for Transactions of a CMU over one Delivery Period and one month meeting one of the following conditions:

- it concerns a Transaction of the Primary Market; or
- the Transaction Period covers one or more full Delivery Periods.

No limits apply to the total amount of Unavailability Penalties a Capacity Provider can receive for any other Transactions.

615. The limit of the Unavailability Penalty for the Delivery Period is equal to the sum of the awarded Capacity Remunerations for the Delivery Period multiplied with their respective Contracted Capacities as recorded on October 30 preceding the Delivery Period, for all Transactions of the CMU meeting one of the two above conditions.

616. The limit of the Unavailability Penalty for one month is equal to twenty percent of the sum of the awarded Capacity Remunerations for the Delivery Period multiplied with their respective Contracted Capacities as recorded on October 30 preceding the Delivery Period, for all Transactions of the CMU meeting one of the two above conditions.

617. Once the above-defined Delivery Period or monthly limit is reached for the Transaction(s) satisfying one of the criteria on a Non-energy Constrained CMU, Elia limits the Missing Capacity solely for the purposes of calculating the Unavailability Penalty to the difference between the Obligated Capacity and the sum of the Contracted Capacities for the Transactions subject to the limit. This is defined by the following formula:

$$MC(CMU, t) = \min(P_{Obligated}(CMU, t) - \sum_{i=1}^n Contracted\ Capacity_i(CMU, t); Max(P_{Obligated}(CMU, t) - P_{Available}(CMU, t); 0))$$

Where:

- $i$  represents the transaction for which the Delivery Period or monthly limit has been reached.

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<sup>24</sup> The value of X differs depending on the situation

- $t$  is either an AMT Hour or quarter hour within an Availability Test.

This applies until the end of the Delivery Period or month for the Delivery Period or monthly limit respectively.

618. Once the above-defined Delivery Period or monthly limit is reached for the Transaction(s) satisfying one of the criteria on an Energy Constrained CMU, ELIA limits the Missing Capacity solely for the purposes of calculating the Unavailability Penalty to the difference between the Obligated Capacity and the sum of the Contracted Capacities for the Transactions subject to a limit divided by the Derating Factor for the CMU. This is defined by the following formula:

$$MC(CMU, t) = \min(P_{Obligated}(CMU, t) - \frac{\sum_{i=1}^n \text{Contracted Capacity}_i(CMU, t)}{\text{Derating Factor}(CMU, t)}; \max(P_{Obligated}(CMU, t) - P_{Available}(CMU, t); 0))$$

Where:

- $i$  represents the transaction to which the Delivery Period or monthly limit has been reached.
- $t$  is either an AMT Hour or quarter hour within an Availability Test.
- $derating\ factor(CMU, t)$  is the weighted average Derating Factor of the  $i$  to  $n$  Transactions in Annex A of the CMU's Capacity Contract, calculated in accordance with the definition in chapter 3.

This applies until the end of the Delivery Period or month for the Delivery Period or monthly limit respectively.

619. In addition, the transaction(s) is (are) no longer included in the above calculation of the weighted contract value for the remainder of the Delivery Period or month for the Delivery Period or monthly limit respectively.
620. The limitation on Missing Capacity during this period does not impact any other processes using Missing Capacity as input than the calculation of the Unavailability Penalty.

### 9.6.3 Notification and Contestation

621. In accordance with the Capacity Contract, ELIA sends an activity report each month to the Capacity Provider via the CRM IT Interface. This report covers an entire month, from the first day of the month at 00:00 until the last day of the month at 23:59. The report contains the following information determined for each AMT Hour in an AMT Moment or for each quarter hour of Availability Test where Missing Capacity has been detected by ELIA (with the exception of the Unavailability Penalty, which is stated for each entire AMT Moment/Availability Test):

- date and time; and
- the value in MW of the CMU's Available Capacity; and
- the value in MW of the CMU's Obligated Capacity; and
- the value in MW of the CMU's Missing Capacity, split up in Announced and Unannounced Missing Capacity; and
- the value in € of the CMU's Unavailability Penalty.

622. For each month M, the delivery activity report is sent before the 15<sup>th</sup> of month M+2 at the latest.

623. If the Capacity Provider wishes to contest any parameters or calculation leading to an Unavailability Penalty, he has twenty Working Days from the notification of the delivery activity report to notify such motivated contestation to ELIA. In such a case, the Capacity Provider and ELIA enter into negotiations in order to reach an amicable agreement within sixty Working Days as of the date of notification of contestation by the Capacity Provider. ELIA and the Capacity Provider may request additional information from each other on the parameters in the delivery activity report if needed.

In case a partial or total amicable agreement is reached between the parties within sixty Working Days, this agreement will give rise, where applicable, to a credit note for the amount subject of the agreement, in accordance with the Capacity Contract.

If within sixty Working Days no partial or total agreement is found, the disputed amount or part of the disputed amount of the Unavailability Penalty is the subject of a separate credit note in accordance with the Capacity Contract and at the same time, both parties continue to seek an amicable solution within the sixty Working Days following the end of the first period of sixty Working Days.

In case an amicable agreement is reached between the parties in the second sixty Working Days, this agreement will result, where applicable, in a corrective invoice related to the amount that was the subject of the separate credit note, in accordance with the Capacity Contract.

If within sixty Working Days still no such agreement has been reached, the parties commence the litigation procedure in accordance with chapter 14.

#### **9.6.4 Penalty escalation procedure**

624. A Capacity Provider with a CMU for which ELIA has determined Missing Capacity on three separate instances over the same Delivery Period incurs a downwards revision of its Monthly Remuneration (as defined in the Capacity Contract) and is subject to other adaptations to its contract situation, in accordance with the terms provided for in this section.

625. ELIA issues the downwards revision of the Monthly Remuneration of a CMU if:

- the CMU fails to meet its Availability Obligations three times over a Delivery Period, during AMT Moments and/or Availability Tests. These three times do not require to be consecutive but do occur on separate calendar days; and
- each of these failures constitutes an Unannounced Missing Capacity over twenty percent of Obligated Capacity established during an AMT Moment and/or Availability Test.

626. The Monthly Remuneration for the Capacity Provider is reduced by a factor equal to the maximum ratio of the three Missing Capacities and the Obligated Capacity values established during the three failures. This reduction is realized by reducing future Monthly Remunerations by the original Monthly Remuneration multiplied with this ratio.

However, the Capacity Provider retains the initial Availability Obligation and remains liable for possible Unavailability Penalties for that CMU as in the Capacity Contract before the downwards revision was issued. *Total Contract Value* is not altered.

627. ELIA notifies the Capacity Provider via the CRM IT Interface of the application of the downwards revision through the monthly delivery activity report. The downwards revision of the Monthly Remuneration applies as of the moment of notification, regardless of the initiation of the contestation procedure. The agreement after contestation can be settled in a future invoice to the

Capacity Provider. In addition, ELIA takes the reduction of the Nominal Reference Power in updating the volumes according to section 5.6.3.4.

628. For each month during which the Capacity Provider is subject to a reduced Monthly Remuneration, the reduced amount for that month is added to the amount of penalties contributing to the limit of the Unavailability Penalty for a Delivery Period defined § 614 for the CMU's Transactions to which such a limit applies. Once the penalty cap is reached for the concerned Delivery Period, the original Monthly Remuneration is restored for the remainder of the ongoing Delivery Period.
629. From the moment the Capacity Provider receives the downwards revision, the CMU has to successfully provide its Obligated Capacity in accordance with the Contracted Capacity and SLA three consecutive times during an AMT Moment and/or Availability Tests to reinstate the Capacity Provider's original Monthly Remuneration. For each of these three occurrences, the CMU must deliver one hundred percent of the Obligated Capacity as Proven Availability.

630. The Capacity Provider notifies ELIA via the CRM IT Interface after completing the third successful delivery. This notification contains:

- the CMU ID; and
- the start date and time of each concerning Availability Test and/or AMT Moment.

ELIA accepts the notification if it contains a valid CMU ID and each of the stated start and end times correspond to an Availability Test and/or AMT Moment. Otherwise, ELIA rejects the notification and the Capacity Provider submits a new notification.

631. ELIA analyses the Obligated and Available Capacity for each Availability Test and/or AMT Moment. ELIA notifies the Capacity Provider of the following within five Working Days after the notification by the Capacity Provider:

- the CMU ID; and
- the start date and time of each concerning Availability Test and/or AMT Moment; and
- for each Availability Test/AMT Moment, the Obligated, Available and Missing Capacities; and
- whether the conditions for reinstating the remuneration have been met or not.

The Capacity Provider can request an Availability Test (according to section 9.5) to ELIA for the purpose of reinstating the Capacity Remuneration.

632. The downward revision automatically carries over to the next Delivery Period for multi-year Capacity Contracts and sequential one-year contracts if the Capacity Provider failed to recover the initial Monthly Remuneration before the end of the Delivery Period during which the downward revision was applied.

633. As long as the CMU has not reinstated its Monthly Remuneration in accordance with §§ 629 to 631, its Capacity Provider is prohibited from carrying out, for this CMU, a transaction on the Secondary Market as a Buyer of an Obligation.

634. In case a new Missing Capacity greater than the previous three ones is determined by ELIA during an Availability Test or AMT Moments for this CMU before performing three successful tests or three successful deliveries during an AMT Moment, ELIA sends an updated value of the downward revision of its Monthly Remuneration, taking into account this last Missing Capacity, to the Capacity Provider. This update is applicable as from the moment of notification to the Capacity Provider.

635. In case the CMU was subject to a downwards revision of Monthly Remuneration during two consecutive Delivery Periods and the CMU each time failed to reinstate the original Capacity Remuneration within twelve weeks after the notification of the downward revision via the monthly delivery activity report, the Capacity Provider loses the possibility to reinstate the original Monthly Remuneration for the CMU. All current and future Contracted Capacities assigned to the CMU are reduced in proportion to the permanent reduction in Monthly Remuneration. Any Transactions having as a result zero MW Contracted Capacity are subsequently terminated, along with the associated rights and obligations.
636. In case the Capacity Provider contests the application of the penalty escalation according to § 626 or 635, it is as a part of the procedure according to section 9.6.3 and litigation procedure in chapter 14.

# 10 SECONDARY MARKET

## 10.1 INTRODUCTION

*This chapter describes the Secondary Market, which allows the transfer of (part of) the Contracted Capacity of a CMU to another CMU.*

*It explains the principles, conditions and the different processes that are to be followed by the Parties on the Secondary Market in order to participate to the Secondary Market.*

*Section 10.2 provides the general provisions which form the basis for more elaborate rules in the subsequent sections.*

*Section 10.3 describes the conditions for the Parties on the Secondary Market and their CMUs to notify a Secondary Market transaction to ELIA.*

*Section 10.4 describes the content of a Secondary Market transaction and the related requirements in order to obtain an approved Secondary Market transaction, conditions in Section 10.3 notwithstanding.*

*Section 10.5 describes the process of notification to ELIA of a Secondary Market transaction to ELIA and its approval or rejection by ELIA.*

*Section 10.6 describes the process of contractual modification for ELIA resulting from an approved Secondary Market transaction.*

*Section 10.7 describes the Capacity Contract's possible escalation of penalties in case of underperformance of CMUs having concluded a Secondary Market Transaction.*

*Section 10.8 describes the start, accessibility and end of the Secondary Market.*

*Finally, section 10.9 describes the high-level IT requirements of a functioning and efficient Secondary Market participation.*

## 10.2 GENERAL PROVISIONS

637. Parties on the Secondary Market may participate in the Secondary Market on a voluntary basis, provided they meet the necessary requirements according to section 10.3.
638. The Secondary Market process is solely a title transfer facility that is part of the CRM IT Interface. The process entails a notification of the Secondary Market transaction between the Parties on the Secondary Market, as well as the processing of received information and approval or rejection of it. Approved transactions result in a modification of the obligations and remuneration of the involved parties in accordance with the content of the approved Transaction.
639. The term 'Secondary Market transaction' is to be distinguished from the defined term Transaction. The Secondary Market transaction consists of a joint request, subject to approval, from a Seller of an Obligation and a Buyer of an Obligation to transfer rights and obligations, or from an Exchange. The approval of a Secondary Market transaction leads to the creation/modification of Transactions, which are registered by ELIA in the Capacity Contract.

640. The phases prior to the notification towards ELIA of a Secondary Market transaction are arranged either solely between the Parties on the Secondary Market, or via an Exchange. No interventions by ELIA are provided for in this context.
641. The process to be followed in order to successfully notify a Secondary Market transaction is performed by:
- both Parties on the Secondary Market: a primary Party on the Secondary Market submits a notification of the Secondary Market transaction to ELIA via the CRM IT Interface, after which the secondary Party on the Secondary Market confirms or rejects the data; or
  - the Exchange mandated by both Parties on the Secondary Market for the notification of the Secondary Market transaction to ELIA via the CRM IT Interface.
642. ELIA is not required to make its own Exchange or trading platform for Secondary Market transactions available to Secondary Market parties. Its role, in connection with these Functioning Rules, is to provide and manage the process of notification of Secondary Market transactions via the title transfer facility, approve or reject Secondary Market transactions, publish the relevant data listed in chapter 16 and update the contractual modalities accordingly.
643. The Secondary Market transactions are processed by ELIA. Therein, Elia performs a verification on the submitted data to ensure that the content is consistent with the contractual information and remains within the limits of involved CMUs' maximum capacity. However, ELIA does not judge the quality of the transaction from a business point of view and cannot be held responsible for losses incurred on approved transactions, meeting the requirements of this chapter. In particular, ELIA is not responsible for any arrangements, of any kind, made between Secondary Market Parties and, where applicable, an Exchange.
644. A Secondary Market transaction can be notified solely after the opening of the Secondary Market according to section 10.8.1 and no Secondary Market transaction can be notified after the closure of the Secondary Market according to section 10.8.3.
645. Any approved Secondary Market transaction implies a full transfer of the contractual rights (e.g. the payment of the Capacity Remuneration) and obligations (e.g. the Availability Obligation) between the Secondary Market Parties. The Seller of an Obligation yields the specified amount of Contracted Capacity and associated rights and obligations from a Transaction in their Capacity Contract to the Buyer of an Obligation via a new Transaction under the Capacity Contract of the latter.
646. The approval of a Secondary Market transaction notified by the Secondary Market Parties or by an Exchange results in contractual implications for the Secondary Market Parties, according to section 10.6.
647. All formulas described in sections 10.4 and 10.5 are related to parameters evolving in time and incorporate all parameters and Transactions (incl. modifications) in the Capacity Contract. At any time, the most recent data are used by ELIA for the approval or rejection of a Secondary Market transaction.
648. Two dimensions of time determine the applied parameters in the formulas for this section:
- the  $t_{notif}$  defining the moment at which ELIA acknowledges reception of the notification of the Secondary Market transaction, according to paragraph 721; and
  - the Transaction Period  $TP$  on which the Secondary Market transaction applies
649. A granularity of 0,01 MW is applicable for MW data.



650. The rounding rule is rounding-up so that the result is rounded up or down to the nearest number (with a rounding-up if there is no nearest number) and applies to each formula.

## **10.3 CONDITIONS FOR SECONDARY MARKET PARTICIPATION**

651. To participate in the Secondary Market, the Secondary Market Parties and their CMUs must satisfy the conditions stipulated in this section.

652. Potential Parties on the Secondary Market that mandated an Exchange to notify on their behalf a Secondary Market transaction must equally satisfy these conditions.

653. Exchanges may only participate in the Secondary Market on behalf of Parties on the Secondary Market if they meet the conditions in section 10.3.2.

654. ELIA does not grant access to the Secondary Market to Capacity Providers, Prequalified CRM Candidates, their CMUs and Exchanges if they do not comply with all conditions set out in this section.

655. ELIA exclusively approves Secondary Market transactions that comply with the conditions set out in this section. In case of non-compliance, these Secondary Market transactions are rejected. ELIA does so via the process detailed in section 10.5.4.

### **10.3.1 Conditions for Parties on the Secondary Market**

656. Only Capacity Providers are entitled to be Sellers of an Obligation.

657. The Buyer of an Obligation is either a Prequalified CRM Candidate or a Capacity Provider.

658. The Buyer of an Obligation cannot be subject to contractual restrictions inhibiting him from participating to the Secondary Market as a result of the penalty escalation process, according to § 752.

### **10.3.2 Conditions for Exchanges**

659. To participate in the Secondary Market, an Exchange should be mandated by the two Parties on the Secondary Market each having signed a valid Secondary Market Exchange Mandate, duly communicated to ELIA for registry.

660. The Secondary Market Exchange Mandate is completed, signed and sent to ELIA by both Parties on the Secondary Market.

661. The notifications of Secondary Market transactions can be sent by the Exchange at the earliest five Working Days after reception by ELIA of duly completed and signed Market Exchange Mandates.

662. A Secondary Market Exchange Mandate can be revoked in two ways:

- either unilaterally, by one of the Secondary Market Parties that gave the Market Exchange Mandate, by sending to ELIA a completed and signed copy of annex 18.4.1 with option B.1 selected. The revocation takes effect twenty Working Days after receipt by ELIA of the completed copy;

- or by mutual agreement between the Exchange and the Secondary Market Party that gave the Market Exchange Mandate, by sending jointly to ELIA a completed and signed copy of annex 18.4.1 with option B.2 selected. The revocation takes effect five Working Days after receipt by ELIA of the completed copy.

663. As from the day the revocation takes effect, ELIA no longer approves Secondary Market transactions submitted by the Exchange for the concerned Prequalified CRM Candidate or Capacity Provider, be it new or in process.

### 10.3.3 Conditions for CMUs

664. A Secondary Market transaction is solely considered if it involves two different CMUs: the CMU of the Seller of an Obligation and the CMU of the Buyer of an Obligation.

665. A CMU must meet the following criteria for participation in the Secondary Market:

- in case it concerns the Seller of an Obligation's CMU, it has a positive Contracted Capacity on the Transaction Period, according to section 10.4.8.1; and
- in case it concerns a CMU for the Buyer of an Obligation, it is an Existing CMU that is successfully prequalified for each Delivery Period (partly) covered by the Transaction period according to § 210 and it has a positive Secondary Market Remaining Eligible Volume for at least one hour during the current or future Delivery Period(s), covered by the Secondary Market transaction according to section 10.4.8.2; and
- in case it concerns the Buyer of an Obligation's CMU, it is not subject to any restrictions inhibiting it from participating in the Secondary Market as a result of the penalty escalation process, according to § 752.

666. In line with the formulas in section 10.4.8.2, the Secondary Market Remaining Eligible Volume of the Buyer of an Obligation's CMU is reduced with any Opt-out Volume which is classified as "IN", in accordance with section 5.4.2.

667. A Buyer of an Obligation can only use an Energy-constrained CMU without Daily Schedule for ex-post transactions if the CMU was already subject to a Capacity Contract that covers the entire Transaction Period of the ex-post transaction at the Transaction Date in order to ensure that the Proven Availability can be calculated (cf. section 10.4.8).

## 10.4 SECONDARY MARKET TRANSACTIONS REQUIREMENTS

668. ELIA exclusively approves Secondary Market transactions complying with all the requirements listed in this section. Secondary Market transactions that do not match these requirements are rejected. ELIA does so via the process detailed in section 10.5.4.

669. The Transaction Date, as determined in section 10.5.2, cannot exceed the start of the Transaction Period by more than twelve Working Days.

670. The Secondary Market Transaction contains all the information in the Table 9 and respects the stated format.

671. In case of a bilateral Secondary Market transaction (i.e. without the involvement of an Exchange), a primary Party on the Secondary Market submits a notification to ELIA via the CRM IT Interface

containing all the information relating to the Secondary Market transaction, after which the secondary Party on the Secondary Market confirms or reject it.

672. In case of a Secondary Market transaction notified via an Exchange, both Parties on the Secondary Market approve the content of the Secondary Market transaction prior to the notification thereof according to § 720. The Exchange submits a single notification on their behalf.

<b>Information</b>	<b>Type</b>	<b>Unit</b>	<b>Information</b>	<b>Details</b>
<b>Secondary Market transaction external ID</b>	Free field of 6 alphabet letters followed by 6 digits	NA	The ID of the Secondary Market transaction arranged by both the Seller of an Obligation and the Buyer of an Obligation (or an Exchange)	As detailed in section 10.4.1
<b>Seller of an Obligation</b>	Capacity Provider ID	NA	Identification of the Capacity Provider considered as the Seller of an Obligation	As detailed in section 10.4.2
<b>CMU of the Seller of an Obligation</b>	CMU ID	NA	Identification of the CMU of the Seller of an Obligation	As detailed in section 10.4.3
<b>Transaction of the Seller of an Obligation's CMU</b>	Transaction ID	NA	Identification of the Transaction from which the obligation is deducted for the CMU of the Seller of an Obligation	As detailed in section 10.4.4
<b>Buyer of an Obligation</b>	Capacity Provider ID or Prequalified CRM Candidate ID	NA	Identification of the Capacity Provider or Prequalified CRM Candidate considered as the Buyer of an Obligation	As detailed in section 10.4.5
<b>CMU of the Buyer of an Obligation</b>	CMU ID	NA	Identification of the CMU taking over the obligation	As detailed in section 10.4.6
<b>Secondary Market Capacity</b>	Decimal number	MW	The volume of the Secondary Market Capacity that is transferred	As detailed in section 10.4.8
<b>Transaction Period</b>	Date / Time to Date / Time	Time	The Transaction Period indicating the start date/time until the end date/time (included)	As detailed in section 10.4.7
<b>Capacity Remuneration</b>	Decimal number	€/MW/year	The Capacity Remuneration of the identified Transaction of the CMU of the Seller of an Obligation	As detailed in section 10.4.9

<b>Calibrated Strike Price of the Transaction</b>	Decimal number	€/MWh	The Calibrated Strike Price of the identified Transaction of the CMU of the Seller of an Obligation	As detailed in section 10.4.10
<b>Strike Price indexation Auction year</b>	Integer or "NA"	Year	The Calibrated Strike Price indexation in time represented by its parameter Auction year	As detailed in section 10.4.10
<b>Strike Price indexation Auction type</b>	"Y-4", "Y-1" or "NA"		The Calibrated Strike Price indexation in time represented by its parameter Auction type Y-4 or Y-1	As detailed in section 10.4.10

Table 9 – Requirement on the notification content of a Secondary Market transaction

### 10.4.1 Secondary Market transaction external ID

673. A *Secondary Market transaction external ID* is generated, applicable for both the Buyer of the Obligation and the Seller of the Obligation. This *Secondary Market transaction external ID* is composed of six letters (of the Latin alphabet of twenty-six letters) followed by six digits (each from zero to nine).

The *Secondary Market transaction external ID* is unique and has never been used previously in a Secondary Market transaction, whether for a transaction that is in process, rejected or approved.

### 10.4.2 Seller of an Obligation

674. The Seller of an Obligation is exclusively identified by its *Capacity Provider ID*, listed in Annex A of its Capacity Contract.

### 10.4.3 CMU of the Seller of an Obligation

675. The CMU of the Seller of an Obligation is exclusively identified by its *CMU ID*, listed in Annex A of its Capacity Contract.

### 10.4.4 Transaction of the Seller of an Obligation's CMU

676. The Secondary Market transaction contains the Transaction ID, as listed in annex A of the Capacity Contract of the Seller of an Obligation. After approval of the transaction on the Secondary Market, the Secondary Market Capacity is deducted from this Transaction.

### 10.4.5 Buyer of an Obligation ID

677. The Buyer of an Obligation is identified as follows:

- if it concerns a Capacity Provider, by its *Capacity Provider ID*, as specified in its Capacity Contract, annex A, or
- if it concerns a Prequalified CRM Candidate, by its *Prequalified CRM Candidate ID* communicated in connection with the Prequalification Process

## 10.4.6 CMU of the Buyer of an Obligation

678. The CMU of the Buyer of an Obligation is identified by its *CMU ID*, communicated in the Prequalification Process.

## 10.4.7 Transaction Period

679. The Transaction Period is composed of a start date (date and time) and an end date (date and time).

680. As a general rule, the granularity in terms of period covered by the Secondary Market transaction is, unless further specified in the further paragraphs of this section :

- one calendar day (measured from 00:00 to 23:59) or multiple consecutive calendar days during the same Delivery Period or multiple Delivery Period(s); or
- one full hour or multiple consecutive full hours within a single calendar day.

681. The Transaction Period of the Secondary Market transaction is a period in time entirely covered by one or more Delivery Period(s) in the LCT or CRM. A transaction covering more Delivery Periods is only allowed if the Seller of Obligation has a multi-year Transaction in its Capacity Contract.

682. The Transaction Period of the Secondary Market transaction is equal to or part of the Transaction Period of the Transaction of the Seller of an Obligation's CMU.

683. In case the Transaction of the Seller of an Obligation was obtained on the Primary Market and covers more than one Delivery Period and the Investment File relating to the CMU of this Seller of an Obligation has not yet undergone the ex post control as described in articles 12 to 18 of the Royal Decree on "Investment Thresholds", the end date of the Transaction Period does not exceed by more than one year, the latest date between the two following dates:

- the date of notification on the Secondary Market  $t_{notif}$ , according to paragraph 648; or
- the start date of the Delivery Period referred to in the Auction (as mentioned in Annex A.1 in the Capacity Contract) during which the Transaction of the Seller of an Obligation was obtained.

684. The Transaction Period for an ex-ante Secondary Market transaction, as determined according to section 10.5.3, transferring an obligation from or to an Energy Constrained CMU covers one or multiple full calendar days (i.e. from 00:00 to 23:59 for each day in the Transaction Period).

685. The Transaction Period for an ex-post Secondary Market transaction, as determined according to section 10.5.3, covers an hour or a set of consecutive hours considered as AMT Hour(s) within the same calendar day. Any Transaction Period of an ex-post Secondary Market transaction including at least one hour not considered as an AMT Hour is rejected according to § 732.

An exception applies for ex-post Secondary Market transactions during an Availability Test, exclusively permitted under the conditions of § 594. There, the Transaction Period may cover any quarter-hour to which the Obligated Capacity applies, according to § 596.

686. For an ex-post Secondary Market transaction, such as determined according to section 10.5.3, if the Transaction of the Seller of an Obligation's CMU has the status ex-ante and the CMU of the Seller of an Obligation is an Energy Constrained CMU, the Transaction Period is the entire set of SLA Hours of the Seller of an Obligation's CMU (according to section 9.4.3.1.3) for the calendar day to which the Transaction Period applies.

## 10.4.8 Secondary Market Capacity

687. The Secondary Market Capacity has a positive value in MW.
688. The Secondary Market Capacity is a fixed value in MW over the Transaction Period  $TP$ .
689. The value of the Secondary Market Capacity does not exceed the limitations specified in this section. These limitations are based on the characteristics of the involved CMUs, belonging to the Buyer of an Obligation and the Seller of an Obligation.
690. All parameters and characteristics are evaluated relative to the time of notification  $t_{notif}$ .

### 10.4.8.1 Limitations relative to the Seller of the Obligation's CMU

691. In the case where:
- the Secondary Market transaction is performed in ex-post, as determined in section 10.5.3; And
  - the Transaction of the Seller of an Obligation has the status ex-ante, implying that the transaction was made before the start of the Transaction Period (so including all Transactions on the Primary Market and all ex-ante Secondary Market Transactions) ; And
  - the CMU of the Seller of an Obligation is an Energy Constrained CMU,

The Secondary Market Capacity is limited to the minimum Contracted Capacity over the Transaction Period  $TP$  for the Transaction of the Seller of an Obligation's CMU divided by the Derating Factor of the Transaction.

This is represented by the following formula:

$$\text{Secondary Market Capacity} \leq \frac{\text{Contracted Capacity}_{\min}(\text{CMU}, \text{Transaction ID}, \text{TP}, t_{\text{notif}})}{\text{Derating Factor}(\text{Transaction ID})}$$

Where:

- $TP$  is the Transaction Period of the Secondary Market transaction according to section 10.4.7;
  - $t_{notif}$  is the moment at which ELIA acknowledges reception of the notification according to section 10.5.2;
  - Transaction ID refers to the unique identifier of a Transaction of the Seller of an Obligation's CMU according to section 10.4.4 as specified in the annex A of the Capacity Contract or in the CRM IT Interface.
  - $\text{Contracted Capacity}_{\min}(\text{CMU}, \text{Transaction Id}, \text{TP}, t_{\text{notif}})$  is the minimum Contracted Capacity of the Transaction's CMU identified by its Transaction ID over the Transaction Period  $TP$  at the moment of the notification  $t_{notif}$ ;
  - $\text{Derating Factor}(\text{Transaction Id})$  is the Derating Factor associated to the Transaction identified by its  $\text{Transaction ID}$  in Annex A of the CMU's Capacity Contract.
692. In all other cases, the Secondary Market Capacity is limited to the minimum of the Contracted Capacity over the Transaction Period  $TP$  for the Transaction of the Seller of an Obligation's CMU.

This is represented by the following formula:

$$\text{Secondary Market Capacity} \leq \text{Contracted Capacity}_{\min}(\text{CMU}, \text{Transaction ID}, \text{TP}, t_{\text{notif}})$$

Where:

- $TP$  is the Transaction Period of the Secondary Market transaction according to section 10.4.7
- $t_{\text{notif}}$  is the moment at which ELIA acknowledges reception of the notification according to section 10.5.2;
- $\text{Transaction ID}$  refers to the unique identifier of a Transaction of the Seller of an Obligation's CMU according to paragraph 10.4.4 as specified in the annex A of the Capacity Contract or in the CRM IT Interface;
- $\text{Contracted Capacity}_{\min}(\text{CMU}, \text{Transaction ID}, \text{TP}, t_{\text{notif}})$  is the minimum Contracted Capacity of the Transaction's CMU identified by its Transaction ID over the Transaction Period  $TP$  at the moment of the notification  $t_{\text{notif}}$ .

#### 10.4.8.2 Limitations relative to the Buyer of the Obligation's CMU

693. The Secondary Market Capacity does not exceed the Secondary Market Remaining Eligible Volume (SMREV) for the CMU of the Buyer of an Obligation. This is represented by the following formula:

$$\text{Secondary Market Capacity} \leq \text{SMREV}(\text{CMU}, \text{TP}, t_{\text{notif}})$$

694. The method for determining the Secondary Market Remaining Eligible Volume differs based on the following factors:

- whether the CMU of the Buyer of an Obligation is an Energy Constrained CMU or not; and
- whether the transaction takes place in ex-post or ex-ante, according to section 10.5.3.

695. The rest of this section contains the calculation of the Secondary Market Remaining Eligible Volume for the various cases that might arise.

##### 10.4.8.2.1 Secondary Market Remaining Eligible Volume for Non-energy Constrained CMUs

696. For a Non-Energy Constrained CMU of the Buyer of an Obligation pursuant to an ex-ante Secondary Market transaction, the Secondary Market Remaining Eligible Volume is the positive result of the Remaining Maximum Capacity, reduced by the Total Contracted Capacity and Opt-out IN Volume over the Transaction Period, and then multiplied by the Last Published Derating Factor.

This is represented by the following formula:

$$\begin{aligned} \text{SMREV}(\text{CMU}, \text{TP}, t_{\text{notif}}) &= \text{Max}(0; \text{Remaining Maximum Capacity}_{\min}(\text{CMU}, \text{TP}, t_{\text{notif}}) \\ &\quad - \text{Total Contracted Capacity}_{\max}(\text{CMU}, \text{TP}, t_{\text{notif}}) - [\text{OptOut Volume}_{\max}(\text{CMU}, \text{TP}, t_{\text{notif}}) \\ &\quad * \text{Last Published Derating Factor}(\text{CMU}, \text{TP}, t_{\text{notif}})]) \end{aligned}$$

Where:

- $TP$  is the Transaction Period of the Secondary Market transaction according to 10.4.7
- $t_{notif}$  is the moment at which ELIA acknowledges reception of the notification according to section 10.5.2;
- $Remaining\ Maximum\ Capacity_{min}(CMU, TP, t_{notif})$  is the minimum of the CMU's Remaining Maximum Capacity applicable according to section 9.3 over the Transaction Period  $TP$  at the moment of the notification  $t_{notif}$ ;
- $Total\ Contracted\ Capacity_{max}(CMU, TP, t_{notif})$  is the maximum of the CMU's Total Contracted Capacity over the Transaction Period  $TP$  at the moment of the notification  $t_{notif}$ ;
- $Opt - out\ Volume_{max}(CMU, TP, t_{notif})$  is the maximum Opt-out Volume of the CMU over the Transaction Period  $TP$  considered as IN according to section 5.4.2, leading to a correction volume of the demand in the Auction § 291 at the moment of the notification  $t_{notif}$ ;
- $Last\ Published\ Derating\ Factor(CMU, TP, t_{notif})$  is the last published Derating Factor for the CMU's technology at the moment of the notification  $t_{notif}$  according to 10.4.8.3

697. For a Non-Energy Constrained CMU of the Buyer of an Obligation and an ex-post Secondary Market transaction, the Secondary Market Remaining Eligible Volume is the positive result of the Proven Availability, reduced by the Obligated Capacity and Opt-out IN Volume over the Transaction Period, and then multiplied by the Last Published Derating Factor. For CMUs without Daily Schedule, this rule implies that the CMU of the Buyer of an Obligation is only allowed to participate to the Secondary Market if it is subject to a Capacity Contract that covers the entire Transaction Period at the Transaction Date.

This is represented by the following formula:

$$\begin{aligned}
 SMREV(CMU, TP, t_{notif}) &= \text{Max}(0; \text{Proven Availability}_{min}(CMU, TP, t_{notif}) \\
 &\quad - \text{Obligated Capacity}_{max}(CMU, TP, t_{notif}) \\
 &\quad - [\text{OptOut Volume}_{max}(CMU, TP, t_{notif}) \\
 &\quad * \text{Last Published Derating Factor}(CMU, TP, t_{notif})])
 \end{aligned}$$

Where:

- $TP$  is the Transaction Period of the Secondary Market transaction according to section 10.4.7
- $t_{notif}$  is the moment at which ELIA acknowledges reception of the notification according to section 10.5.2;
- $Proven\ Availability_{min}(CMU, TP, t_{notif})$  is the minimum of the CMU's Proven Availability applicable according to section 9.4.3.2 over the Transaction Period  $TP$  at the moment of the notification  $t_{notif}$ ;
- $Obligated\ Capacity_{max}(CMU, TP, t_{notif})$  is the maximum of the CMU's Obligated Capacity according to the section 9.4.3.1 over the Transaction Period  $TP$  at the moment of the notification  $t_{notif}$ ;
- $Opt - out\ Volume_{max}(CMU, TP, t_{notif})$  is the maximum Opt-out Volume of the CMU considered as IN according to section 5.4.2, leading to a correction volume of the demand in the Auction according to chapter Auction § 6.3.1.1 over the Transaction Period  $TP$  at the moment of the notification  $t_{notif}$ ;



- *Last Published Derating Factor*( $CMU, TP, t_{notif}$ ) is the last published Derating Factor for the CMU's technology at the moment of the notification  $t_{notif}$  according to 10.4.8.3

### 10.4.8.2.2 Secondary Market Remaining Eligible Volume for Energy Constrained CMUs on their SLA Hours

698. For an Energy-Constrained CMU pursuant to an ex-ante Secondary Market transaction on its SLA hours, the Secondary Market Remaining Eligible Volume is the positive result of the Remaining Maximum Capacity, reduced by the Total Contracted Capacity divided by the Derating Factor and Opt-Out IN Volume and then multiplied by the Last Published Derating Factor.

This is represented by the following formula:

$$\begin{aligned}
 SMREV(CMU, TP, t_{notif}) &= \text{Max} \left( 0; \left[ \text{Remaining Maximum Capacity}_{min}(CMU, TP, t_{notif}) \right. \right. \\
 &\quad \left. \left. - \left[ \frac{\text{Total Contracted Capacity}_{max}(CMU, TP, t_{notif})}{\text{Derating Factor}(CMU, t)} \right] \right. \right. \\
 &\quad \left. \left. - \text{OptOut Volume}_{max}(CMU, TP, t_{notif}) \right] \right) \\
 &\quad * \text{Last Published Derating Factor}(CMU, TP, t_{notif})
 \end{aligned}$$

Where:

- $TP$  is the Transaction Period of the Secondary Market transaction according to section 10.4.7
- $t_{notif}$  is the moment at which ELIA acknowledges reception of the notification according to section 10.5.2;
- *Remaining Maximum Capacity* $_{min}(CMU, TP, t_{notif})$  is the minimum CMU Remaining Maximum Capacity according to the section 9.3 applicable over the Transaction Period  $TP$  at the moment of the notification  $t_{notif}$ ;
- *Total Contracted Capacity* $_{max}(CMU, TP, t_{notif})$  is the maximum CMU Total Contracted Capacity over the Transaction Period  $TP$  at the moment of the notification  $t_{notif}$ ;
- *Derating Factor*( $CMU, t$ ) is the weighted average Derating Factor of all Transactions in Annex A of the CMU's Capacity Contract that constitute the *Total Contracted Capacity* $_{max}(CMU, TP, t_{notif})$  over the Transaction Period  $TP$  at the moment of the notification  $t_{notif}$ , calculated in accordance with the definition in chapter 3.
- *OptOut Volume* $_{max}(CMU, TP, t_{notif})$  is the maximum Opt-out Volume of the CMU considered as IN according to section 5.4.2, leading to a correction volume of the demand in the Auction according to § 291 over the Transaction Period  $TP$  at the moment of the notification  $t_{notif}$ ;
- *Last Published Derating Factor*( $CMU, TP, t_{notif}$ ) is the last published Derating Factor for the CMU's technology at the moment of the notification  $t_{notif}$  according to 10.4.8.3

699. For an Energy-Constrained CMU and an ex-post Secondary Market transaction on its SLA Hours, the Secondary Market Remaining Eligible Volume is the positive result of the Proven Available Capacity, reduced by the Obligated Capacity and the Opt-Out IN Volume. For CMUs without Daily

Schedule, this rule implies that the CMU of the Buyer of an Obligation is only allowed to participate to the Secondary Market if it is subject to a Capacity Contract that covers the entire Transaction Period at the Transaction Date.

This is represented by the following formula:

$$\begin{aligned}
 SMREV(CMU, TP, t_{notif}) & \\
 &= \text{Max}\left(0 ; \text{Proven Availability}_{min}(CMU, TP, t_{notif})\right. \\
 &\quad \left. - \text{Obligated Capacity}_{max}(CMU, TP, t_{notif}) - \text{OptOut Volume}_{max}(CMU, TP, t_{notif})\right)
 \end{aligned}$$

Where:

- $TP$  is the Transaction Period of the Secondary Market transaction according to section 10.4.7
- $t_{notif}$  is the moment at which ELIA acknowledges reception of the notification according to section 10.5.2;
- $\text{Proven Availability}_{min}(CMU, TP, t_{notif})$  is the minimum CMU Proven Availability according to section 9.4.3.2 applicable over the Transaction Period  $TP$  at the moment of the notification  $t_{notif}$ ;
- $\text{Obligated Capacity}_{max}(CMU, TP, t_{notif})$  is the maximum CMU Obligated Capacity according to the section 9.4.3.1 over the Transaction Period  $TP$  at the moment of the notification  $t_{notif}$ ;
- $\text{OptOut Volume}_{max}(CMU, TP, t_{notif})$  is the maximum Opt-out Volume of the CMU considered as IN according to section 5.4.2, a leading to a correction volume of the demand in the Auction according to § 291 over the Transaction Period  $TP$  at the moment of the notification  $t_{notif}$ .

### 10.4.8.2.3 Secondary Market Remaining Eligible Volume for Energy Constrained CMUs on their Non-SLA Hours

700. Energy Constrained CMUs are allowed to trade, take over and release obligations in the Secondary Market outside of their SLA Hours for hours considered in the AMT Moments.
701. Secondary Market transaction involving the non-SLA Hours of an Energy Constrained CMU is only authorized in ex-post, according to section 10.5.3.
702. For an Energy-Constrained CMU the Secondary Market Remaining Eligible Volume is the positive result of the Proven Availability reduced by Obligated Capacity over the Transaction Period. For CMUs without Daily Schedule, this rule implies that the CMU of the Buyer of an Obligation is only allowed to participate to the Secondary Market if it is subject to a Capacity Contract that covers the entire Transaction Period at the Transaction Date.

This is represented by the following formula:

$$\begin{aligned}
 SMREV(CMU, TP, t_{notif}) & \\
 &= \text{Max}\left(0 ; \text{Proven Availability}_{min}(CMU, TP, t_{notif})\right. \\
 &\quad \left. - \text{Obligated Capacity}_{max}(CMU, TP, t_{notif})\right)
 \end{aligned}$$

Where:

- $TP$  is the Transaction Period of the Secondary Market transaction according to section 10.4.7. The Transaction Period  $TP$  is a set of continuous hours exclusively on a continuous set of non-SLA hours for the CMU of the Seller of an Obligation in the AMT hours
- $t_{notif}$  is the moment at which ELIA acknowledges reception of the notification according to section 10.5.2;
- $Proven\ Availability_{min}(CMU, TP, t_{notif})$  is the minimum CMU Proven Availability according to the section 9.4.3.2.2 applicable over the Transaction Period  $TP$  at the moment of the notification  $t_{notif}$ ;
- $Obligated\ Capacity_{max}(CMU, TP, t_{notif})$  is the maximum CMU Obligated Capacity according to the section 9.4.3.1 over the Transaction Period  $TP$  at the moment of the notification  $t_{notif}$ ;

### 10.4.8.3 Last Published Derating Factor applying to a Secondary Market transaction

703. The Last Published Derating Factor of a Secondary Market transaction applying to the Secondary Market Remaining Eligible Volume, according to section 10.4.8.2, is defined by  $t_{notif}$  and the Delivery Period covering the Transaction Period. This is represented by:

$$Last\ Published\ Derating\ Factor(CMU, TP, t_{notif})$$

Where :

- $TP$  is the Transaction Period of the Secondary Market transaction according to section 10.4.7;
- $t_{notif}$  is the moment at which ELIA acknowledges reception of the notification according to section 10.5.2;

704. At  $t_{notif}$ , the Last Published Derating Factor applying to the Secondary Market transaction is the last published value of the Derating Factor applicable to the CMU of the Buyer of an Obligation's category applicable to the first Delivery Period covering (part of) the Transaction Period.

705. If at  $t_{notif}$ , no Derating Factor of the CMU's category is published for the Delivery Period covering the Transaction Period, the Last Published Derating Factor applying to the Secondary Market transaction is the last published value of the Derating Factor category for the CMU of the Buyer of an Obligation's category, applicable to the Delivery Period nearest to the first Delivery Period covering (part of) the Transaction Period.

### 10.4.9 Capacity Remuneration

706. The Capacity Remuneration is a value in €/MW/y.

707. The Capacity Remuneration corresponds to the original Capacity Remuneration (originally awarded in the Auction) listed for the Transaction of the CMU of the Seller of an Obligation, set out in the Capacity Contract annex A.

### 10.4.10 Strike Price

708. The Strike Price is a value in €/MWh.

709. If the Transaction of the Seller of the Obligation covers multiple Delivery Periods, the Calibrated Strike Price is accompanied by its indexation in time represented by its parameters:

- Auction year
- Auction type Y-4 or Y-1

If the Buyer of an Obligation's Transaction does not cover multiple Delivery Periods, the fields relating to the Calibrated Strike Price indexation parameters remain empty in the Secondary Market transaction notification(s).

710. The communicated Strike Price and, if applicable, its indexation equals the original Calibrated Strike Price and indexation parameters of the Transaction of the CMU of the Seller of an Obligation, set out in the Capacity Contract annex A.

### **10.4.11 Requirement of Financial Security**

711. In accordance with the section 11.2, for any ex-ante Secondary Market transaction notified at a certain moment in time  $t_{notif}$  prior to the start of the Delivery Period covering the start date of Transaction Period  $TP$ , the Buyer of an Obligation increases its Financial Security.

712. An ex-ante Secondary Market transaction notified to ELIA prior the start of the first Delivery Period covering the Transaction Period start date and for which the Buyer of an Obligation provides an insufficient (increase of the) Financial Security is rejected according to § 732.

## **10.5 SECONDARY MARKET TRANSACTION APPROVAL PROCESS**

713. Prequalified CRM Candidates and Capacity Providers, wishing to obtain approval for a Secondary Market transaction comply with the process described in this section.

714. Obtaining the approved status for a secondary market transaction is only possible in case of compliance with the conditions for participation in the Secondary Market, as detailed in section 10.3, and the requirements of the Secondary Market transaction, as detailed in section 10.4.

715. During an Auction process, Elia does not process any transactions on the Secondary Market with a Transaction Period that covers (part of) the Delivery Period of the Auction and with a Transaction Date later than 15 Working Days before the Bid submission deadline.

716. For CMUs that participate to an Auction, ELIA does not process any transactions on the Secondary Market with a Transaction Period that covers (part of) the Delivery Period(s) covered by the Bid(s) in the Auction between Bid submission and Capacity Contract signing for the selected Bids.

### **10.5.1 Notification of a Secondary Market transaction**

717. Any notification of a Secondary Market transaction made by the Secondary Market Parties or by an Exchange is submitted via the CRM IT Interface.

718. In case the Parties on the Secondary Market have not mandated an Exchange, a first Party on the Secondary Market submits a notification to ELIA via the CRM IT Interface containing all the information relating to the Secondary Market transaction, after which the second Party on the Secondary Market confirms or rejects it. Such confirmation or rejection of the secondary Party on

the Secondary Market is not required if the Buyer of an Obligation and Seller of Obligation are the same Capacity Provider.

719. If three Working Days after the first notification by a Party on the Secondary Market, the other party does not confirm the notification, ELIA communicates at the latest the next Working Day by email and/or via the CRM IT Interface to the Parties on the Secondary Market, the rejection of the Secondary Market transaction.

In such a case, the Secondary Market transaction external ID used by the issuer of the first notification cannot be used for a subsequent Secondary Market transaction notification issuance between the same Secondary Market Parties.

720. In case of a Secondary Market transaction notified by an Exchange, according to § 672, the notification process of the Secondary Market transaction consists of one single notification, with the content as detailed in § 668. The Exchange carries out this notification content through its individual access to the CRM IT Interface.

## **10.5.2 Acknowledgement of receipt by ELIA**

721. ELIA acknowledges receipt of the notifications in respect of the Parties on the Secondary Market or the Exchange (as applicable) in compliance with sections 10.4.1 and 10.5.1:

- in case of Secondary Market transaction, notified by the Parties on the Secondary Market, the acknowledgement of reception is sent by ELIA to the Parties on the Secondary Market within a maximum of one Working Day after reception of the latest notification.
- in case of a Secondary Market transaction notified by an Exchange, the acknowledgement of receipt is sent by ELIA within one Working Day after receipt of the notification, according to § 720.

The acknowledgment of receipt includes:

- the notification of the Secondary Market transaction details (as described in section 10.5.1)
- the Transaction Date which is (and logged as) the official acknowledgement of receipt creation timestamp (date and time) by ELIA.

## **10.5.3 Determination of the Ex-ante or Ex-post status of the Secondary Market transaction**

722. Elia uses the Transaction Date to determine automatically the ex-ante or ex-post status of a Secondary Market transaction.

An ex-ante Secondary Market transaction has a Transaction Date before the start date and time of a Transaction Period.

An ex-post Secondary Market transaction has a Transaction Date after or coinciding with the start date and time of a Transaction Period.

## **10.5.4 Processing of the Secondary Market transaction by Elia**

723. ELIA processes the Secondary Market transaction.

724. The nine possible statuses of a Secondary Market transaction notified to ELIA are either:

- "Submitted"
- "Cancelled"
- "Rejected by the CRM Actor"
- "In Process"
- "Rejected by ELIA"
- "Approved by ELIA"
- "Contract refused"
- "Contract signed"
- "Closed"

725. The up-to-date status of the Secondary Market transaction is available on the CRM IT Interface.

726. Simultaneous notifications being sent to ELIA are processed according to their Transaction Date.

727. Without prejudice to the previous paragraph, no later than two Working Days after confirming receipt, ELIA processes (i.e. approves or rejects) the Secondary Market transaction in the event that:

- The processing of the transaction is not subject to the approval or rejection of a transaction with an earlier Transaction Date. This implies that the respect of the restrictions on the Secondary Market Capacity for both the Seller of the Obligation's CMU (cf. section 10.4.8.1 ) and the Buyer of the Obligation's CMU (cf. section 10.4.8.2) is not subject to the processing of a transaction with an earlier Transaction Date.
- The processing of the transaction is subject to the approval or rejection of one or more transaction(s) with an earlier Transaction Date , but this (these) transaction(s) have been rejected or approved and duly recorded in Annex A of the Capacity Contract (implying that the Annex A of both Parties on the Secondary Market are signed by the Party on the Secondary Market and ELIA), according to section 10.6, for the two Secondary Market Parties.

728. In the event that paragraph 727 does not apply, and the processing of the transaction is thus subject to the approval or rejection of a transaction with an earlier Transaction Date, Elia processes (i.e. approves or rejects) the Secondary Market transaction no later than two Working Days after the the rejection or, in the event of approval, of the registration of this (these) other transaction(s) with an earlier Transaction Date in Annex A of the Capacity Contract according to section 10.6.

729. The Secondary Market transaction is "approved" if it respects all Secondary Market participation conditions according to section 10.3, Secondary Market transaction requirements according to section 10.4 and the related process steps according to sections 10.5.1, 10.5.2, 10.5.3 and 10.5.4.

730. If at least one of the conditions in the above-mentioned sections is not respected, ELIA rejects the Secondary Market transaction.

731. A maximum of fifty notifications of Secondary Market transactions involving the same CMU are authorized within a same calendar day. Once this limit reached, new Secondary Market transactions are automatically rejected.
732. In case of reasonable doubts of ELIA on whether a Secondary Market transaction, or a group of Secondary Market transactions, might be affected by or constitute anti-competitive behaviour or market abuse attributable to the Prequalified CRM Candidate or Capacity Provider, ELIA communicates the details of the Secondary Market transaction or group of Secondary Market transactions, including the content as detailed in section 10.4, its process steps and timings, to CREG within five Working Days after ELIA's transaction approval. .

#### **10.5.4.1 Approval or rejection of a Secondary Market transaction by ELIA**

733. ELIA notifies the Parties on the Secondary Market, or the Exchange, of the final status ("approved" or "rejected") of a Secondary Market transaction.

The "approved" status given by ELIA is a necessary condition to initiate the contractual modifications applied by ELIA according to section 10.6.

734. In case of an approved Secondary Market transaction, ELIA provides directly two sets of emails confirming the 'approved' status of the Secondary Market transaction.

735. An initial set of emails is sent to:

- the Seller of an Obligation; and
- the Exchange, if applicable

These emails contain the following information relating to the Secondary Market transaction approved:

<b>Information</b>	<b>Type</b>	<b>Unit</b>	<b>Information</b>
<b>Secondary Market transaction external ID</b>	Free field of six alphabet letters followed by six digits	NA	The automatically generated ID of the Secondary Market transaction
<b>Seller of an Obligation</b>	Capacity Provider ID	NA	Identification of the Capacity Provider of the CMU of the Seller of an Obligation and considered as the Seller of an Obligation
<b>CMU of the Seller of an Obligation</b>	CMU ID	NA	Identification of the CMU of the Seller of an Obligation
<b>Transaction of the Seller of an Obligation's CMU</b>	Transaction ID	NA	Identification of the Transaction from which the obligation is deducted of the CMU of the Seller of an Obligation
<b>Secondary Market Capacity</b>	Decimal number	MW	The volume of the Secondary Market Capacity that is transferred

<b>Transaction Period</b>	Date / Time to Date / Time	Time	The Transaction Period indicating the start date/time until the end date/time (included)
<b>Capacity Remuneration</b>	Decimal number	€/MW/year	The Capacity Remuneration of the identified Transaction of the CMU of the Seller of an Obligation
<b>Calibrated Strike Price of the Transaction</b>	Decimal number	€/MWh	The Calibrated Strike Price of the identified Transaction of the CMU of the Seller of an Obligation
<b>Strike Price indexation Auction year</b>	Integer or "NA"	Year	The Calibrated Strike Price indexation in time represented by its parameter Auction year
<b>Strike Price indexation Auction type</b>	"Y-4", "Y-1" or "NA"		The Calibrated Strike Price indexation in time represented by its parameter Auction type Y-4 or Y-1
<b>Transaction Date</b>	Date / Time	Time	The acknowledgment of receipt date/time

*Table 10 – Content of the approved transaction on the Secondary Market*

A second set of emails is sent to:

- the Buyer of an Obligation; and
- the Exchange, if applicable

These emails contain the following information relating to the Secondary Market transaction approved:

<b>Information</b>	<b>Type</b>	<b>Unit</b>	<b>Information</b>
<b>Secondary Market transaction external ID</b>	Free field of six alphabet letters followed by six digits	NA	The automatically generated ID of the Secondary Market transaction
<b>Buyer of an Obligation</b>	Capacity Provider ID	NA	Identification of the Capacity Provider or Prequalified CRM Candidate of the CMU taking over the obligation and considered as the Buyer of an Obligation
<b>CMU of the Buyer of an Obligation</b>	CMU ID	NA	Identification of the CMU taking over the obligation
<b>Secondary Market Capacity</b>	Decimal number	MW	The volume of the Secondary Market Capacity that is transferred
<b>Transaction Period</b>	Date / Time to Date / Time	Time	The Transaction Period indicating the start date/time until the end date/time (included)



<b>Capacity Remuneration</b>	Decimal number	€/MW/year	The Capacity Remuneration of the identified Transaction of the CMU of the Seller of an Obligation
<b>Calibrated Strike Price of the Transaction</b>	Decimal number	€/MWh	The Calibrated Strike Price of the identified Transaction of the CMU of the Seller of an Obligation
<b>Strike Price indexation Auction year</b>	Integer or "NA"	Year	The Calibrated Strike Price indexation in time represented by its parameter Auction year
<b>Strike Price indexation Auction type</b>	"Y-4", "Y-1" or "NA"		The Calibrated Strike Price indexation in time represented by its parameter Auction type Y-4 or Y-1
<b>Last Published Derating Factor</b>	Decimal number	No unit	The Derating Factor applicable on the Secondary Market Capacity for the CMU taking over the obligation according to 10.4.8.3
<b>Transaction Date</b>	Date / Time	Time	The acknowledgment of receipt date/time

*Table 11 - Content of the approved transaction on the Secondary Market*

736. In case of a 'rejected' status Secondary Market transaction, ELIA sends an email to the following recipients, indicating the reason for the rejection and the list of requirements in sections 10.3 and 10.4 that were not respected:

- the Seller of an Obligation: and
- the Buyer of an Obligation; and
- the Exchange, if applicable.

737. In case of rejection of a Secondary Market transaction the Seller of an Obligation remains responsible for the obligation envisaged for transfer. If the Parties on the Secondary Market nevertheless want to carry out their transaction, a new Secondary Market transaction with updated and required data can be re-submitted to ELIA with another Secondary Market transaction external ID according to section 10.4.1.

738. Any contestation regarding a "rejected" Secondary Market transaction has to be dealt with according to chapter 14.

## **10.6 CONTRACTUAL IMPACT OF A TRANSACTION ON THE SECONDARY MARKET**

### **10.6.1 General provisions**

739. An approved Secondary Market transaction leads to a full transfer of the obligation of the Secondary Market Capacity during the Transaction Period from the Seller of an Obligation to the Buyer of an Obligation, after both Parties on the Secondary Market and ELIA have signed the adapted Annexes A of the Capacity Contract, according to the modalities set out in the present section.

This section involves solely the Seller of an Obligation, the Buyer of an Obligation and ELIA, and therefore does not include the Exchange.

ELIA applies the modifications to the Capacity Contracts and their Transactions as detailed in section 10.6.2.

## 10.6.2 Contractual implementation of the transaction

740. At the latest two Working Days after the approval of a Secondary Market transaction, ELIA sends a new Annex A of the Capacity Contract to the Buyer of an Obligation and an updated Annex A of the Capacity Contract to the Seller of an Obligation in the format of Table 12 and Table 13 below. If the Buyer of an Obligation has not signed a Capacity Contract yet, the Buyer of Obligation signs the most recent version of the Capacity Contract as part of the contractual implementation.

741. Table 12 below presents the format of the annex A for the Buyer of an Obligation:

Capacity Provider ID	
CMU ID	
Market Type (Secondary Market)	
Financial Security ID (if applicable)	
Contracted Capacity (MW)	
Transaction Period	
Pre-delivery Period	
Transaction Date	
Transaction Validation Date.	To be completed by ELIA at the moment of ELIA's signature of the Annex A.
Calibrated Strike Price	
Auction Type (Y-4;Y-1)	
Year of Auction	
Derating Factor	
Derating Factor without Associated Delivery Points (if applicable)	
Capacity Remuneration	

Table 12: Format of Annex A for the Buyer of an Obligation

742. Table 13 below presents the format of the annex A for the Seller of an Obligation:

Capacity Provider ID	
CMU ID	
Transaction ID	
Contracted Capacity (MW)	
Transaction Period	
Financial Security ID	
Transaction Date	
Transaction Validation Date	To be completed by ELIA at the moment of ELIA's signature of the Annex A.

*Table 13: Format of Annex A for the Seller of an Obligation*

ELIA effects the following updates to Annex A to the Capacity Contract of the Seller of an Obligation:

- In case of an ex-post Secondary Market transaction, if the Transaction of the Seller of an Obligation is ex-ante and the CMU of Seller of an Obligation is an Energy Constrained CMU, the Contracted Capacity is reduced by the Secondary Market Capacity multiplied by the Derating Factor of the CMU's Transaction of the Seller of an Obligation on the entire calendar day to which the Transaction Period applies.
- Otherwise, the Contracted Capacity is reduced by the Secondary Market Capacity on the Transaction Period.

743. Both Parties on the Secondary Market have 3 Business Days to sign the new Annex A of the respective Capacity Contract. If one of the Parties on the Secondary Market fails to duly sign the new Annex A of the Capacity Contract, ELIA cancels the Secondary Market transaction. If the Buyer of an Obligation has already signed a Capacity Contract, he only signs the new Capacity Contract annex A to which the new Transaction following the Secondary Market transaction as detailed in § 741 is assigned. If the Buyer of an Obligation has not signed a Capacity Contract yet, the most recent version of the Capacity Contract is signed as part of the contractual implementation.

744. ELIA signs the updated Annex A of the Seller of Obligation and the new Annex A of the Buyer of Obligation at the latest 10 Business Days after the Secondary Market transaction approval, but subject to receipt of the signed Annex A from both the Buyer of an Obligation and the Seller of an Obligation (cf. § 743 above). ELIA signs the Annex A of both Parties on the Secondary Market on the same date, but first signs the Annex A of the Buyer of an Obligation and afterwards the updated Annex A of the Seller of an Obligation.

745. The Transaction Validation Date of a Secondary Market Transaction is equal to the date and time stamp of ELIA's signature of the updated Annex A of the Seller of an Obligation.

746. By way of derogation from § 744, if ELIA or the Capacity Market Auditor, in accordance with article 9 of the Royal Decree on "Monitoring", transmits an ad hoc report to CREG within five Working Days after approval of the Secondary Market transaction ", and CREG does not ask ELIA to cancel

the Secondary Market Transaction in question within ten Working Days following approval of the Secondary Market transaction, then :

- ELIA signs the updated Annex A of the Seller of Obligation and the new Annex A of the Buyer of Obligation at the latest 15 Business Days after the transaction approval;
- the Transaction Validation Date of a Secondary Market Transaction is equal to the date and time stamp of ELIA's signature of the updated Annex A of the Seller of an Obligation.

747. If, in accordance with article 20 of the Royal Decree on "Monitoring", the CREG asks ELIA to cancel the Secondary Market transaction, according to article 20 of the Royal Decree Control, the status of the Secondary Market transaction is changed to "rejected".

### **10.6.3 Transaction impact for the Buyer of an Obligation**

748. The Capacity Remuneration, Pre-delivery control, the Availability Obligations, Availability Penalties and the Payback Obligation are applied to the Buyer of an Obligation for the Secondary Market Capacity on the Transaction Period.

749. For the Transaction Period, the Buyer of an Obligation will be remunerated by ELIA for the Secondary Market Capacity instead of the Seller of an Obligation, applying the Capacity Remuneration which was transferred via the Secondary Market transaction, in accordance with the terms and conditions set out in the Capacity Contract.

### **10.6.4 Transaction impact for the Seller of an Obligation**

750. The Financial Security (if applicable) and the Payback Obligation are adapted in accordance with the updated Contracted Capacity of the Transaction of the Seller of an Obligation.

Following the decrease in Contracted Capacity on the Transaction Period, the Seller of an Obligation will no longer be remunerated by the ELIA for the Secondary Market Capacity.

751. Prior to the Transaction Validation Date, the Seller of an Obligation remains responsible for the Secondary Market Capacity, i.e. the (part of) the Contracted Capacity to which the Secondary Market transaction relates.

## **10.7 PENALTY ESCALATION FOR THE SECONDARY MARKET**

752. In addition to the applicable standard Unavailability Penalty escalation in accordance with § 624, a penalty escalation is provided in the event of recurring ignorance of the obligations resulting from a Secondary Market Transaction:

After three consecutive underperformances resulting in a Missing Capacity, according to section 9.6.1, of more than twenty percent of the Obligated Capacity, according to 9.4.3.1, the CMU of the Buyer of an Obligation is suspended for any new Secondary Market transaction. Notwithstanding this suspension, the CMU remains subject to the Pre-delivery control, Availability Obligations, Penalties & Payback Obligation all its ongoing Contracted Capacities.

No later than twenty Working Days after the third underperformance date and time detected here above, an Availability Test is organized on the CMU of the Buyer of an Obligation according to section 9.5.1.

If the Availability test is not successful, in accordance with the criterion stipulated in § 586, a suspension for new Contracted Capacities is activated for the Buyer of an Obligation, such that:

- the possibility for the Buyer of an Obligation of concluding new Secondary Market transactions is suspended, for all its CMUs, until the end of the current Delivery Period and for the full next Delivery Period. At the end of this suspension, the Buyer of an Obligation can participate again in the Secondary Market if it successfully prequalifies its CMUs;

753. However, the Buyer of an Obligation remains, where applicable, responsible for the already Contracted Capacities and previous obligations.

If the Availability Test is successful, in accordance with the criterion set out in § 586, the Buyer of an Obligation recovers the possibility of concluding further Secondary Market Transactions.

## 10.8 TIMING AND DURATION

### 10.8.1 Secondary Market implementation

754. The Secondary Market will open in the first semester of the year 2023. ELIA publicly communicates the information to the market and provides it in the CRM IT Interface. In any case, no Secondary Market transactions can be notified to ELIA prior the start date on which the Secondary Market opens.

### 10.8.2 Access to the Secondary Market platform

755. The Secondary Market is a continuous market.

756. Access to the Secondary Market platform is provided twenty-four hours a day, seven days a week with prior notification by ELIA of any scheduled unavailability according to paragraph 761.

757. ELIA will use its best efforts to reduce unscheduled unavailability of the Secondary Market platform and applies, where appropriate, a fallback procedure, according to section 15.7.

### 10.8.3 Termination of the Secondary Market

758. The Secondary Market remains available until the end of the last Transaction Period of all CRM Transactions plus twenty Working Days.

## 10.9 HIGH-LEVEL IT REQUIREMENTS

759. ELIA provides the CRM IT Interface, which enables each Prequalified CRM Candidate to submit Secondary Market transaction notification(s) to participate in the Secondary Market.

Access rights to this CRM IT Interface related to the Secondary Market are granted once the conditions according to section 10.3 are fulfilled. The Prequalified CRM Candidate is authorized to access it according to the Secondary Market timing and duration (as per section 10.8).

760. The CRM IT Interface performs automatic checks in order to validate the compliancy of the Secondary Market transactions as detailed in section 10.5 and in this context also informs the Prequalified CRM Candidate when and why some of their submitted Secondary Market transactions are considered as non-compliant.

761. If ELIA foresees a maintenance or encounters an unforeseen unavailability of the CRM IT Interface related to the Secondary Market, the fallback procedures according to chapter 15.
762. All Secondary Market transactions notified to ELIA through the CRM IT Interface instead of via the fallback procedure by the Prequalified CRM Candidate within the timeframe of a foreseen or, unforeseen unavailability of the CRM IT Interface, are considered as rejected as detailed in section [10.5.4.1](#).
763. If any, the duration of the unavailability of the CRM IT Interface is considered in the determination of the ex-ante or ex-post status of the Secondary Market transaction according to section 10.5.3. This consideration is also based on the timing  $t_{notif}$  of the notification issuance according to section 10.5.2. For the ex-post Secondary Market transactions, the authorized ten Working Days delay of notification after the start of the Transaction Period according to § 669 is extended by the duration of the unavailability of the CRM IT Interface.

# 11 FINANCIAL SECURITIES

## 11.1 INTRODUCTION

*This chapter establishes the obligation for the CRM Actor to provide the Financial Securities. Financial Securities serve as a guarantee in case of non-payment of potential penalties arising during the Pre-delivery Period.*

*This chapter is structured around five sections:*

*Section 11.2 provides several general provisions regarding the Financial Security obligation for Transactions on the Primary Market and the Secondary Market over the related Validity Period.*

*Section 11.3 elaborates on the valid types of Financial Securities, being a bank guarantee, an Affiliate guarantee and a cash payment.*

*Section 11.4 specifies the amount that should be secured by the Financial Security ('Secured Amount'), calculated in function of the volume that should be covered ('Volume to be Guaranteed') and the Required Level per MW.*

*Section 11.5 includes details on the modalities for calling upon the Financial Security.*

*Finally, section 11.6 describes the modalities for the release of the Financial Security.*

## 11.2 GENERAL PROVISIONS REGARDING THE FINANCIAL SECURITY OBLIGATION

764. The CRM Actor provides a Financial Security via the dedicated module of the CRM IT Interface<sup>25</sup> (section 2.6.3) for the transactions to which a Financial Security obligation applies (in accordance with section 11.2.1).

In case the CRM Actor is not able to submit the proof of the Financial Security to ELIA via the CRM IT Interface due to an IT problem, the fallback procedure described in section 15.8 applies.

765. The CRM Actor ensures that the sum of the amounts of the CMU's Financial Securities is at least equal to the Secured Amount (as calculated according to section 11.4) during any moment  $t$  of the CMU's Validity Period(s).

The amounts of the CMU's Financial Securities must not be adjusted to its initial level when ELIA has partly or fully invoked the Financial Security. However, towards every transaction to which a Financial Security obligation applies, the entire Secured Amount must again be covered by the sum of the amounts of the CMU's Financial Securities, in accordance with the rules described in section 11.2.1.

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<sup>25</sup> The original document also needs to be sent by post to ELIA in case it is not possible to provide the Financial Security electronically signed in an official manner via the CRM IT Interface.

766. In case multiple configurations located on the same geographical site – which would result in mutually exclusive Bids if these configurations would be offered in the Auction – are identified during the Prequalification Process, only one Financial Security must be provided to cover the highest Secured Amount of the concerned configurations.
767. For CMUs that form Linked Capacities, a single Financial Security can be used to cover them.
768. The Financial Security obligation for a CRM Candidate with Aggregated CMUs with common Delivery Points is determined jointly across all transactions to which a Financial Security obligation applies related to these CMUs. A single Financial Security can be used to cover them.
769. From the moment a Financial Security is submitted to ELIA, ELIA verifies the information included in it and informs the CRM Candidate whether the Financial Security is approved or rejected within fifteen Working Days starting from this Financial Security submission.
770. ELIA notifies the CRM Actor if:
- without prejudice to the situation referred to in § 777 and in accordance with § 765, the total amount of the CMU's Financial Securities is less than the Secured Amount; and/or
  - the Financial Security does not cover any more the Validity Period; and/or
  - ELIA notices that the minimum rating requirement (in accordance with § 789) is not respected anymore.

At the latest by 17:00 on the thirtieth Working Day after ELIA's notification, the CRM Actor ensures – by providing additional Financial Security – that the aggregate amount of the CMU's Financial Securities is again at least equal to the Secured Amount for any future moment  $t$  that is part of the related Validity Period (per § 765).

If ELIA does not receive an additional Financial Security within the aforementioned deadline, ELIA sends, without delay, a written reminder to the CRM Actor via the CRM IT Interface. The CRM Actor provides the additional Financial Security at the latest by 17:00 on the twentieth Working Day after this reminder.

If the CRM Actor fails to submit an additional Financial Security within the above mentioned deadline, ELIA is authorized, depending on the case to restrict access to the Primary Market or Secondary Market, or to reduce the Total Contracted Capacity accordingly so that the Financial Security obligation as described in § 765 is respected. If ELIA decides not to restrict access to the Primary Market or Secondary Market, or to reduce the Total Contracted Capacity, although the Financial Security obligation as described in § 765 is not respected, ELIA informs CREG and provides a written motivation on it to CREG.

771. The CRM Actor may provide different Financial Securities to ELIA at any time, each securing a different amount or a different period.
772. The CRM Actor may, subject to a prior written notice of at least twenty Working Days to ELIA, substitute one form of Financial Security for another provided that the replacement Financial Security respects the requirements detailed in section 11.3 and has the same expiry date or a longer one.

## **11.2.1 Transactions for which a Financial Security obligation applies**



### **11.2.1.1 Primary Market transactions**

773. A Financial Security obligation applies to every CMU that is being prequalified, or that is renewing its prequalification in accordance with section 5.6.1, in view of participating in the Auction.
774. To be able to participate to the Primary Market, the CRM Candidate submits its Financial Security via the Financial Security module of the CRM IT Interface (in accordance with section 2.6.3) no later than September 1 of the year during which the Auction is organised.
775. No Financial Security can be submitted or adapted to cover a Primary Market Financial Security obligation – except upon request of ELIA – from September 2 until October 31 inclusive.
776. The CRM Candidate is free to anticipate the Secured Amount (calculated in accordance with section 11.4) required to participate in the Auction, i.e. the Secured Amount that must be covered on the Bid submission deadline referred to in § 284.
777. If the Financial Security (or a combination of Financial Securities) covers less than ninety percent of the Secured Amount of the CMU at the Bid submission deadline (as referred to in § 284), access to the Primary Market is denied for this CMU and the corresponding Prequalification File is considered as “rejected” by ELIA.

If the Financial Security (or a combination of Financial Securities) covers at least ninety percent of the Secured Amount of the CMU at the Bid submission deadline (as referred to in § 284), the remaining part of the Financial Security may have to be provided in the event of the selection of one of the Bids relating to this CMU during the Auction, in accordance with the calculated Secured Amount of the CMU on the Transaction Validation Date, before the signature of the Capacity Contract in accordance with chapter 7.

### **11.2.1.2 Secondary Market transactions**

778. A Financial Security obligation applies for transactions on the Secondary Market:
- for which the Transaction Date falls before the start date of the Delivery Period containing the Transaction Period start date; and
  - for which the transactions on the Secondary Market result in an increase of the CMU’s Volume to be Guaranteed during the Validity Period related to the Transaction.
779. Within the context of the pre-delivery control process of a Virtual CMU, no Financial Security obligation applies in case a transaction on the Secondary Market is made to transfer the obligations of the Virtual CMU to an Existing CMU of the same Capacity Provider.
780. When a Transaction is subject to a Financial Security obligation, the notification of the transaction on the Secondary Market to ELIA must be made in parallel with the submission of the Financial Security via the Financial Security module of the CRM IT Interface.

## **11.2.2 Validity Period**

781. The Validity Period is the period related to a Transaction of a CMU during which the CRM Actor has to provide a valid Financial Security.
782. In case of multiple Transactions for a CMU with different Validity Periods, several Validity Periods are associated to this CMU.

783. The Validity Period is to be distinguished from the expiry date of the Financial Security, which is the date until which the Financial Security is valid and can be called upon. For a bank guarantee and an Affiliate guarantee, the expiry date is included in the template of annex 18.5.1 and 18.5.2 respectively. For a cash payment, the expiry date is unlimited in time.

784. The start date of the Validity Period differs depending on whether it applies to transactions on the Primary Market or on the Secondary Market:

- for a transaction on the Primary Market, the Validity Period starts on September 30 of the year of the Auction.
- for a transaction on the Secondary Market, the Validity Period starts on the Transaction Date.

Before the Transaction Validation Date, the Financial Security is only provisory. Therefore, the Financial Security can only be called upon as of the Transaction Validation Date (as detailed in section 11.5 and as mentioned in the templates included in annexes 18.5.1 and 18.5.2).

785. The end date of the Validity Period related to a Transaction depends on the status of the CMU:

- for an Existing CMU, the Validity Period ends fifty Working Days after the due date of the last credit note that can be issued by the CRM Actor (or in the absence of a credit note, the invoice issued by ELIA in its place), relating to any financial penalties after the issuance of the pre-delivery activity report, in accordance with the Capacity Contract;
- for an Additional CMU, the Validity Period ends ten Working Days after the first of the following two dates occurs: (i) the last day of the Transaction Period and (ii) five years as of the Transaction Validation Date. If the CMU has not reached the 'existing' status before the aforementioned end date, the Validity Period is extended by two years. In this case, an additional Financial Security may have to be provided in accordance with the procedure described in § 770. In addition to the penalty provided for in § 770, if the Capacity Provider fails to submit an additional Financial Security within the required deadline, a financial penalty for an amount of EUR 15,000 EUR/MW of the Contracted Capacity applies;
- for a Virtual CMU, the Validity Period ends ten Working Days after the end of the Transaction Period.

At the moment that an Additional CMU or Virtual CMU has reached the existing status as described in section 8.6, the Validity Period for an Existing CMU applies.

### **11.2.3 Transfer of Capacity Contract**

786. As stipulated in the Capacity Contract, ELIA's authorisation of the transfer of the Capacity Contract is subject to the condition that the transferred CMU(s) is (are) covered by a Financial Security provided by the buyer of the CMU, such that the Financial Security obligation as described in § 764 is respected by the transferee.

787. As soon as ELIA authorises the transfer of the Capacity Contract, in accordance with the terms provided for in the Capacity Contract, the Volume to be Guaranteed for the transferor is reduced to zero MW. In that case, the procedure for release of the Financial Security as detailed in section 11.6 applies.

## **11.3 TYPES OF FINANCIAL SECURITIES**

788. The following types of Financial Securities are permissible:

- a bank guarantee, which satisfies all of the requirements detailed in section 11.3.1;
- an Affiliate guarantee, which satisfies all of the requirements detailed in sections 11.3.1 and 11.3.2;
- a cash payment, which satisfies all of the requirements detailed in section 11.3.3.

### **11.3.1 Common requirements for a bank guarantee and an Affiliate guarantee**

789. The bank guarantee and the Affiliate guarantee respect the following requirements:

- they must be drafted in the form set out in respectively annex 18.5.1 and annex 18.5.2 of the Functioning Rules applicable at the moment that the Financial Security is submitted; and
- they are irrevocable, unconditional and on first-demand (on request of ELIA according to § 808); and
- they are issued by a financial institution or an Affiliate of the CRM Actor (as defined in § 792) that:
  - meets the minimum official rating requirements of 'BBB' issued by the credit rating agency Standard & Poor's (S&P) or of 'Baa2' issued by the credit rating agency Moody's Investor Services (Moody's); and
  - is permanently established in a Member State of the European Economic Area (either via its headquarters or via a branch).

790. The CRM Actor ensures that the minimum rating requirement (see previous §) is respected until the expiry date of the guarantee. The CRM Actor notifies ELIA via e-mail ([operations.crm@elia.be](mailto:operations.crm@elia.be)) at the latest two months after a 'downgrade event' resulting in the loss of the minimal rating required for the financial institution or Affiliate Company that issues the Security .

791. In this case, a new Financial Security must be provided in accordance with the procedure described in § 770.

### **11.3.2 Additional requirements for an Affiliate guarantee**

792. The corporate institution issuing the Affiliate guarantee is an Affiliate<sup>26</sup> of the company owning the CMU that, pursuant to the law applicable to the guarantor<sup>27</sup>, has the capacity to validly issue the guarantee. The guarantee must include the signature of persons that can validly represent the company according to its bylaws.

The CRM Actor provides a legal opinion together with the Affiliate guarantee, issued by a law firm with national or international reputation to ELIA, confirming that the guarantee issued by the Affiliate is legal, valid, binding and enforceable under the applicable law. The legal opinion is to

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<sup>26</sup> "Affiliate" in relation to the company owning the CMU means any company that, directly or indirectly, controls, is controlled by, or is under common control with such company owning the CMU. For the purposes of this definition, "control" has the meaning of art 1:14 of the Belgian Companies and Associations Code

<sup>27</sup> E.g. from a Belgian law perspective, the guarantor should be entitled according to its articles of association to issue such a guarantee and issuing the guarantee should be in accordance with its corporate interest.

be provided in English, French or Dutch.

### **11.3.3 Requirements concerning cash payment**

793. In case a CRM Actor elects to provide the Financial Security through a cash payment, the amount is transferred to a bank account of ELIA following the rules of section 11.2.1.

For each payment, the word 'Financial Security' and the concerned CMU ID(s) (cf. section 2.6.2.2) shall be indicated in the 'Message' field.

The said account shall not accumulate interest for the CRM Actor.

794. Once the Transaction has been validated, ELIA is entitled to take possession of the sums transferred for the cash payment by the CRM Actor, on the condition that ELIA returns an equivalent amount, to the extent that the Financial Security has not been called upon, when the cash payment is replaced with a bank guarantee or an Affiliate guarantee or when the Financial Security is released.

795. At the latest within six months after the cash payment has been made and without prejudice to section 11.2, the CRM Actor replaces the cash payment by a bank guarantee or an Affiliate guarantee.

In case no replacement is made within the required deadline, the CRM Actor provides an objective argumentation to ELIA in the form of a written statement signed by persons that can validly represent the company according to its bylaws, justifying why a replacement by a bank guarantee or an Affiliate guarantee is not feasible. ELIA (who is acting reasonably) notifies the CRM Actor within ten Working Days after receipt of the written statement.

If ELIA does not consider the written statement to be manifestly unreasonable, the cash payment remains in place.

If the arguments are deemed manifestly unreasonable, ELIA communicates the reasons to the CRM Actor and the CRM Actor is entitled to provide further argumentation to ELIA in the form of a written statement signed by persons that can validly represent the company according to its bylaws to ELIA within ten Working Days after receipt of ELIA's decision. In case the argumentation provided by the additional written statement is still not deemed satisfactory by ELIA (who is acting reasonably), a new Financial Security is to be provided (i.e. a bank guarantee or an Affiliate guarantee to replace the cash payment) in accordance with the procedure described in § 770.

## **11.4 SECURED AMOUNT**

796. For any moment  $t$  which is part of one or more Validity Period(s) of a CMU, the Secured Amount for a CMU (expressed in €) is calculated by multiplying the Required Level (expressed in €/MW) with the Volume to be Guaranteed (expressed in MW). The Required Level and Volume to be Guaranteed are further detailed below in sections 11.4.1 and 11.4.2 respectively.

### **11.4.1 Required Level**

797. The Required Level is determined at CMU level, in function of the status of the CMU.

### 11.4.1.1 Existing CMUs

798. For an Existing CMU, the Required Level equals 10,000 €/MW.

### 11.4.1.2 Additional CMUs

799. For a New Build CMU, the Required Level of Financial Security equals:

- 20,000 €/MW if the "Permitting Milestone" is relevant and has not been reached;
- 15,000 €/MW if the "Permitting Milestone" is not relevant or if the "Permitting Milestone" is relevant and has been reached.

800. For any other Additional CMU, the Required Level of Financial Security equals:

- 15,000 €/MW if the "Permitting Milestone" is relevant and has not been reached;
- 11,000 €/MW if the "Permitting Milestone" is not relevant or if the "Permitting Milestone" applies and has been reached.

### 11.4.1.3 Virtual CMUs

801. For a Virtual CMU, the Required Level equals 20,000 €/MW.

## 11.4.2 Volume to be Guaranteed

802. As a general rule, for any moment  $t$  which is part of one or more Validity Period(s) related to one or more transaction(s) of a CMU, the Volume to be Guaranteed for this CMU equals the Maximum Expected Contracted Capacity for the corresponding Delivery Period(s) that is/are (partly) covered by the Transaction Period of the transaction(s). The usage of the Expected Contracted Capacity, as detailed in § 804, serves to determine the Financial Security obligation also for transactions that have not yet been validated.

803. The Financial Security obligation of a CMU does not apply cumulatively when several Validity Periods overlap.

For each moment  $t$  during which one or more Validity Period(s) are in progress, the Volume to be Guaranteed of a CMU is equal to the Maximum Expected Contracted Capacity for the CMU for all the moments  $\tau$  part of one (or more) Delivery Period(s) that is/are (partly) covered by the Transaction Period of the transaction(s) to which a Financial Security obligation applies. This is represented by the following formula:

$$\text{Volume to be Guaranteed (CMU, } t) = \max_{\tau} [\text{Expected Contracted Capacity (CMU, } \tau, t)]$$

Where,

- $\tau$  represents a moment of the Delivery Period(s) related to the Validity Period(s) in progress at moment  $t$ ;
- *Expected Contracted Capacity (CMU,  $\tau, t$ )* is the expected contracted capacity at moment  $\tau$  that applies at moment  $t$  determined in accordance with the next §.

804. For any moment  $t$  which is part of one or more Validity Periods, the Expected Contracted Capacity at moment  $\tau$  for a CMU corresponds to the sum of the CMU's Contracted Capacities that respect the following conditions:
- the corresponding Transaction Validation Date is prior to the start of the Delivery Period of which moment  $\tau$  is part; and
  - the corresponding Transaction Period covers partially or totally the Delivery Period of which moment  $\tau$  is part.
  - Additionally, in case the transaction has not been validated at moment  $t$ , also the following volumes are taken into account in the total:
  - in case the Validity Period relates to a Primary Market transaction:
    - the volume considered is the sum of the Eligible Volume and Associated Eligible Volume, if applicable, or the Remaining Eligible Volume, thereby assuming that the total volume that can be offered in the Auction will be contracted;
    - the number of Delivery Periods during which the volume considered applies corresponds to the number of Delivery Periods associated with the Capacity Category in which the CMU has been classified by the CREG; or
  - in case the Validity Period relates to a Secondary Market transaction, the Secondary Market Capacity related to the transaction, thereby assuming that ELIA will approve the transaction.
805. The Volume to be Guaranteed for a moment  $t$  that is part of one or more Validity Period(s) (calculated in accordance with §§ 803 and 804) for a CMU can change over time in function of the Transactions on the Primary Market and/or on the Secondary Market. This is also illustrated by some numerical examples in annex 18.5.5.

## 11.5 CALL UPON THE FINANCIAL SECURITY

806. The Financial Security can only be called upon by ELIA as of the Transaction Validation Date and only when the following penalties remain unpaid:
- the financial penalties resulting from the pre-delivery control (chapter 8); or
  - the penalty due in the event of the non-signature of the Capacity Contract (chapter 7).
807. In order to be able to validly call upon the Financial Security, the following procedure must be followed:
- **in case of financial penalties resulting from the pre-delivery control**, the Capacity Provider issues a credit note or, in the absence of the credit note, ELIA issues an invoice, as foreseen in the Capacity Contract;
  - in case of penalty resulting from the non-signature of the Capacity Contract,
    - ELIA sends a reminder to the Capacity Provider via the CRM IT Interface within ten Working Days starting from the deadline for the signature of the Capacity Contract;
    - if the CRM Actor does not sign the Capacity Contract within ten Working Days starting from the date of this reminder, ELIA issues an invoice for the penalties arising from the non-signature of the Capacity Contract. The due date of this invoice is thirty Working Days from the invoice date;

- **in both cases**, if the credit note or the aforementioned invoice remains unpaid at the due date, ELIA sends a reminder to the Capacity Provider via the CRM IT Interface within ten Working Days starting from the due date.

In this reminder, ELIA informs the Capacity Provider of:

- the Transaction(s) and associated Financial Security(ies) that relate to these unpaid credit notes or the aforementioned invoice;
- that it will call upon the Financial Security within ten Working Days starting from the date of this reminder in case the credit note or the aforementioned invoice remains unpaid;
- in case multiple Financial Securities cover such Transaction(s), the Capacity Provider can indicate to ELIA which Financial Security(ies) will be used first in response to this reminder.
- if the Capacity Provider does not pay the credit note or the aforementioned invoice within ten Working Days after ELIA has sent the reminder via the CRM IT Interface, ELIA has the right to call upon the Financial Security.
- in order to validly call upon a bank guarantee or an Affiliate guarantee, ELIA provides a written statement to the issuer of the Financial Security that the Capacity Provider has not fulfilled its payment obligations during the Pre-Delivery Period or related to the signature of a Capacity Contract, arising from the Functioning Rules. In addition, ELIA provides a copy of the credit note or the aforementioned invoice related to the unpaid due penalties to the issuer of the Financial Security. ELIA sends a copy of this written statement and the credit note or the aforementioned invoice related to the unpaid due penalties to the Capacity Provider via the CRM IT Interface within ten Working Days after providing the written statement to the issuer of the Financial Security;
- in order to validly call upon a cash payment, ELIA provides the CRM Actor via the CRM IT Interface with a written statement explaining that it has not fulfilled its payment obligations during the Pre-Delivery Period or related to the signature of a Capacity Contract, arising from the Functioning Rules.

808. If ELIA calls upon the CMU's Financial Securities at any moment  $t$ , which is part of one or more Validity Periods, and for which the CRM Actor has submitted several Financial Securities to cover the Secured Amount, the Financial Securities will be used on a prorata basis, unless the CRM Actor has informed ELIA of which Financial Security(ies) should be claimed first in accordance with § 711. For each Financial Security, the claimed amount is calculated by multiplying the total amount of the claim by the ratio between the amount of the Financial Security at moment  $t$  and the total amount of all the Financial Securities that have been submitted at that moment  $t$ .

809. In line with the description in § 765, the amount of the Financial Security must not be adjusted to the initial level at the moment ELIA partly or fully invokes the Financial Security.

## 11.6 RELEASE OF THE FINANCIAL SECURITY

810. A full or partial release of a Financial Security is possible at certain defined moments, which are described in section 11.6.1. The procedure for such releases is described in section 11.6.2.

### 11.6.1 Release moments

811. A full or a partial release of all the Financial Securities related to a CMU is only possible if and to the extent that the Secured Amount for this CMU is lower than the aggregated amount of those Financial Securities minus the amounts of the Financial Securities that have been invoked by ELIA since the last Transaction and when there are no outstanding penalties related to the CMU.

812. A release of the Financial Securities related to a Virtual CMU is only possible from the moment that all of its obligations have been successfully transferred to one or more Existing CMUs.
813. The notification to the CRM Actor for a Financial Security release – when relevant – is launched by ELIA only within the ten Working Days starting from the following defined moments:
- at the moment of a Primary Market Transaction Validation Date;
  - at the moment of the Capacity Contract signature;
  - after the Capacity Contract signature, whenever the "Permitting Milestone" has been reached and/or whenever the status of the CMU changes from additional/virtual to existing;
  - at the moment of a rejection of a Secondary Market transaction;
  - at the end of the Validity Period;
  - at the moment of the transfer of the Capacity Contract;
  - at the moment a cash payment is replaced by another type of Financial Security.

## **11.6.2 Procedure for the release**

814. Whenever a full or partial release is applicable in accordance with §§ 811 and 813, the following procedure applies:
- ELIA notifies the CRM Actor via the CRM IT Interface within ten Working Days starting from one of the moments defined in § 813, about the possibility for a Financial Security(ies) release linked to the CMU, informing it of the CMU ID and the amount (in €) of the applicable release;
  - Within ten Working Days after the notification of ELIA, the CRM Actor communicates its choice of whether or not to proceed with the release of the Financial Security(ies) to ELIA via the CRM IT Interface; If the release concerns more than one Financial Security and if the release is a partial release, the CRM Actor also communicates the manner in which it intends to split the release between all the Financial Securities<sup>28</sup>.
815. Depending on the choice made by the CRM Actor as per the previous §:
- either ELIA releases the submitted Financial Security(ies) in accordance with the procedure detailed in § 816;
  - or the submitted Financial Security is not released and remains available for future transactions on the Primary Market and/or the Secondary Market, as long as the expiry date of the Financial Security is not exceeded.
816. From the moment the release is approved by the CRM Actor or when the deadline as described in § 814 has expired if no choice has been made by the CRM Actor, the release will be carried out by ELIA within a maximum of ten Working Days. In order for the release to be considered as executed, ELIA must perform the following actions:

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<sup>28</sup> Without answer from the CRM Actor regarding that point, ELIA will split the release amount on a prorata basis between all the Financial Securityies.



- notify the CRM Actor of the release via the CRM IT Interface; and
- make a refund based on the amount to be released and the choice made as per § 814; or
- notify the bank or the Affiliate of this release via a registered letter, including at least the CMU ID, the bank reference of the Financial Security concerned and the moment released.

# 12 PAYBACK OBLIGATION

## 12.1 INTRODUCTION

*A Payback Obligation applies to the Capacity Providers in accordance with the rules described in this chapter, relating to the calculation of the Payback Obligation, its communication to the Capacity Provider, its settlement and invoicing.*

*This chapter applies in addition to and without prejudice to the Electricity Act and its implementing Royal Decrees, in particular in that they set out rules applicable to the Payback Obligation.*

*Section 12.2 describes the general provisions applicable to the Payback Obligation.*

*Section 12.3 describes the parameters necessary for the application of the Payback Obligation formula, the Payback Obligation formula and the Stop-Loss Amount of a Transaction.*

*Finally, section 12.4 describes the process followed by ELIA to determine the Effective Payback Obligation of a Capacity Provider CMU's Transaction.*

## 12.2 GENERAL PROVISIONS

817. The Payback Obligation applies to all CMUs' Transactions at any moment of their Transaction Period when the Reference Price exceeds the Strike Price.
818. The Payback Obligation is calculated in accordance with a formula based on the positive difference between:
  - the Reference Price, in €/MWh; and
  - the Strike Price, in €/MWh.
819. The Payback Obligation of a Transaction is calculated for every hour of the Delivery Period covered by the Transaction Period and is expressed in €/h.
820. The Payback Obligation calculations are performed by ELIA with the contractual and operational data related to (a) Transaction(s) and parameters of the CMU, which are communicated to ELIA by the Capacity Provider. These parameters include the Reference Price as detailed in section 12.3.1.1, the Strike Price as detailed in section 12.3.1.2 and the remaining parameters are to be found in the Annex A of the Capacity Contract.
821. A granularity of 0,01 MW is applicable for MW data.
822. A granularity of 0,01 is applicable for € and €/MWh data.
823. If the values of an element of the formulas are expressed in MW or €/MWh and have a lower granularity than an hour, an hourly average of those values applies to reach the hourly granularity.

824. The result of each formula is rounded up or down to the nearest number, with a rounding-up if there is no nearest number<sup>29</sup>.

## 12.3 MODALITIES OF THE PAYBACK OBLIGATION

825. This section describes, for a CMU's Transaction, the parameters necessary for the application of the Payback Obligation formula and the Stop-Loss Amount of a Transaction.

826. The Payback Obligation modalities may vary depending on the following CMU and Transaction features:

- Energy Constrained or Non-energy Constrained CMU ;
- CMU with Daily Schedule or without Daily Schedule ;
- Ex-ante Transaction or ex-post Transaction ;
- Transaction from the Primary Market or the Secondary Market.

### 12.3.1 Parameters of the formula of the Payback Obligation

#### 12.3.1.1 Reference Price

827. The Reference Price is a parameter of a CMU. It is observed for each hour  $t$  in the related Day-ahead Market under the form of hourly prices and expressed in €/MWh as *Reference Price* ( $CMU_{id,t}$ ), where:

- $CMU_{id}$  is the CMU unique identifier available in the Capacity Contract and in the CRM IT Interface and
- $t$  is the hour to which the Payback Obligation calculation applies.

828. The same Reference Price is applicable to the Payback Obligation of all Transactions of the CMU at the moment  $t$ .

#### 12.3.1.1.1 Initial choice of NEMO for a CMU

829. In accordance with § 471, the Prequalified CRM Candidate (or Capacity Provider) determines, before the start of the Transaction Period, as part of the pre-delivery control of its CMU, a NEMO active in the Belgian Day-ahead Market for setting its Reference Price.

The CMU's chosen NEMO Belgian Day-ahead Market hourly prices are used as *Reference Price* ( $CMU_{id,t}$ ) in the Payback Obligation calculation.

In case of absence of the NEMO determination during the pre-delivery control as per § 471 or in

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<sup>29</sup> As an example, a number ending by 0,005 is therefore rounded up to 0,01 and a number ending by 0,0049 is rounded down to 0,00.

case of missing or conflicting data related to a specific CMU's NEMO choice, the Day-ahead Market Price as defined in chapter 3 is used as fallback value.

### 12.3.1.1.2 Modification of the NEMO of a CMU

830. The Capacity Provider can, for each CMU, notify to ELIA a modification of its choice of NEMO for the Reference Price of a CMU as defined in accordance with § 471.
831. As soon as the change of NEMO is notified to ELIA, it becomes applicable in the Payback Obligation calculation, ELIA confirms the reception of the notification of this change to the Capacity Provider within five Working Days.

### 12.3.1.2 Strike Price

832. The section refers to the Calibrated Strike Price, which is a value associated to a Transaction for the entire Delivery Period, that is indexed according to section 12.3.1.2.2 and is required for the determination of the Strike Price of a Transaction. When an Aggregated CMU benefiting from a multi-years contract associates on an annual basis with Associated Delivery Points, the Strike Price remains the one from the Transaction applicable to the CMU's multi-years Contract.
833. The Strike Price of a Transaction is represented by *Strike Price* ( $CMU_{id}, Transaction_{id}, t$ ) and expressed in €/MWh, where:
- $CMU_{id}$  is the CMU unique identifier available in the Capacity Contract and in the CRM IT Interface; and
  - $Transaction_{id}$  is the Transaction unique identifier as displayed on the CRM IT Interface; and
  - $t$  is the hour to which the Payback Obligation calculation applies within the Delivery Period.

#### 12.3.1.2.1 Calibrated Strike Price of a Transaction

834. The Calibrated Strike Price of an Auction is the Strike Price determined by the Ministerial Decree "Volume and Parameters" for the year in which the Auction takes place. It is represented by the *Calibrated Strike Price* ( $Auction\ year$ ) where  $Auction\ year$  is the year in which the Auction takes place.
835. The Calibrated Strike Price is a fixed value applicable in the Payback Obligation to all Transactions of the Primary Market resulting from the Y-4 or Y-1 Auctions at the Primary Auction results publication date. The Calibrated Strike Price applicable to a Payback Obligation resulting from a Secondary Market Transaction is determined according to section 10.4.10.

It is represented by the following formula:

$$\text{Calibrated Strike Price } (CMU_{id}, Transaction_{id}, t) = \text{Calibrated Strike Price } (Auction\ year)$$

where:

- $CMU_{id}$  is the CMU unique identifier available in the Capacity Contract and in the CRM IT Interface; and
- $Transaction_{id}$  is the Transaction unique identifier as displayed on the CRM IT Interface; and
- $t$  is the hour during the Transaction Period; and
- $Auction\ year$  is the year on which the Auction is organized.

### 12.3.1.2.2 Indexation of the Calibrated Strike Price of a Transaction in time

836. The Calibrated Strike Price of a Primary Market Transaction is indexed ex-post by application of a monthly update on the initial Calibrated Strike Price for the entire duration of the Capacity Contract respectively as of the start of the Delivery Period for capacities with a one year Capacity Contract and as of the first Delivery Period for capacities with a multi-year Capacity Contract as detailed in article 26 of the [placeholder to amendment of Royal Decree on Methodology] .
837. This indexation mechanism of the Strike Price of a Transaction is applicable to all capacities with a signed Capacity Contract.
838. The ex post indexed Calibrated Strike Price is equal to the sum of a fixed component and of a variable component :
- The fixed component is equal to the difference between the Calibrated Strike Price as detailed in § 835 and the DAM simple average prices for the winter months of the same years than as the ones used for the calibration of the Strike Price (referred to in § 835) as detailed in article 27 § 1 of the [placeholder to amendment of Royal Decree on Methodology] .
  - The value of the fixed component of the indexed Calibrated Strike Price remains, at all times, identical during the entire Transaction Period of a Transaction.
  - The variable component consists in the DAM simple average prices of the month from the ongoing Delivery Period for which the ex-post Indexed Calibrated Strike Price is calculated and is therefore adapted on a monthly basis after each month of the ongoing Delivery Period. It is added to the above mentioned fixed component of the indexed Calibrated Strike Price once per each month  $m$  after this same month  $m$  of the ongoing Delivery Period  $DP_{e_t}$  by ELIA. This is represented by the following formula:

$$\begin{aligned} & \text{ex post Indexed Calibrated Strike Price } (CMU_{id}, Transaction_{id}, t) \\ &= ( \text{Calibrated Strike Price } (CMU_{id}, Transaction_{id}, t) - \text{Average DAM ( winter months calibration )} ) \\ &+ \text{average DAM}_m \end{aligned}$$

Where:

- *Calibrated Strike Price* is the Calibrated Strike Price of the Auction Y-4 or Y-1 determined according to section 12.3.1.2.1 and indexed according to the above formula; and
- $CMU_{id}$  is the CMU unique identifier available in the Capacity Contract and in the CRM IT Interface; and
- $Transaction_{id}$  is the Transaction unique identifier as displayed on the CRM IT Interface; and
- $t$  is the hour in the Transaction Period that is linked to a Delivery Period  $DP_e$ ; and
- $DP_{e_t}$  is the Delivery Period linked to the hour  $t$  from the Transaction Period; and
- DAM represent the prices of the Day-ahead Market. In case, these prices would be unavailable due to missing data or any operational issues, the Day-ahead Market Price as defined in chapter 3 is used as fallback value for the calculations detailed above in this section.
- *Winter months calibration* represents the winter months that were used for the calibration of the Strike Price as detailed in article 26 of [placeholder to amendment of Royal Decree on Methodology] .

- $DAM_m$  equals the average monthly Day-ahead price of the specified month of the ongoing Delivery Period  $DPe_t$ .

839. The *Calibrated Strike Price* ( $CMU_{id}, Transaction_{id}, t$ ) is indexed once per month  $m$  after this same month of the ongoing Delivery Period  $DPe_t$  by ELIA by summing the fixed and the variable components described in § 838. It is available on the CRM IT Interface, prior to the Payback Obligation determination process (according to section 12.3.2). The practical details regarding the timing of the calculation of such ex-post Indexed Calibrated Strike Price are described in section 12.4.2.

840. For a Secondary Market Transaction, the ex post indexed Calibrated Strike Price corresponds to the Calibrated Strike Price of the Transaction of the Seller of an Obligation, listed in Annex A of the Capacity Contract and indexed based on the methodology described in this same section. This Calibrated Strike Price, the parameters Auction Year and Auction Type are listed in the notification of the Secondary Market transaction according to § 710 and are registered by ELIA in the Secondary Market Transaction as contractual parameter available in the Annex A of the Capacity Contract according to section 10.4.10. The Calibrated Strike Price is represented by *Calibrated Strike Price* ( $CMU_{id}, Transaction_{id}, t$ ) and is indexed once per month  $m$  after this same month  $m$  of the ongoing Delivery Period  $DPe_t$  by ELIA by summing the fixed and the variable components described in § 838.

This is represented by the same formula as the one applicable to the ex-post Indexed Calibrated Strike Price of a Primary Market Transaction.

### **12.3.1.2.3 Determination of the Strike Price of a Transaction of a CMU with Daily Schedule**

841. the Strike Price of a Transaction of a CMU with Daily Schedule is equal to the Calibrated Strike Price determined in accordance with section 12.3.1.2.1 and then indexed in accordance with section 12.3.1.2.2.

This is represented by the following formula:

$$\text{Strike Price } (CMU_{id}, Transaction_{id}, t) = \text{Calibrated Strike Price } (CMU_{id}, Transaction_{id}, t)$$

Where:

- $CMU_{id}$  is the CMU's unique identifier available in the Capacity Contract and in the CRM IT Interface; and
- $Transaction_{id}$  is the Transaction's unique identifier as displayed on the CRM IT Interface; and
- $t$  is an hour during the Transaction Period; and
- *Calibrated Strike Price* ( $CMU_{id}, Transaction_{id}, t$ ) is determined in accordance with section 12.3.1.2.1 and then indexed in accordance with section 12.3.1.2.2.

### **12.3.1.2.4 Determination of the Strike Price of a Transaction of a CMU without Daily Schedule**

842. The Strike Price of a Transaction of a CMU without Daily Schedule is the maximum between the Declared Market Price and the Calibrated Strike Price of the Transaction.

843. This is represented by the following formula:

$$\begin{aligned} \text{Strike Price } (CMU_{id}, \text{Transaction}_{id}, t) \\ = \max (DMP(CMU_{id}, t) ; \text{Calibrated Strike Price } (CMU_{id}, \text{Transaction}_{id}, t)) \end{aligned}$$

Where:

- $CMU_{id}$  is the CMU's unique identifier available in the Capacity Contract and in the CRM IT Interface; and
- $\text{Transaction}_{id}$  is the Transaction's unique identifier as displayed on the CRM IT Interface; and
- $t$  is an hour during the Transaction Period; and
- $DMP(CMU_{id}, t)$  is the Declared Market Price of the CMU according to section 9.4.2.3.3 on the hour  $t$ ; and
- $\text{Calibrated Strike Price } (CMU_{id}, \text{Transaction}_{id}, t)$  is determined according to section 12.3.1.2.1 and indexed in accordance with section 12.3.1.2.2.

### 12.3.1.3 Availability Ratio

844. The Availability Ratio of a CMU reflects the exemption of Payback Obligation in the event of planned or unplanned unavailability duly communicated by the Capacity Provider to ELIA in accordance with § 482.
845. The exemption is considered in the Availability Ratio by the Remaining Maximum Capacity Day Ahead according to § 482. This Availability Ratio is taken into account for the determination of the Payback Obligation.
846. For a Non-energy Constrained CMU, ELIA determines the CMU's equivalent capacity  $P_{equivalent}(CMU_{id}, t)$  of an hour as a derated quantity, which equals the Total Contracted Capacity of the CMU. In other words,  $P_{equivalent}(CMU_{id}, t)$  is equal to the expected Obligated Capacity of the CMU that would otherwise be required for an AMT Hour. This is represented by the following formula:

$$P_{equivalent}(CMU, t) = \text{Total Contracted Capacity } (CMU_{id}, t)$$

Where:

- $CMU_{id}$  is the CMU's unique identifier available in the Capacity Contract and in the CRM IT Interface; and
  - $t$  is an hour in the Transaction Periods of the CMU's Transactions.
847. For an Energy Constrained CMU, ELIA determines for the N hours of the CMU's SLA of the related day<sup>30</sup>, the CMU's equivalent capacity  $P_{equivalent}(CMU_{id}, t)$  as a non-derated quantity, which is equal to the expected Obligated Capacity of the CMU that would otherwise be required for an AMT Hour, which is an SLA Hour.  $P_{equivalent}(CMU, t)$  is determined by dividing the ex-ante Transactions Total Contracted Capacity of the CMU by the Derating Factor of the CMU in accordance with the

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<sup>30</sup> N is the number of hours specified in the SLA of the CMU selected during the Prequalification Process, in accordance with § 91 for the Delivery Period to which  $t$  is linked

definition proposed in chapter 3 and adding the ex-post acquisitions of obligations on top of 10.4.8).

This is represented by the following formula:

$$P_{equivalent}(CMU, t) = \frac{Total\ Contracted\ Capacity_{ex-ante}(CMU_{id}, t)}{Derating\ Factor(CMU, t)} + Total\ Contracted\ Capacity(CMU_{id}, t)_{ex-post}$$

Where:

- $t$  is an hour of the Delivery Period for which the CMU has selected an SLA during the Prequalification Process (in accordance with § 91); and
- $CMU_{id}$  is the CMU's unique identifier available in the Capacity Contract and in the CRM IT Interface; and
  - for a CMU with Daily Schedule,  $t$  is a measure of time which represents an SLA Hour, as defined in § 537, or an hour belonging to the set of hours having the highest Measured Power that are Non-SLA Hours forming with the SLA Hours a continuous period in time within a day. A Non SLA Hour(s) is (are) only considered on top of the SLA Hours of the CMU for the concerned day if the number of SLA Hours observed during the concerned day remains lower than the N hours of the CMU's SLA; and
  - for a CMU without Daily Schedule,  $t$  is a measure of time which represents an SLA Hour, as defined in § 539, or an hour belonging to the set of hours having the highest Active Volume that are Non-SLA Hours forming with the SLA Hours a continuous period in time within a day. A Non SLA Hour(s) is (are) only considered on top of the SLA Hours of the CMU for the concerned day if the number of SLA Hours observed during the concerned day remains lower than the N hours of the CMU's SLA;
- $Total\ Contracted\ Capacity_{ex-ante}(CMU_{id}, t)$  is the Total Contracted Capacity of the CMU ex-ante Transactions and the total Capacity of the Associated Delivery Points; and
- $Derating\ Factor(CMU_{id}, t)$  is the weighted average Derating Factor of all Transactions in Annex A of the CMU's Capacity Contract that constitute the  $Total\ Contracted\ Capacity_{ex-ante}(CMU_{id}, t)$ , calculated in accordance with the definition in chapter 3 during  $t$ ; and
- $Total\ Contracted\ Capacity(CMU_{id}, t)_{ex-post}$  is the sum of Contracted Capacities acquired in ex-post on the Secondary Market.

848. For an Energy Constrained CMU, ELIA determines for each of the other hours of the concerned day that differ from the N hours of the CMU's SLA, the CMU's equivalent capacity  $P_{equivalent}(CMU_{id}, t)$ , which equals the sum of the ex-post Contracted Capacities of the CMU Secondary Market Transactions for those hours. This is represented by the following formula:

$$P_{equivalent}(CMU, t) = Total\ Contracted\ Capacity(CMU_{id}, t)_{ex-post}$$

where:

- $CMU_{id}$  is the CMU's unique identifier available in the Capacity Contract and in the CRM IT Interface; and
  - for a CMU with Daily Schedule,  $t$  is a measure of time which is not an SLA Hour, as defined



in § 537, or an hour belonging to the set of hours having the highest Measured Power that are Non-SLA Hours forming with the SLA Hours a continuous period in time within a day. A Non SLA Hour(s) is (are) only considered on top of the SLA Hours of the CMU for the concerned day if the number of SLA Hours observed during the concerned day remains lower than the N hours of the CMU’s SLA; and

- for a CMU without Daily Schedule,  $t$  is a measure of time which is not an SLA Hour, as defined in § 539, or an hour belonging to the set of hours having the highest Active Volume that are Non-SLA Hours forming with the SLA Hours a continuous period in time within a day. A Non SLA Hour(s) is (are) only considered on top of the SLA Hours of the CMU for the concerned day if the number of SLA Hours observed during the concerned day remains lower than the N hours of the CMU’s SLA. N is the amount of hours specified in the CMU’s SLA selected during the Prequalification Process, in accordance with § 91, for the Delivery Period to which  $t$  is linked; and

- $Total\ Contracted\ Capacity(CMU_{id},t)_{ex-post}$  is the sum of Contracted Capacities ex-post of Secondary Market Transactions.

849. The Availability Ratio of a CMU for an hour is a value obtained by the division of the minimum between the CMU equivalent capacity  $P_{equivalent}(CMU_{id},t)$  and the Remaining Maximum Capacity DA for an hour, by the CMU equivalent capacity  $P_{equivalent}(CMU_{id},t)$  of that hour.

This is represented by the following formula:

$$Availability\ Ratio\ (CMU_{id},t) = \frac{Min(P_{equivalent}(CMU_{id},t); Remaining\ Maximum\ Capacity\ DA\ (CMU_{id},t))}{P_{equivalent}(CMU_{id},t)}$$

where:

- $CMU_{id}$  is the CMU’s unique identifier available in the Capacity Contract and in the CRM IT Interface; and
- $Transaction_{id}$  is the Transaction’s unique identifier as displayed on the CRM IT Interface; and
- $t$  is the hour on which the Payback Obligation calculation applies within the Transaction Period, when the Reference Price exceeds the Strike Price; and
- $P_{equivalent}(CMU_{id},t)$  is the CMU’s equivalent capacity as detailed in § 836 on the hour  $t$ ; and
- $Remaining\ Maximum\ Capacity\ DA\ (CMU_{id},t)$  is the CMU Remaining Maximum Capacity DA according to § 482 on the hour  $t$ .

## 12.3.2 Payback Obligation formula

850. The Payback Obligation formula is used to determine the amount due to ELIA by the Capacity Provider for a CMU’s Transaction for an hour  $t$  of the Transaction Period.

### 12.3.2.1 Payback Obligation for a Non-energy Constrained CMU’s Transaction

851. The Payback Obligation for a Non-energy Constrained CMU’s Transaction for an hour  $t$  is equal to the positive difference between the Reference Price and the Strike Price of the Transaction for this hour  $t$ , multiplied by the Contracted Capacity of the CMU Transaction and the Availability Ratio for the same hour  $t$ .

This is represented by the following formula:

$$\begin{aligned} \text{Payback Obligation } (CMU_{id}, Transaction_{id}, t) \\ = (\text{Reference Price } (CMU_{id}, t) - \text{Calibrated Strike Price}(CMU_{id}, Transaction_{id}, t)) \\ * \text{Contracted Capacity } (CMU_{id}, Transaction_{id}, t) * \text{Availability Ratio } (CMU_{id}, t) \end{aligned}$$

where:

- $CMU_{id}$  is the CMU's unique identifier available in the Capacity Contract and in the CRM IT Interface; and
- $Transaction_{id}$  is the Transaction's unique identifier as displayed on the CRM IT Interface; and
- $t$  is the hour to which the Payback Obligation calculation applies within the Transaction Period, when the Reference Price exceeds the Strike Price and for which an Availability Ratio is calculated; and
- $Reference Price (CMU_{id}, t)$  is determined according to section 12.3.1.1; and
- $Calibrated Strike Price (Transaction_{id}, t)$  is determined according to section 12.3.1.2.1 and indexed in accordance with section 12.3.1.2.2; and
- $Contracted Capacity (CMU_{id}, Transaction_{id}, t)$  is the Contracted Capacity of the CMU's Transaction on the hour  $t$  available in the Capacity Contract and the CRM IT Interface; and
- $Availability Ratio (CMU_{id}, t)$  is the CMU Availability Ratio according to section 12.3.1.3 on the hour  $t$ .

### 12.3.2.2 Payback Obligation for an Energy Constrained CMU's ex-ante Transaction

852. The Payback Obligation for the ex-ante Transaction of an Energy Constrained CMU on the SLA Hours is equal to the positive difference between the Reference Price and the Strike Price of the Transaction for an SLA hour  $t$ , multiplied by the Contracted Capacity of the CMU's Transaction and the Availability Ratio and divided by the Derating Factor of the Transaction for the same hour  $t$ .

This is represented by the following formula:

$$\begin{aligned} \text{Payback Obligation } (CMU_{id}, Transaction_{id}, t) \\ = (\text{Reference Price } (CMU_{id}, t) - \text{Calibrated Strike Price}(CMU_{id}, Transaction_{id}, t)) \\ * \frac{\text{Contracted Capacity } (CMU_{id}, Transaction_{id}, t)}{\text{Derating Factor}(Transaction_{id})} * \text{Availability Ratio } (CMU_{id}, t) \end{aligned}$$

where:

- $CMU_{id}$  is the CMU's unique identifier available in the Capacity Contract and in the CRM IT Interface; and
- $Transaction_{id}$  is the Transaction's unique identifier as displayed on the CRM IT Interface; and
- $t$  is the SLA Hour to which the Payback Obligation calculation applies within the Transaction Period, when the Reference Price exceeds the Strike Price and for which an Availability Ratio is calculated; and

- *Reference Price* ( $CMU_{id}, t$ ) is determined according to section 12.3.1.1; and
- *Calibrated Strike Price* ( $CMU_{id}, Transaction_{id}, t$ ) is determined according to section 12.3.1.2.1 and indexed in accordance with section 12.3.1.2.2; and
- *Contracted Capacity* ( $CMU_{id}, Transaction_{id}, t$ ) is the Contracted Capacity of the CMU Transaction on the hour  $t$  available in the Capacity Contract and the CRM IT Interface; and
- *Availability Ratio* ( $CMU_{id}, t$ ) is the CMU's Availability Ratio determined according to section 12.3.1.3 on the SLA Hour  $t$ ; and
- *Derating Factor* ( $Transaction_{id}$ ) is the Derating Factor associated to the Transaction to which the Calibrated Strike Price applies identified by its Transaction ID in Annex A of the CMU's Capacity Contract.

853. The ex-ante Transaction Payback Obligation equals zero on the Non-SLA Hours.

This is represented by the following formula:

$$Payback\ Obligation\ (CMU_{id}, Transaction_{id}, t) = 0$$

where:

- $CMU_{id}$  is the CMU's unique identifier available in the Capacity Contract and in the CRM IT Interface; and
- $Transaction_{id}$  is the Transaction's unique identifier as displayed on the CRM IT Interface; and
- $t$  is the hour, which is a Non-SLA Hour, to which the Payback Obligation calculation applies within the Transaction Period and for which an Availability Ratio is calculated in 12.3.1.3.

854. Demand Side Response (DSR) as defined in chapter 3 is exempted from a Payback Obligation payment.

### 12.3.2.3 Payback Obligation for an Energy Constrained CMU's ex-post Transaction

855. The Payback Obligation for the ex post Transaction of an Energy Constrained CMU for an hour  $t$  is equal to the positive difference between the Reference Price and the Strike Price of the Transaction for this hour  $t$ , multiplied by the Contracted Capacity of the CMU Transaction and the Availability Ratio for the same hour  $t$ .

This is represented by the following formula:

$$Payback\ Obligation\ (CMU_{id}, Transaction_{id}, t) = (Reference\ Price\ (CMU_{id}, t) - Calibrated\ Strike\ Price\ (CMU_{id}, Transaction_{id}, t)) * Contracted\ Capacity\ (CMU_{id}, Transaction_{id}, t) * Availability\ Ratio\ (CMU_{id}, t)$$

where:

- $CMU_{id}$  is the CMU's unique identifier available in the Capacity Contract and in the CRM IT Interface; and
- $Transaction_{id}$  is the ex-post Transaction's unique identifier as displayed on the CRM IT Interface; and

- $t$  is the hour to which the Payback Obligation calculation applies within the Transaction Period, when the Reference Price exceeds the Strike Price and for which an Availability Ratio is calculated; and
- *Reference Price* ( $CMU_{id}, t$ ) is determined according to section 12.3.1.1; and
- *Calibrated Strike Price* ( $Transaction_i, t$ ) is determined according to section 12.3.1.2.1 and then indexed according to section 12.3.1.2.2; and
- *Contracted Capacity* ( $CMU_{id}, Transaction_{id}, t$ ) is the Contracted Capacity of the ex-post CMU Transaction on the hour  $t$  available in the Capacity Contract and the CRM IT Interface; and
- *Availability Ratio* ( $CMU_{id}, t$ ) is the CMU's Availability Ratio according to section 12.3.1.3 on the hour  $t$ .

856. Demand Side Management (DSM) as defined in chapter 3 is exempted from a Payback Obligation payment.

### 12.3.3 Stop-Loss Amount of a Transaction

857. For Primary Market Transactions and ex-ante Secondary Market Transactions for which the Transaction Period covers at least one complete Delivery Period, the sum of all Payback Obligations for the same Delivery Period cannot exceed the Transaction Stop-Loss Amount for that Delivery Period.

858. The Stop-Loss Amount of a Transaction  $id$  for a Delivery Period is calculated by ELIA according to section 12.4.1.

859. The Stop-Loss Amount  $ia$  for a Delivery Period is equal to the sum on all hours of the Delivery Period of the hourly Contracted Capacity multiplied with the Transaction's Capacity Remuneration and divided by the number of hours on the Delivery Period.

This is represented by the following formula:

$$\begin{aligned}
 & \text{StopLoss Amount } (CMU_{id}, Transaction_{id}, \text{Delivery Period}) \\
 &= \sum_{t=1}^w \left( \text{Contracted Capacity } (CMU_{id}, Transaction_{id}, t) \right. \\
 & \quad \left. * \frac{\text{Capacity Remuneration } (CMU_{id}, Transaction_{id})}{w} \right)
 \end{aligned}$$

where:

- $CMU_{id}$  is the CMU's unique identifier available in the Capacity Contract and in the CRM IT Interface; and
- $Transaction_{id}$  is the Transaction's unique identifier as displayed on the CRM IT Interface; and
- $t$  and  $w$  respectively, represent the hours of a Delivery Period and the number of hours on the Delivery Period; and
- *Contracted Capacity* ( $CMU_{id}, Transaction_{id}, t$ ) is the Contracted Capacity of a CMU Transaction on the hour  $t$  available in the Capacity Contract and the CRM IT Interface; and
- *Capacity Remuneration* ( $CMU_{id}, Transaction_{id}$ ) is the CMU's Transaction Capacity Remuneration according to the Capacity Contract.

## 12.4 PAYBACK OBLIGATION PROCESS

860. In case of inconsistency or non-compliance of at least one of the below elements and modalities, ELIA can request extra information to the Capacity Provider in order to perform the Payback Obligation calculation.

### 12.4.1 Stop-Loss Amount initial calculation

861. Once a year as of October 30 preceding the considered Delivery Period, ELIA calculates the Stop-Loss Amount of the considered Delivery Period for each CMU's Transaction of the Primary Market and each ex-ante Secondary Market Transaction, which has a Transaction Period covering at least the full Delivery Period concerned.

862. The calculation of the Stop-Loss Amount for the Delivery Period of a Transaction is performed with the Transaction contractual data as of October 30 preceding the considered Delivery Period, at the AMT Moment determination of November 1 of the considered Delivery Period and according to § 858.

The result of the calculation by ELIA is made available on the CRM IT Interface of the CMU's Transaction Capacity Provider at the latest when the first Payback Obligation report is communicated to the Capacity Provider as detailed in section 12.4.4. It contains the following content:

- the identification of the Capacity Provider of the CMU and its Capacity Provider ID available in the Capacity Contract; and
- the identification of the CMU and its  $CMU_{id}$  available in the Capacity Contract; and
- the ID of each of the CMU's Transactions; and
- the Stop-Loss Amounts of each of the CMU's Transactions.

### 12.4.2 Calculation of the ex-post indexed Strike Price application for the Payback Obligation calculation

863. No later than fifteen Working Days after each month M of the ongoing Delivery Period  $DPe_t$ , ELIA calculates the value of the ex-post indexed Strike Price used for the calculation of the Payback Obligation taking place according to the modalities described in section 12.3.1.2.2.

The way of calculating this ex-post Indexed Calibrated Strike Price is described in detail in section 12.3.1.2.2.

864. This ex-post Indexed Calibrated Strike Price calculated according to the timing foreseen in section 12.4.3 is applicable for all hours of the previous month M of the ongoing Delivery Period  $DPe_t$  for which the effective Payback Obligation is calculated.

### 12.4.3 Effective Payback Obligation calculation

865.  $t_{calc}$  is the moment on which ELIA performs the calculation of the Payback Obligation for a CMU Transaction.

866. The Payback Obligation calculation is performed by ELIA in month M+2 for the month M of the Delivery Period, and applies to each hour of the Transaction Period related to the month M for which the Reference Price exceeds the Strike Price.

For each hour  $t$  of the Transaction Period included in the month M, ELIA calculates the *Calibrated Strike Price* ( $CMU_{id}, Transaction_{id}, t$ ) determined according to section 12.3.1.2.1 and indexed according to section 12.3.1.2.2.

For each hour  $t$  of the Transaction Period included in the month M for which the Reference Price exceeds the ex-post indexed Strike Price, ELIA calculates the:

- *Availability Ratio* ( $CMU_{id}, t$ ) of the CMU according to section 12.3.1.3; and
- *Payback Obligation* ( $CMU_{id}, Transaction_{id}, t$ ) of the Transaction according to section 12.3.2

867. If the Transaction is a Primary Market Transaction or an ex-ante Secondary Market Transaction for which the Transaction Period covers at least the Delivery Period concerned, as detailed in § 857, and if the cumulative Payback Obligation of the CMU's Transaction does not exceed the Stop-Loss Amount, the effective Payback Obligation of the month M for the CMU's Transaction is equal to the sum of the hourly Payback Obligations of the CMU's Transaction for all hours of the month M.

This is represented by the following formula:

$$\begin{aligned} & \text{Effective Payback Obligation } (CMU_{id}, Transaction_{id}, M) \\ &= \sum_{t=1}^m \text{Payback Obligation } (CMU_{id}, Transaction_{id}, t) \end{aligned}$$

where:

- $CMU_{id}$  is the CMU's unique identifier; and
- $Transaction_{id}$  is the Transaction's unique identifier; and
- $t$  and  $m$  respectively, represent the hours and the number of hours of the month M of the Delivery Period; and
- *Payback Obligation* ( $CMU_{id}, Transaction_{id}, t$ ) is the Payback Obligation of a CMU Transaction(s) on the hour  $t$  according to 12.3.2.

868. If the Transaction is a Primary Market Transaction or an ex-ante Secondary Market Transaction for which the Transaction Period covers at least the Delivery Period concerned, as detailed in § 857, ELIA calculates the cumulative Payback Obligation which is the sum of the hourly Payback Obligations of all the previous months and of the month M of the Delivery Period to which the month M is linked for the Transaction, if any.

This is represented by the following formula:

$$\begin{aligned} & \text{cumulative Payback Obligation } (CMU_{id}, Transaction_{id}, M) \\ &= \sum_{t=1}^p \text{Payback Obligation } (CMU_{id}, Transaction_{id}, t) \end{aligned}$$

where:

- $CMU_{id}$  is the CMU's unique identifier available in the Capacity Contract and in the CRM IT Interface; and
- $Transaction_{id}$  is the Transaction's unique identifier as displayed on the CRM IT Interface; and
- $t$  and  $p$  respectively represent the hours and the number of hours of the past months of the Delivery Period and of the month M of the Delivery Period; and
- $Payback\ Obligation(CMU_{id}, Transaction_{id}, t)$  is the Payback Obligation of a CMU Transaction on the hour  $t$  according to 12.3.2.

869. If the Transaction is a Primary Market Transaction or an ex-ante Secondary Market Transaction for which the Transaction Period covers at least the Delivery Period concerned, as detailed in § 857, and if the cumulative Payback Obligation defined in § 868 exceeds the Stop-Loss Amount of the CMU's Transaction on the Delivery Period, the Effective Payback Obligation for the CMU's Transaction of the month M equals the positive difference between the Stop-Loss Amount and the sum of the Payback Obligations of the previous months of the Delivery Period to which the month M is linked .

This is represented by the following formula:

$$\begin{aligned}
 & \text{Effective Payback Obligation}(CMU_{id}, Transaction_{id}, M) \\
 &= \text{Max} \left( 0; \text{StopLoss Amount}(CMU_{id}, Transaction_{id}, \text{Delivery Period}) \right. \\
 & \quad \left. - \sum_{t=1}^n \text{Payback Obligation}(CMU_{id}, Transaction_{id}, t) \right)
 \end{aligned}$$

where:

- $CMU_{id}$  is the CMU's unique identifier available in the Capacity Contract and in the CRM IT Interface; and
- $Transaction_{id}$  is the Transaction's unique identifier as displayed on the CRM IT Interface; and
- $t$  and  $n$  respectively, represent the hours and the number of hours of the past months of the Delivery Period prior the month M of the Delivery Period; and
- $Payback\ Obligation(CMU_{id}, Transaction_{id}, t)$  is the Payback Obligation of a CMU Transaction on the hour  $t$  according to section 12.3.2; and
- $Stop\ Loss\ Amount(CMU_{id}, Transaction_{id}, \text{Delivery Period})$  is the Stop-Loss Amount of a CMU Transaction on the hour  $t$  according to section 12.3.3.

## 12.4.4 Monthly delivery activity report

870. No later than the 15<sup>th</sup> day of M+2, ELIA provides the Capacity Provider with the delivery activity report. This report covers an entire month, from the first day of the month M at 0:00 until the last hour of the last day of the month M. The delivery activity report contains among others the following information for all hours of the Transaction Period of the CMU's Transaction part of month M:

- the calculation date of the report's data,  $t_{calc}$ ; and

- the Capacity Provider identified with a unique ID as displayed on CRM IT Interface, the  $Capacity\ Provider_{id}$ ; and
- the  $CMU_{id}$  which is the CMU's unique identifier available in the Capacity Contract and in the CRM IT Interface; and
- the  $Transaction_{id}$  of the CMU having hours of their Transaction Period in the month M identified with a unique ID as displayed on CRM IT Interface; and
- the *Calibrated Strike Price* ( $CMU_{id}, Transaction_{id}, t$ ), as determined according to section 12.3.1.2.1 and indexed according to section 12.3.1.2.2, applicable for the calculation of the effective Payback Obligation during month M of the ongoing Delivery Period  $DPe_t$ ; and
- for each CMU's  $Transaction_{id}$  above, date and time for each hour of the Transaction Period of the month M for which the Reference Price exceeds the ex-post indexed Calibrated Strike Price as determined according to section 12.3.1.2.1 and then indexed based on section 12.3.1.2.2 and for which a Payback Obligation applies; and
  - the related value in [€/MWh] of the Reference Price
  - the related value in [€/MWh] of the ex-post Indexed Calibrated Strike Price
  - the related value in decimal number value of the Availability Ratio
  - the related value in [€] of the Payback Obligation
- for each CMU's  $Transaction_{id}$  above, the total value in [€] of the Payback Obligations on all hours of the Transaction Period in the month M; and
- for each CMU's  $Transaction_{id}$  above, the total value in [€] of the Effective Payback Obligation of the month M.

## 12.4.5 Settlement and invoicing of the Effective Payback Obligation

871. ELIA determines and invoices the Effective Payback Obligation of the Capacity Providers' CMU's Transactions in accordance with the terms set out in the Capacity Contract.
872. The delivery activity report, as detailed in § 870, is part of the invoice by ELIA.

## 12.4.6 Contestation

873. If the Capacity Provider wishes to contest any parameters or calculation that he believes has led to an incorrect Stop-Loss Amount, Payback Obligation or Effective Payback Obligation, he has twenty Working Days from the notification of the delivery activity report to notify such motivated contestation to ELIA via the CRM IT Interface. In such a case, the Capacity Provider and ELIA enter into negotiations in order to reach an amicable agreement within sixty Working Days as of the date of notification of the contestation by the Capacity Provider. ELIA and the Capacity Provider may request additional information from each other's on the parameters in the delivery activity report if needed.

In the event of a partial or total amicable agreement being reached between the parties within the sixty Working Days, the undisputed amount agreed upon shall then be subject to an invoice in accordance with Capacity Contract.

If within sixty Working Days no partial or total agreement is found, the disputed amount or part



of the disputed amount of the Payback Obligation is the subject of a separate invoice in accordance with the Capacity Contract. , at the same time, both parties continue to seek an amicable solution during a second period of sixty Working Days following the end of the first period of sixty Working Days.

In case an amicable agreement is reached between the parties during the second period of sixty Working Days, this agreement will result, where applicable, in a corrective credit note related to the amount that was the subject of a separate invoice, in accordance with the Capacity Contract.

If within sixty Working Days still no such agreement has been reached, the parties commence the litigation procedure in accordance with chapter 14.

# 13 LIABILITY AND FORCE MAJEURE

## 13.1 LIABILITY

### 13.1.1 Notification of the breach

874. In the event that a CRM Actor or ELIA remains in default of an obligation under the Functioning Rules, the creditor of that obligation shall notify the defaulting party of said default as soon as possible and in any case within sixty Working Days. The defaulting party is required to respond within fifteen Working Days as of the notification. Failure to respond within this period shall be deemed to constitute an acknowledgement of the facts set out in the notification.

### 13.1.2 Liability of CRM Actors and ELIA

875. Without prejudice to the application of the Penalties provided for in the present Functioning Rules, a CRM Actor or ELIA may, in connection with the CRM or LCT, only be liable for Direct Damage suffered by the creditor of its obligation as a result of gross negligence on its part. However, no limitation of liability is applicable in the case of fraud or wilful misconduct.
876. Direct Damage is defined as damage that is the direct and immediate result of a fault on the part of a CRM Actor or ELIA, their employees, subcontractors or performing agents in the performance of his obligations under the Functioning Rules. Under no circumstances, except in cases of fraud or wilful misconduct, will the CRM Actor and ELIA be mutually liable or obliged to guarantee or indemnify each other against claims for indirect or consequential damages, including, but not limited to, any loss of profit, loss of revenue, loss of use, loss of contracts or loss of goodwill.
877. In all cases, the liability of a CRM Actor in respect of ELIA and of ELIA in respect of a CRM Actor in the event of gross negligence is limited to a maximum amount of EUR 600 multiplied by the sum of the Nominal Reference Power, expressed in MW, of all the CMUs of this CRM Actor, it being understood that this amount may not be less than EUR 50,000 per claim per year or exceed EUR 2,500,000 per claim per year. ELIA's liability in respect of the CRM Actor in the event of gross negligence is limited to a maximum amount of EUR 600 multiplied by the sum of the Nominal Reference Power, expressed in MW, of all of the CMUs of this CRM Actor, it being understood that this amount may not be less than EUR 50,000 per CRM Actor or exceed EUR 5,000,000 per claim, calculated, where applicable, on a prorata basis with respect to the amount of the compensation order. However, ELIA's liability is limited to a total amount of EUR 15,000,000 per year, regardless of the number of claims. There is no limitation of liability in the event of wilful misconduct.
878. The application of Penalties provided for in the Functioning Rules when the CRM Actor breaches its obligations, does not preclude ELIA's entitlement to to compensation for any Direct Damage suffered as a result of such breach, provided that ELIA establishes that said Direct Damage is the result of fraud, wilful misconduct or gross negligence on the part of the CRM Actor, on the one hand, and that it affects ELIA's assets, on the other hand. Within the meaning of this provision, ELIA's assets are only affected if ELIA is unable to remedy the consequences of the said breach via the mechanisms established by these Functioning Rules or via other regulatory mechanisms provided by or by virtue of the Electricity Act and covered in accordance with article 12 of the Electricity Act.
879. The CRM Actor is liable in respect of ELIA for gross negligence committed by Grid Users or CDS Users with which the CRM Actor forms a CMU, within the liability limits applicable between the Parties. In the event of combined gross negligence on the part of multiple Grid Users or CDS Users and/or the CRM Actor, the CRM Actor's liability will be limited to the maximum amount

stated in § 877. ELIA may not take direct action against the aforementioned Grid Users or CDS Users.

### **13.1.3 Warranty clause**

880. Without prejudice to the application of the Penalties provided for in the present Functioning Rules, the CRM Actor and ELIA will guarantee each other against any compensation order for damage suffered by a third party resulting from their gross negligence, fraud or wilful misconduct in the performance of their obligations under these Functioning Rules.

881. Save for fraud or wilful misconduct, the warranty referred to in the previous section may not, under any circumstances, exceed the amount of EUR 5,000,000 per claim and per year.

### **13.1.4 Interaction with other regulated contracts**

882. Without prejudice to the application of the Penalties as provided for in these Functioning Rules, the amount due by the CRM Actor or ELIA for one and the same claim, for reasons of gross negligence, as compensation under another Regulated Contract concluded between them shall be deducted from the amount of compensation due pursuant to sections 13.1.2 and 13.1.3.

883. The Regulated Contracts referred to in the previous section refer to the contracts listed in article 4 § 1 of the Federal Grid Code and the regulated contracts at regional level. Save for that which is provided in § 882, these Functioning Rules do not limit in any way the application of the provisions of said contracts, even if the non-performance of an obligation under the Functioning Rules has an impact on the performance of an obligation under the Regulated Contract.

### **13.1.5 Limitation of liability clauses in other contracts and third party rights**

884. When a CRM Actor or ELIA enters into a contract with a third party for the purpose of participating in the CRM or LCT, the liability limitation clauses set out in said contract shall reflect the principles and thresholds set out in this chapter, in such a way that said third party cannot assert more rights in respect of the CRM Actors and ELIA than the latter are entitled to assert between themselves. Any contractual provision to the contrary shall be deemed not to have been written.

885. The Grid Users or CDS Users with whom the CRM Actor forms a CMU cannot take direct action against ELIA. For any Direct Damage that may have been suffered by said Grid Users or CDS Users, the CRM Actor is subrogated with respect to the rights of said Grid Users or CDS Users, within the liability limits that apply between the parties.

886. Third parties may only assert claims against a CRM Actor or ELIA if they can prove that it is guilty of gross negligence in respect of the satisfaction of the obligations set out in the Functioning Rules. The liability of a CRM Actor or ELIA in the event of gross negligence may not exceed the maximum amount set out in § 877. No limitation of liability shall apply in the event of fraud or wilful misconduct.

## **13.2 FORCE MAJEURE**

887. Without prejudice to the definition of Force Majeure given in the applicable legal and regulatory provisions or additional definitions given in the Capacity Contract, the term Force Majeure means any unforeseeable or unusual event or situation which is beyond the reasonable control of the CRM Actor or ELIA,, which is not attributable to any fault on the part of the CRM Actor or ELIA, which cannot be avoided or overcome in spite of all reasonable due diligence or preventive

measures deployed, which cannot be corrected by measures that it would be reasonable in technical, financial or economic terms for the CRM Actor or ELIA to undertake, and which temporarily or permanently prevent the CRM Actor or ELIA Party from fulfilling its obligations under these Functioning Rules.

888. Without prejudice to the provisions of the Capacity Contract, the following situations, among others, are to be considered as Force Majeure provided they meet the conditions of Force Majeure set out in the previous section:

- natural disasters resulting from earthquakes, floods, storms, cyclones or other unusual weather events recognised as such by a public authority with expertise in this area, as well as epidemics and pandemics;
- a nuclear or chemical explosion and the consequences thereof;
- situations of unusual risk (or "non-categorised" risk) during which the sudden unavailability of one or more electricity or gas distribution or transmission grids (including closed grids) or of Capacity or CMU is caused by reasons other than ageing, lack of maintenance or the competence of operators, including the unavailability of the IT system, whether or not caused by a virus, when all state-of-the-art precautions had been taken;
- the temporary or permanent technical inability of the grid to exchange electricity because of disruptions within the Belgian Control Area caused by electricity flows resulting from energy exchanges within another Control Area or between two or more other Control Areas, where the identity of the market players involved in said energy exchanges is not, and cannot reasonably be, known to ELIA;
- an inability to operate the electricity or gas distribution or transmission grid (including closed grids), equipment forming a functional part of the grid, or equipment belonging to the CRM Actor or ELIA due to a labour dispute that gives rise to a unilateral measure by the employees (or groups of employees) or any other labour-management conflict;
- fire, explosion, sabotage, acts of a terrorist nature, acts of vandalism, damage caused by criminal acts, criminal coercion or threats of the same nature or acts that have the same consequences;
- war (whether declared or not), the threat of war, invasion, armed conflict, embargo, revolution or uprising;
- a situation in which a competent authority imposes unusual and temporary measures on CRM Actors, Grid Users, CDS Users or ELIA, such as the measures necessary to maintain or restore the safe and efficient functioning of grids, including load-shedding in the event of power shortages; and
- a decision or measure adopted by any competent public authority.

889. The CRM Actor or ELIA who invokes a situation of Force Majeure must immediately notify the creditor of his obligation in writing via the CRM IT Interface, or by telephone provided that the matters discussed and agreed upon verbally are confirmed by official correspondence within three Working Days of the said discussion. The written or verbal notification must be made in any event within three Working Days of the appearance of the situation of Force Majeure or the time at which he should reasonably have discovered it. He must describe precisely the event that he qualifies as Force Majeure and indicate the measures he intends to take to remedy it as soon as possible. Absent any notification within said deadline, the CRM Actor or ELIA will no longer be entitled to invoke a situation of Force Majeure.

890. The CRM Actor or ELIA who proves a situation of Force Majeure is discharged from his contractual obligations, without prejudice to financial obligations which arose before the situation of Force Majeure. The suspension of obligations only lasts for the duration of the situation of Force Majeure, insofar as the latter prevents him from fulfilling his obligations. To the same extent, the creditor of his obligation is not obliged to perform his counter-obligations. Nevertheless, the Party that invokes a situation of force majeure shall do everything possible to limit the consequences of the non-performance of its obligations in respect of the other Party and to once again fulfil said obligations.
891. If, as a result of a situation of Force Majeure, the CRM Actor or ELIA is unable to fulfil his obligations under the Functioning Rules and if this situation of Force Majeure persists for at least [one hundred and eighty] consecutive days, the CRM Actor or ELIA that invokes the Force Majeure may be definitively released from his obligations under the Functioning Rules by sending a registered letter or an email with acknowledgment of receipt setting out the reasons for the termination.

### **13.3 DAMAGE OR ELIA WARRANTY EXCEEDING THE LIMITATIONS**

892. Any amount payable by ELIA to a third party due to gross negligence by a CRM Actor, or any Damage suffered by ELIA which is due to gross negligence by a CRM Actor, and which ELIA is unable to recover from the CRM Actor due to a limitation provided by these Functioning Rules, will be covered by the mechanism provided in article *7undecies* § 15 of the Electricity Act.

# 14 DISPUTE RESOLUTION

## 14.1 INTRODUCTION

*This chapter describes the process for a CRM Actor or ELIA to follow in the event of a dispute arising in connection with the CRM or LCT.*

*If a dispute falls within the special or exclusive remit of the Markets Tribunal (article 29bis of the Electricity Act) or the Brussels Tribunal of First Instance (article 7undecies § 14 of the Electricity Act), the interested party may submit the dispute to said tribunal.*

*For any other dispute arising in connection with the CRM or LCT, the settlement of said dispute shall commence, as a general rule, with an optional consultation phase.*

*If the dispute cannot be resolved during the consultation phase, the parties have the option of submitting their dispute to the CRM Disputes Committee.*

## 14.2 CONSULTATION PHASE

### 14.2.1 Specific or general consultation mechanism

893. If a CRM Actor or ELIA intends to contest an action or decision in connection with the CRM or LCT that directly affects its interests, it can invite the other party to open a consultation phase in order to resolve the dispute amicably.
894. If a specific consultation mechanism is provided in one of the other chapters of the Functioning Rules, the parties must follow said mechanism.
895. If no specific consultation mechanism is provided in the other chapters of the Functioning Rules, the general consultation mechanism described below applies. However, a party is not obliged to follow this general consultation mechanism prior to bringing a dispute before the relevant tribunal or the CRM Disputes Committee.

### 14.2.2 Consultation procedure

896. The interested party ("Notifying Party") shall notify its grievances to the other party ("Notified Party") within ten Working Days as of the notification of the decision taken by the other party, or, in the absence of a decision, after having become aware of an action likely to affect its interests. Grievances are notified via the CRM IT Interface or by e-mail.
897. The Notified Party will contact the Notifying Party within five Working Days after it has received the notification of grievances in order to either confirm its willingness to take part in the consultation, or to refuse to do so.
898. If both parties are prepared to take part in the consultation phase, they will begin a dialogue in order to find an amicable solution. This dialogue can be effected in writing only, or, if necessary, one or more meeting(s) can be organised between the parties in a mutually agreed location.
899. If an amicable solution is found within a period of thirty Working Days as of the notification of grievances, a period which can be extended via the written agreement of each party, the

conditions governing said solution will be formalised in a written agreement. Said conditions must comply strictly with the applicable legislation and regulations.

900. If no solution is found within the aforementioned period, the first party to take action can undertake one of the procedures described in sections 14.3.3.1 and 14.3.3.2.

## 14.3 CRM DISPUTES COMMITTEE

### 14.3.1 Objective and Rules of Procedure

901. The role of the CRM Disputes Committee is to help the parties resolve disputes in connection with the CRM or LCT, either informally by engaging in discussions with the parties and, where necessary, issuing a recommended resolution ("Recommendation"), or, if said informal assistance yields no results or is not requested, by taking a binding decision ("Binding Decision").
902. The CRM Disputes Committee takes action and decisions by virtue of the rules listed below and the Rules of Procedure annexed hereto.

### 14.3.2 Organisation

903. The CRM Disputes Committee is assisted by a secretariat which is responsible for receiving and managing dispute resolution applications of which it is notified ("Notifications") and checking whether the Notification contains all the information required and that the object of the dispute falls *prima facie* within the remit of the CRM Disputes Committee ("Secretariat").
904. The CRM Disputes Committee comprises three members: a chairman and two ad hoc members.
905. The chairman is, depending on the case, the person appointed by CREG following a public tender (the "Chairman" of the CRM Disputes Committee), or an *ad hoc* chairman appointed by the parties ("*ad hoc* Chairman"). The term Chairman below refers, depending on the case, to the Chairman of the CRM Disputes Committee or the *ad hoc* Chairman.
906. The Chairman must have legal training with proven experience in energy law and/or in the area of litigation . The two other members have either the legal or technical training relevant for resolving the dispute.

### 14.3.3 Procedures

907. In order to initiate a procedure, the interested party will send the Secretariat a Notification of its intention to submit the dispute to the CRM Disputes Committee. The Notification must, *inter alia*, contain the contact details of the parties, a summary of the grievances, the demands and the remedies demanded.
908. When a party submits a dispute to the CRM Disputes Committee via a Notification, it can request either a Recommendation or a Binding Decision.
909. If a party requests a Binding Decision and if the other party is not opposed thereto, the CRM Disputes Committee issues a Recommendation.
910. Even if a recommendation has been requested, the *ad hoc* members must already be appointed in order to participate, where necessary, in any binding decision.

### **14.3.3.1 Recommendation procedure**

911. The recommendation procedure applies when, in the Notification, the interested party asks the CRM Disputes Committee for informal assistance with the dispute and the other party is not opposed thereto.
912. This procedure is handled by the chairman acting as an intermediary to reconcile the parties.
913. The chairman begins the informal discussions to this end, or if necessary, meetings with the parties. He may also request any information needed in order to be fully informed about the dispute.
914. Pursuant to discussions and after no more than thirty Working Days (as of the acknowledgement of receipt of the Notification), the chairman issues a written recommendation to the parties in order to enable them to reach an agreement ("Recommendation").
915. If an amicable solution is found within ten Working Days as of the issuance of the Recommendation, a period which may be extended via the written agreement of each party, the conditions for said solution will be formalised in a written agreement. These conditions must comply strictly with the applicable legislation and regulations.
916. If no amicable solution is found following the recommendation procedure, the first party to act may either ask the CRM Disputes Committee to issue a Binding Decision, or may bring the matter before the relevant tribunal or court. A new Notification must be sent to the Secretariat ("Additional Notification") in the event of a request for a Binding Decision.

### **14.3.3.2 Binding decision procedure**

917. The binding decision procedure applies when, in the Notification (or in an Additional Notification), the interested party submits the dispute to the CRM Disputes Committee in order to obtain a Binding Decision. If the interested party has indicated, in the Notification, its wish for the Binding Decision to have the status of an arbitral award, the other party(ies) shall communicate to the secretariat, within five Working Days of the acknowledgement of receipt of the (Additional) Notification, a notice of response ("Notice of Response") in which they adopt a position on the issue of arbitration. In the absence of any agreement regarding the conferring of the status of arbitral award on the Binding Decision, the Binding Decision shall have the status of a binding third-party decision.
918. The parties shall agree on a calendar for the exchange of arguments. The CRM Disputes Committee may, if necessary and after consulting the parties, establish a different period, ask for additional documents to be submitted, ask questions or demand any information needed for resolving the dispute.
919. If necessary, the CRM Disputes Committee may organise a hearing during which each party may present its point of view.
920. The CRM Disputes Committee will issue a Binding Decision within a period not exceeding three months as of the acknowledgement of receipt of the Notification by the Secretariat, or within a period not exceeding two months as of the acknowledgement of receipt of the Additional Notification. The CRM Disputes Committee may, with the agreement of the parties, extend this period in order to issue a Binding Decision.
921. If the dispute is of an urgent nature, the interested party may request in the Notification (or in the Additional Notification) to use the emergency procedure making it possible to issue a Binding Decision within a shorter period of time.



## **14.3.4 Main characteristics of the procedure before the CRM Disputes Committee**

### **14.3.4.1 Fixed costs and schedule**

922. The costs of bringing a matter before the CRM Disputes Committee will be determined in advance and as accurately as possible by the Chairman of the CRM Disputes Committee, in consultation, where necessary, with the *ad hoc* Chairman. These costs may be adjusted during the procedure, due to changes in the circumstances of the case, after having obtained the opinion of the parties. The costs of bringing a matter before the Committee may be charged to the losing party.
923. The procedures follow a strict schedule determined in advance.

### **14.3.4.2 Confidentiality**

924. The information exchanged during the recommendation procedure remains confidential. If a binding decision procedure is launched following a recommendation procedure, the parties may agree to waive confidentiality for certain documents already communicated during the recommendation procedure.
925. The information exchanged between the parties during the binding decision procedure and the Binding Decision itself is confidential with regard to third parties, unless otherwise agreed by the parties. A party may invoke the confidentiality with regard to another party, of certain documents communicated to the CRM Disputes Committee, subject to justification.

### **14.3.4.3 Experts**

926. The CRM Disputes Committee may request the assistance of experts.

### **14.3.4.4 Types of decisions issued**

927. The Recommendations of the CRM Disputes Committee are not binding, whereas Binding Decisions are final and mandatory. Binding Decisions have the status of third-party decisions, unless expressly agreed by the parties to give them the status of arbitral awards within the meaning of article 1676 *et seq.* of the Belgian Judicial Code. Binding Decisions are taken by the majority of the members of the CRM Disputes Committee, except within the context of an emergency procedure or a procedure requesting provisional measures, in which the Chairman of the CRM Disputes Committee decides alone.
928. Within thirty Working Days following the receipt of the Binding Decision, a party may, via written Notification sent to the other parties, ask the CRM Disputes Committee to provide an interpretation of its Binding Decision or to correct its Binding Decision if it contains a calculation error, a typographical error or any other error or omission of that nature. If the CRM Disputes Committee deems that the request is justified, it will issue the interpretation or correction within thirty Working Days following receipt of the request.

# 15 FALLBACK PROCEDURES

## 15.1 INTRODUCTION

*This chapter lists and describes all the fallback procedures applicable to ELIA and every CRM Actor. These fallback procedures include all the steps to be followed by the relevant party in case of specific issue.*

*Section 15.2 presents the general principles of the fallback procedures.*

*Section 15.3, 15.4, 15.5, 15.6, 15.7 and 15.8 respectively cover all CRM processes separately in order to make it easier to read and search for the right fallback procedure. Each CRM Process is divided into different sub-paragraphs depending on process involved. Every fallback procedure is structured so that the problem is first identified and referenced. Next, the procedure to be followed by the CRM Actor is described and finally the impact on deadline or processes is explained.*

## 15.2 GENERAL PRINCIPLES

929. This section describes the general principles applicable to ELIA and each CRM Actor for whom a fallback procedure is required in order to resolve certain types of issues.

930. When ELIA communicates with a CRM Actor by e-mail in a fallback procedure, ELIA uses the e-mail address(es) that was provided by the actor during the Prequalification Process.

When a CRM Actor communicates with ELIA by e-mail in a fallback procedure, he uses the e-mail address provided by ELIA on ELIA's CRM webpage.

931. If a maintenance of the CRM IT Interface is foreseen and causes an unavailability longer than twenty-four hours, ELIA informs all CRM Actors by e-mail at least five Working Days prior to the start of the foreseen unavailability and indicates the start date/time and the expected end date/time of the maintenance.

932. If ELIA encounters an unforeseen unavailability of the CRM IT Interface which prevents the CRM Actors to access the CRM IT interface for more than twenty-four hours, ELIA informs all CRM Actors concerned by the unavailability by e-mail about it and indicates the expected end date/time of the unavailability.

933. In case an IT issue causes an impact on the good running of a process for a CRM Actor and this CRM Actor cannot respect the deadline related to that process, ELIA extends this deadline for the process in question by a number of Working Days determined depending of the technical assessment of the identified issue. This extension is communicated to and applies for all CRM Actors, upon the condition that the problem blocks the access to functionalities of the CRM Interface or makes it dysfunctional. Otherwise any CRM Actor remains liable for the delay.

934. In case of issues related to the quarterly hour metering data (missing data, communication problem,...), ELIA applies the standards and best practices applicable to other market processes (e.g: balancing).

935. Finally, ELIA reminds that – independent of the communication channel used for the exchange of required information – it remains the CRM Actor's responsibility to respect the deadlines set in the relevant sections of the Functioning Rules. Obviously, in the event of a delay caused by the

use of the fallback procedure, ELIA applies the extension of the related deadline as defined in § 933.

## 15.3 PREQUALIFICATION PROCESSES

936. This section covers all possible issues during the prequalification phase that require a fallback procedure.

### 15.3.1 Application form submission

937. This issue refers to § 68.

938. Prior to submitting his first Prequalification File, a Capacity Holder fills in an application form, via the CRM IT Interface.

In case a Capacity Holder is unable to submit the **application form** via the CRM IT Interface or did not receive the corresponding notification from ELIA within two hours, he checks first that the CRM IT Interface is not under maintenance. If this is not the case and after trying again to submit the application form, the Capacity Holder is entitled to initiate the fallback procedure.

The fallback procedure consists in the following steps:

- the Capacity Holder contacts ELIA as soon as possible by e-mail explaining the nature of the problem.
- ELIA comes back to the Capacity Holder within maximum five Working Days starting from the Capacity Holder's email reception date, saying that either:
  - the problem has been solved and the Capacity Holder may try again to submit the form; or
  - the problem cannot be solved in the short term, and the application form is sent by e-mail so that the Capacity Holder can fill it in and return it back completed to ELIA also by e-mail. In these circumstances, the application form submission date corresponds to the sending date of the email corresponding to the first step of the fallback procedure described above by the Capacity Holder to ELIA.
- ELIA applies the extension of related deadline as specified in the § 935 above.

### 15.3.2 Acknowledgment and compliance checks

939. This issue refers to the section 5.3.1.

940. After the approval of the application form but prior to the possible submission of a Prequalification File, the CRM Candidate ensures compliancy by selecting dedicated boxes in the CRM IT Interface.

941. In case the CRM Candidate is unable to **mark these boxes** via the CRM IT Interface, he checks first that the CRM IT Interface is not under maintenance. If this is not the case and after trying again to mark the dedicated boxes, the CRM Candidate is entitled to initiate the fallback procedure.

942. The fallback procedure consists in the following steps:

- the CRM Candidate contacts ELIA as soon as possible by e-mail explaining the nature of the problem.

- ELIA comes back to the CRM Candidate within maximum five Working Days starting from the Capacity Holder's email reception date, saying that either:
  - the problem has been solved and the CRM Candidate may try again to mark the boxes via the CRM IT Interface; or
  - the problem cannot be solved in the short term. In this situation, the consent with each condition set in section 11.3 is given per email by the CRM Candidate to ELIA.
- ELIA applies the extension of related deadline as specified in the § 935 above.

### 15.3.3 Prequalification File

943. This issue refers to § 74.

944. It is required from the CRM Candidate to submit complete and accurate Prequalification File(s), in line with obligations, requirements and Service Time Schedule. All data or document(s) are either filled in directly on the CRM IT Interface or uploaded as an attachment via the the CRM IT Interface.

945. In case the CRM Candidate is unable to **fill in the Prequalification File and/or upload a required document(s) and/or submit it** on the CRM IT Interface due to IT problem, he checks first that the CRM IT Interface is not under maintenance. If this is not the case and after trying again to complete his Prequalification File, the CRM Candidate is entitled to initiate the fallback procedure.

946. The fallback procedure consists in the following steps:

- the CRM Candidate contacts ELIA as soon as possible by e-mail explaining the nature of the problem.
- ELIA comes back to the Capacity Holder within maximum five Working Days starting from the Capacity Holder's email reception date, saying that either:
  - the problem has been solved and the CRM Candidate may try to fill in the Prequalification File and/or upload a required document on the CRM IT Interface; or
  - the problem cannot be solved in the short term. In this situation, the CRM Candidate can fill in and submit its Prequalification File to ELIA per email within three Working Days, following a Prequalification File template sent by ELIA. The Prequalification File submission date then corresponds to the date of Capacity Holder's Prequalification File's template reception from ELIA. Finally and as part of the Prequalification File, the CRM Actor also submits proof of a valid type of Financial Security, in accordance with the requirements in section 11.3, by email.
- ELIA applies the extension of related deadline as specified in the § 935 above.

### 15.3.4 Change of the Prequalification File submission

947. This issue refers to § 219.

948. A CRM Actor is entitled to modify data or documents upon different circumstances. Any change is submitted via the CRM IT Interface.

949. In case a CRM Actor is unable to **modify data or documents** on the CRM IT Interface due to IT problem, he checks first that the CRM IT Interface is not under maintenance. If this is not the

case and after trying again to apply the change(s) needed, the CRM Actor is entitled to initiate the fallback procedure.

950. The fallback procedure consists in the following steps:

- the CRM Actor contacts ELIA as soon as possible by e-mail mentioning:
  - the ID of the concerned Delivery Point(s) and/or CMU(s); and
  - the data or the document(s) to be modified; and
  - the date of entry into force of the modification(s); and
  - the new value of the data or the new document(s) to be uploaded; and
  - the nature of the IT issue;
- ELIA comes back to the CRM Actor per email within maximum five Working Days starting from the CRM Actor's email reception date, saying that either:
  - the problem has been solved and the CRM Actor may try again to modify the data and/or document(s) in his Prequalification File; or
  - the problem cannot be solved in the short term, and ELIA modifies manually the data and/or the document(s) – instead of the CRM Actor – based on the information provided in the e-mail received from the CRM Actor and sends an e-mail to this CRM Actor to notify him that the change(s) has(have) been taken into account.
- ELIA applies the extension of related deadline as specified in the § 935 above.

### **15.3.5 Notification from ELIA**

951. Throughout the Prequalification Process, ELIA sends notifications to the CRM Actors via the CRM IT Interface. The time period within which such notification is received is listed in the chapter 5.

952. In case the CRM Actor has not received the notification via the CRM IT Interface within the specific timeframe, he initiates the fallback procedure which consists in the following steps:

- the CRM Actor informs ELIA by e-mail as soon as possible that the notification has not been received and mentions the following information:
  - The type of notification that he was expecting to; and
  - The submission date of the involved file or form.
- ELIA comes back to the CRM Candidate within five Working Days starting from the CRM Actor's e-mail reception date, giving the same information as would have been provided by the notification.
- ELIA applies the extension of related deadline as specified in the § 935 above.

## **15.4 AUCTION PROCESS**

### **15.4.1 Bid submission issue**

953. The standard procedure for Bid submission via the CRM IT Interface is described in section 6.2.

954. In case the CRM IT Interface is unavailable to submit Bids on the day of the Bid submission deadline as described in § 284, ELIA notifies all Prequalified CRM Candidates via email that the following fallback procedure applies:

- ELIA extends the access to the CRM IT Interface and the Bid submission deadline by twenty-four hours.
- ELIA informs all Prequalified CRM Candidates via email, in accordance with the relevant contact details as indicated in the application form process, when the problem has been solved, allowing all Prequalified CRM Candidates to submit Bids via the CRM IT Interface.

955. In case the CRM IT Interface is unavailable to submit Bids on the day of the extended Bid submission deadline as described in § 954, ELIA extends the fallback procedure by another twenty-four hours. ELIA may repeat this process up to a maximum five consecutive periods of twenty-four hours after the standard Bid submission deadline as described in § 284.

## **15.4.2 Grid constraints issues**

956. These issues refer to the section 6.3.2.

957. During the calculation phase, which starts on June 15 until September 15 of the year in which the Auction takes place, ELIA identifies, for the concerned Auction, the expected constraints of the public electrical transmission grid infrastructure to be taken into account during the Auction clearing.

Throughout this calculation phase, three problems could trigger this specific fallback process :

- in the event of a Force Majeure (eg. an extreme weather event, a terrorist attack, ...) during the calculation phase, which would cause unforeseen & significant damage to one or more key grid infrastructure assets of the public electrical transmission grid, the public gas transmission system or a public electricity distribution system provided that these have been duly communicated to ELIA by their system operator and which would as a result affect the hypotheses taken for the reference grid on the June 15 of the year in which the Auction takes place, based on which ELIA is calculating the grid constraints.
- if the hypotheses of the reference grid would significantly evolve during the calculation phase, when compared to the initial hypotheses taken in the defined reference grid at the June 15 of the year in which the Auction takes place, related to delays of Infrastructure Works which would negatively affect the hosting capacity of the grid feasible domain. Such delay of Infrastructure Works is considered significant when a specific grid infrastructure project has an expected delay higher than two months, compared to the initial schedule.
- in the extraordinary event that ELIA would be confronted with IT-calculation issues in determination of grid constraints, which would result in an incomplete set of grid constraints by September 15 hence negatively affecting the ex-ante availability of all necessary and approved grid constraints.

958. In the three above cases, ELIA initiates this specific fallback process after informing CREG of the exact cause(s).

959. The fallback process itself consists in performing a grid feasibility check following the drivers specified in section 6.3.2.4 during the application phase after the Auction gate closing time, based on the considered clearing result. This fallback process guarantees that the grid feasibility of any Auction is ensured, in case the standard process, as specified in section 6.3.2, would fail. In case of application of this fallback process, ELIA takes reasonable measures and consults with CREG in order to improve and avoid such events for future Auctions. The fallback process can potentially

imply some iterative steps after the Auction gate closing time, as defined in next §, in order to determine the optimal Auction result that respects all drivers defined in section 6.3.2.4 – while still leaving sufficient time for results validation prior to Auction result publication.

The fallback process would be as follows:

- based on the received Bids and the Demand Curve applied in the Auction, the Auction algorithm provides the clearing result but now without application of grid constraints from ELIA.
- the obtained clearing result is then subsequently verified by ELIA for grid feasibility following the methodology as defined in section 6.2.1.2 (only for the relevant CMU combinations for Additional Capacity that are part of the clearing result) and following the stepwise approach as detailed here:
  - step 1: In case the relevant CMU combination part of the clearing result respects the drivers as specified in section 6.3.2.4 , no further steps are needed and the Auction result can be considered final.
  - step 2: In case the relevant CMU combination part of the clearing result does not respect the drivers as specified in section 6.3.2.4, the next optimal solution with the best objective function value needs to be determined in the Auction algorithm, by iteratively performing an Auction clearing with two additional constraints
    - constraint 1: best objective function value of step two worse than best objective function value of step one
    - constraint 2: clearing result of step two does not equal clearing result of step one.
  - step 3: step two above should be repeated until a solution is found that respects all drivers as specified in section 6.3.2.4 for the respective Auction.

960. In case no solution can be found after several iterations, fallback process described in section 15.4.3 applies.

### **15.4.3 Auction results issues**

961. The standard procedure for the determination of Auction results is described in 6.4.

962. In case of issues during the clearing of the Auction, meaning that ELIA cannot submit the list of selected Bids to CREG for validation by October 15, the following fallback procedure applies:

- ELIA informs CREG about the source of the issue.
- ELIA solves the problem. In case the amount of grid constraints would be at the source of the problem, ELIA can foresee an alternative implementation that aims to reduce the calculation complexity within the Auction clearing algorithm but which does not alter the information embodied in the exhaustive set of grid constraints calculated initially.
- ELIA submits the list of selected Bids to CREG for validation.

963. In case the Auction results cannot be validated at the latest three Working Days before the deadline for the publication of Auction results as described in § 1019 for reasons other than the ones described in article *Tundecies*, § 13 of the Electricity Act, the following fallback procedure applies:

- CREG informs ELIA about the delay and the reason for the delay of the Auction results validation;

- when applicable, ELIA solves the problem;
- CREG validates the Auction results;
- once the results are validated, ELIA informs each Prequalified CRM Candidate about the selection of its submitted Bids. Selected Bids get the status "selected" in the CRM IT Interface;
- auction results are published as described in section 16.4, as soon as possible but at the latest on November 30.

## 15.5 PRE-DELIVERY CONTROL

964. This section covers all possible issues during a pre-delivery control that require a fallback procedure.

### 15.5.1 Pre-delivery test date notification for Existing CMUs

965. In order to organize a pre-delivery test for a Delivery Point without sufficient historical data available (as detailed in section 8.4.2.1), ELIA sends a notification to the Capacity Provider via the CRM IT Interface, asking for a pre-delivery test date.

In case ELIA is not able to request a pre-delivery test date via the CRM IT Interface due to an IT issue, ELIA notifies the Capacity Provider that a test date is required by e-mail.

966. In case the Capacity Provider is not able to communicate to ELIA **the pre-delivery test date** via the CRM IT Interface due to IT problem, he checks first that the CRM IT Interface is not under maintenance. If this is not the case and after trying again to communicate the date, the Capacity Provider is entitled to initiate the fallback procedure.

The fallback procedure consists in the following steps:

- the Capacity Provider contacts ELIA as soon as possible by e-mail mentioning:
  - the ID of the concerned CMU; and
  - the date of the pre-delivery test.
- ELIA has maximum five Working Days starting from the reception of the Capacity Provider's e-mail reception date to acknowledge the pre-delivery test date communicated by e-mail.
- ELIA applies the extension of related deadline as specified in the § 935 above.

### 15.5.2 Quarterly reports submission to ELIA for Additional and Virtual CMUs

967. During a Pre-delivery Period related to an Additional or a Virtual CMU, a Capacity Provider shares with ELIA via the CRM IT Interface quarterly reports (according to section 8.3.4).

968. In case the Capacity Provider is not able to submit a **quarterly report** via the CRM IT Interface due to IT problem, he checks first that the CRM IT Interface is not under maintenance. If this is not the case and after trying again to submit the quarterly report, the Capacity Provider is entitled to initiate the fallback procedure.

The fallback procedure consists in the following steps:



- the Capacity Provider contacts ELIA as soon as possible by e-mail mentioning the ID of the concerned CMU(s) as well as the date of the concerned quarterly report; and
- ELIA comes back to the Capacity Provider within maximum five Working Days starting from the Capacity Provider's email, saying that either:
  - the problem has been solved and the Capacity Provider may try again to submit the report; or
  - the problem cannot be solved in the short term, and the quarterly report may be sent by the Capacity Provider to ELIA by e-mail within five Working Days starting from ELIA's e-mail reception date.

969. In the event that this fallback procedure is initiated, ELIA extends the deadline by five Working Days (defined in section 8.3.4) for providing the quarterly report to all Capacity Providers.

### **15.5.3 Pre-delivery control results**

970. For Additional and Virtual CMUs, ELIA notifies the pre-delivery control results to the Capacity Provider within a certain period of time defined in section 8.4.4 on the CRM IT Interface.

971. In case the Capacity Provider has not received the results of his pre-delivery control via the CRM IT Interface within the timeframe specified, he initiates the fallback procedure which consists in the following steps:

- the Capacity Provider informs ELIA by e-mail that the pre-delivery control results has not been received yet and mentions the following information:
  - the ID of the CMU; and
  - the date of the quarterly report concerned.
- ELIA comes back to the Capacity Provider within maximum five Working Days starting from the Capacity Provider's email, saying that either:
  - the problem has been solved and the results are now made available on the CRM IT Interface; or
  - the problem cannot be solved in the short term, and ELIA sends the results to the Capacity Provider by e-mail.
- ELIA applies the extension of related deadline as specified in the § 935 above.

### **15.5.4 Contestation for Existing CMU**

972. The Capacity Provider is allowed to contest the provisional pre-delivery control results via the CRM IT Interface within a time period defined in section 8.4.4.2.

973. In case the Capacity Provider is not able to notify his contestation through the CRM IT Interface due to IT problem, he checks first that the CRM IT Interface is not under maintenance. If this is not the case and after trying again to submit his contestation, the Capacity Provider is entitled to initiate the fallback procedure.

The fallback procedure consists in the following steps:

- the Capacity Provider contacts ELIA as soon as possible by e-mail mentioning:
  - the ID of the concerned CMU; and

- the nature of the IT issue;
- ELIA comes back to the Capacity Provider within maximum five Working Days starting from the Capacity Provider's email reception date, saying that either:
  - the problem has been solved and the Capacity Provider may submit his contestation via the CRM IT Interface.
  - the problem cannot be solved in the short term, and a contestation form is sent by e-mail so that the Capacity Provider can return it back completed also by e-mail.

974. In the event the fallback procedure is initiated, ELIA extends the deadline to submit the related contestation by ten Working Days.

## 15.6 AVAILABILITY MONITORING AND TESTING

975. This section covers all possible issues occurring throughout the Delivery Period regarding the Availability Obligation and the penalties that require a fallback procedure.

### 15.6.1 Notification of limitation on Available Capacity

976. This issue refers to the section 9.3.

977. In case the Capacity Provider is aware of a limitation on the Capacity of his CMU, the Capacity Provider notifies ELIA by providing the required information via the CRM IT Interface.

978. In case the Capacity Provider is not able to **notify its limitation on Available Capacity** via the CRM IT Interface due to IT problem, he is entitled to initiate the fallback procedure.

The fallback procedure consists in the following steps:

- the Capacity Provider contacts ELIA as soon as possible by e-mail mentioning:
  - the ID of the concerned CMU; and
  - the Remaining Maximum Capacity; and
  - the start date and time of the unavailability; and
  - the end date and time of the unavailability; and
  - the nature of the IT issue;
- ELIA comes back to the Capacity Provider within five Working Days starting from the Capacity Provider's e-mail reception date, saying that either:
  - the problem has been solved and the Capacity Provider may try again to notify the limitation. In addition, ELIA applies the extension of related deadline by five Working Days.
  - the problem cannot be solved in the short term, but the limitation mentioned in the e-mail has been taken into account for the concerned CMU as from the date mentioned in the e-mail.

979. It is the Capacity Provider's responsibility to notify limitations via the CRM IT Interface before 11:00 or timely initiate the fallback procedure in case of CRM IT interface failure. ELIA notes the limitation as Announced Unavailable Capacity for that CMU provided that the fallback procedure was initiated by the Capacity Provider (i.e. by sending the required email) before 11:00 the day

before the start date of the limitation and that the required information are filled in following the template made available on ELIA's website.

## 15.6.2 AMT Moment identification

980. This issue refers to the section 9.4.1.

981. ELIA publishes identified AMT Hours and AMT Moments on its website before 15:00 the day before the occurrence of the AMT Moments or no later than 18:00 in case a fallback procedure for the day-ahead market clearing applies. In case the publication of these AMT Hours and AMT Moments is impossible because of IT issue prior to 18:00 the day before the occurrence of AMT Moment, these are not applicable.

982. After every last Day-ahead Market gate closure time of the NEMOs composing the Day-ahead Market Price, ELIA verifies for every hour of the concerned day if the Day-ahead Market Price exceeds the AMT Price. In case ELIA is unable to determine the Day-ahead Market Price for any given segment, it is not identified as an AMT Hour.

983. In case a NEMO composing (part of) the Belgian Reference Price is decoupled from the Day-ahead Market (e.g. due to IT problems), this does not automatically lead to the triggering of an AMT Hour. ELIA notifies the Capacity Providers via the CRM IT Interface or by e-mail after Day-ahead Market clearing according to the following procedure:

- ELIA acknowledges the decoupling of the market before 15:00 at the latest, along with AMT Hours and Moments identified by the resulting price information (as per section 9.4.1.2) via publication on their website.
  - Capacity Providers proceed as if these AMT Moments apply.
  - ELIA assesses the impact of the decoupling on the Day-ahead Market Price.
  - in case the impact is such that the price would exceed the AMT Price, ELIA continues to apply the identified AMT Hours and AMT Moments.
  - in case the impact is such that the market decoupling itself likely caused the price to rise above the AMT Price, ELIA notifies its publication on its website and notifies the Capacity Providers via the CRM IT Interface or by e-mail that the concerned hours are not considered as AMT Hour(s).

## 15.6.3 Declared Price and Associated Volume declaration

984. This issue refers to the section 9.4.2.1.

### 15.6.3.1 Declaration modalities

985. The Capacity Provider notifies (Partial) Declared Prices to ELIA for CMU(s) without Daily Schedule through declaration(s) via the CRM IT Interface.

986. In case the Capacity Provider is not able to **declare or update (Partial) Declared Price(s) and Associated Volume(s)** via the CRM IT Interface due to IT problem, he checks first that the CRM IT Interface is not under maintenance. If this is not the case and after trying again to declare or to update the information, the Capacity Provider is entitled to initiate the fallback procedure.

The fallback procedure consists in the following steps:

- the Capacity Provider contacts ELIA as soon as possible by e-mail mentioning:
  - the ID of the concerned CMU; and
  - the new (Partial) Declared Price(s) and Associated Volume(s), if any; and/or
  - the (Partial) Declared Price(s) and Associated Volume(s) he wants to modify and their new value, if any; and
  - the nature of the IT issue;
- ELIA comes back to the Capacity Provider within five Working Days starting from the Capacity Provider's e-mail reception date, saying that either:
  - the problem has been solved and the Capacity Provider may try again to declare or update (Partial) Declared Price(s) and Associated Volume(s) via the CRM IT Interface.
  - the problem cannot be solved in the short term, but the information mentioned in the e-mail has been taken into account for the concerned CMU.

987. If the Capacity Provider is not able to declare or update the value(s) of (the set of) Declared Day-ahead Price(s) before 9:00 the day before the occurrence of the AMT Hour due to this fallback procedure and the e-mail was sent to ELIA before that time, ELIA takes into account these prices for this AMT hours provided that the declaration/update information is compliant with section 9.4.2.

988. If the Capacity Provider is not able to declare or update the value(s) of (the set of) Declared Intraday or Balancing Price(s) at least two hours before the start of the AMT Hour due to this fallback procedure and the e-mail was sent to ELIA before that time, ELIA takes into account these prices for this AMT hours provided that the declaration/update information is compliant with section 9.4.2

### **15.6.3.2 Rejection or acceptance notification**

989. In case of rejection, the Capacity Provider automatically receives a notification of rejection completed with a justification. In case of acceptance, the Capacity Provider automatically receives a notification of acceptance.

990. In case the Capacity Provider has not received the rejection or acceptance notification via the CRM IT Interface, he initiates the fallback procedure which consists in the following steps:

- the Capacity Provider informs ELIA by e-mail as soon as possible that the notification has not been received and mentions the following information:
  - the ID of the concerned CMU; and
  - the time and date of the declaration/update; and
  - the nature of the IT issue;
- ELIA comes back to the Capacity Provider within five Working Days starting from the Capacity Provider's e-mail reception date, giving the same information as would have been provided in the notification of rejection or acceptance.

### **15.6.4 Notification of the Availability Test**

991. This issue refers to the section 9.5.1.2.

992. ELIA can verify whether a Capacity Provider has committed to the Availability Obligation for any of its CMU's through unannounced Availability Tests. ELIA instructs the Capacity Provider to perform an Availability Test via the CRM IT Interface at the latest before 15:00 the day before it is to take place.
993. In case ELIA is not able to notify the Availability Test via the CRM IT Interface due to an IT issue, the following fallback procedure is initiated:
- ELIA communicates to the Capacity Provider the following information. Such communication happens by e-mail no later than 15:00 the day before it takes place and is confirmed immediately per phone :
    - the ID of the concerned CMU; and
    - the start date and time of the test; and
    - the end date and time of the test;

### 15.6.5 Submission of the delivery activity report

994. This issue refers to the section 9.6.3.
995. ELIA passes on to the Capacity Provider the delivery activity report for the 15th of month M+2 at the latest related to AMT Moments and Availability Tests having taken place during month M for which the Unavailability Penalties linked to this period are notified.
996. In case the Capacity Provider has not received its delivery activity report via the CRM IT Interface within the timeframe specified hereabove, he initiates the fallback procedure which consists in the following steps:
- the Capacity Provider informs ELIA by e-mail as soon as possible that the delivery activity report has not been received and mentions the following information:
    - the ID of the concerned CMU; and
    - the month of report; and
  - ELIA immediately comes back to the Capacity Provider, giving the same information as would have been provided in the delivery activity report. Such email replaces the delivery activity report communicated to the Capacity Provider through the CRM IT Interface.

### 15.6.6 Notification of three successful deliveries

997. This issue refers to § 629.
998. From the moment the Capacity Provider receives the downwards revision, the CMU has to successfully provide its Obligated Capacity in accordance with the Contracted Capacity and SLA three consecutive times during an AMT Moment and/or Availability Tests to reinstate the Capacity Provider's original Capacity Remuneration. The Capacity Provider notifies ELIA via the CRM IT Interface after completing the third successful delivery.
999. In case the Capacity Provider is not able to **notify that he successfully completed three deliveries** via the CRM IT Interface due to IT problem, he checks first that the CRM IT Interface is not under maintenance. If this is not the case and after trying again to notify ELIA, the Capacity Provider initiates the fallback procedure.

The fallback procedure consists in the following steps:

- the Capacity Provider contacts ELIA as soon as possible by e-mail mentioning:
  - the ID of the concerned CMU; and
  - the start date and time of each concerning Availability Test and/or AMT Moment ; and
  - the nature of the IT issue.
- ELIA comes back to the Capacity Provider within five Working Days starting from his e-mail reception date, saying that either:
  - the problem has been solved and the Capacity Provider may try again to notify the three successful deliveries.
  - the problem cannot be solved in the short term, but the information mentioned in the e-mail has been taken into account for the concerned CMU.

The use of this fallback procedure does not impact the moment from which the initial remuneration is reestablished.

## 15.7 SECONDARY MARKET

### 15.7.1 Notification issuance of a Secondary Market transaction

1000. This part refers to the section 10.5.1, where for any Secondary Market transaction the Buyer and Seller of an Obligation, or the Exchange, have first to notify ELIA via the CRM IT Interface.

1001. In case the Prequalified CRM Candidates, Capacity Providers or the Exchange are not able **to issue the transaction** to ELIA via the CRM IT Interface due to IT problem, they check first that the CRM IT Interface is not under maintenance. If this is not the case and after trying again to issue the transaction, they are entitled to initiate the fallback procedure.

The fallback procedure consists in the following steps:

- the Prequalified CRM Candidates, Capacity Providers or the Exchange contacts ELIA by e-mail mentioning:
  - the CMU ID of the Seller of an Obligation; and
  - the CMU ID of the Buyer of an Obligation; and
  - the start date of the transaction; and
  - the end date of the transaction; and
  - the nature of the IT issue;
- ELIA comes back to the Prequalified CRM Candidates, Capacity Providers or the Exchange within maximum five Working Days starting from their e-mail's reception date, saying that either:
  - the problem has been solved and the Prequalified CRM Candidates, Capacity Providers or the Exchange may try again to issue the transaction via the CRM IT Interface.
  - the problem cannot be solved in the short term and the transaction form is sent by e-mail so that the Prequalified CRM Candidates, Capacity Providers or the Exchange can fill it in and return it back completed to ELIA also by e-mail (if applicable, including proof of a

permissible type of Financial Security, in accordance with the requirements set in section 11.3).

- ELIA applies the extension of related deadline as specified in the § 935 above

1002. In case of bilateral Secondary Market transaction, if the other party cannot confirm the transaction within five Working Days following the first notification due to the fallback procedure and he has notified ELIA by e-mail within the time limit, ELIA considers the notification issuance of that transaction to be compliant (upon the condition that the other validity conditions are satisfied). The date of the first email sent by the Prequalified CRM Candidate or Capacity Provider to ELIA to initiate the fallback procedure above is then used to determine the Transaction date, including its ex-ante or ex-post character.

### **15.7.2 Acknowledgement of reception by ELIA**

1003. This part refers to the section 10.5.2.

1004. After the notification issuance of the transaction, ELIA notifies the good reception with an acknowledgement of reception towards the counterparty(ies) issuing the notifications.

1005. For bilateral Secondary Market transaction, the acknowledgement of reception is sent by ELIA to the Seller of an Obligation and the Buyer of an Obligation within a maximum of one Working Day after reception of both notifications.

1006. For Secondary Market transaction notified by an Exchange, the acknowledgement of reception is sent by ELIA to the Exchange within one Working Day after reception of one notification.

1007. If the Prequalified CRM Candidates, Capacity Providers or the Exchange have not received the notification via the CRM IT Interface within one Working Day, they initiate the fallback procedure which consists in the following steps:

- the Prequalified CRM Candidates, Capacity Providers or the Exchange inform ELIA by e-mail as soon as possible that the notification has not been received and mentions the following information:
  - the CMU ID of the Seller of an Obligation; and
  - the CMU ID of the Buyer of an Obligation; and
  - Secondary Market Transaction external ID; and
  - the date of the notification in case of transaction notified by an Exchange; or
  - the date of the notification in case of bilateral transaction;
- ELIA comes back to the Prequalified CRM Candidates, Capacity Providers or the Exchange within two Working Days starting from the e-mail reception date, giving the acknowledgement of reception.

### **15.7.3 Approval or rejection of a Secondary Market transaction by ELIA**

1008. This issue refers to § 732.

1009. As a final step of the Secondary Market process, a notification providing the results linked to a Secondary Market transaction – i.e. whether the Secondary Market transaction is compliant or

not – is provided by ELIA to the Buyer and Seller of an Obligation or to the Exchange, within five Working Days from the acknowledgement of reception by ELIA.

1010. In case the Prequalified CRM Candidates, Capacity Providers or the Exchange have not received the notification within five Working Days, they initiate the fallback procedure which consists in the following steps:

- the Prequalified CRM Candidates, Capacity Providers or the Exchange informs ELIA by e-mail as soon as possible that the notification has not been received and mentions the following information:
  - the CMU ID of the Seller of an Obligation; and
  - the CMU ID of the Buyer of an Obligation; and
  - Secondary Market transaction external ID; and
  - the date of the acknowledgment of reception of the transaction;
- ELIA comes back to Prequalified CRM Candidates, Capacity Providers or the Exchange within five Working Days starting from the e-mail reception date, giving the same information as would have been provided in the notification of approval or rejection.

## 15.8 FINANCIAL SECURITIES

### 15.8.1 Submission of Financial Security

1011. This part refers to the Financial Security obligation as per chapter 11:

- for a Transaction on the Primary Market, the submission of Financial Security is a condition to be able to participate to the Primary Market and the process happens partially in parallel with the Prequalification Process, so the fallback procedure is incorporated in section 15.3.
- for a transaction on the Secondary Market, the submission of Financial Security is a condition to obtain ELIA's approval for a notified transaction on the Secondary Market, so the fallback procedure is incorporated in section 15.7.

1012. In case the CRM Actor is not able **to submit the Financial Security** to ELIA via the CRM IT Interface due to an IT problem, he checks first that the CRM IT Interface is not under maintenance. If this is not the case and after trying again to submit the Financial Security, he initiates the fallback procedure.

The fallback procedure consists in the following steps:

- the CRM Actor contacts ELIA by e-mail mentioning:
  - the ID of the concerned CMU; and
  - the date by which he needs to submit a Financial Security; and
  - the amount of the Financial Security he needs to submit; and
  - the expiry date of the Financial Security he needs to submit; and
  - the type of Financial Security he wants to submit; and
  - the nature of the IT issue.



- ELIA comes back to the CRM Actor within maximum five Working Days starting from the CRM Actor's e-mail, saying that either:
  - the problem has been solved and the CRM Actor may try again to submit the Financial Security via the CRM IT Interface.
  - the problem cannot be solved in the short term, so the CRM Actors submits the Financial Security by email.

## **15.8.2 Release of Financial Security**

1013. In case the CRM Actor has not received the notification via the CRM IT Interface in due time and the corresponding amount of the Secured Amount was not released, he initiates the fallback procedure which consists in the following steps:

- the CRM Actor informs as soon as possible ELIA by e-mail with the following information:
  - the ID of the concerned CMU; and
  - the value in [€] of the Secured Amount that needs to be released; and
  - the date of the Secured Amount decrease; and
  - the name of the financial or corporate institution that issued the bank guarantee (if applicable);
- ELIA comes back to the Capacity Provider within maximum five Working Days starting from the e-mail reception, saying that either:
  - the conditions of release are met and ELIA does its best effort to release the Secured Amount as soon as possible.
  - the conditions of release are not met and ELIA explains the reasons why the Secured Amount is not released.

# 16 TRANSPARENCY AND MOTIVATION

## 16.1 INTRODUCTION

*This section of the Functioning Rules includes the rules to ensure the transparency of the Capacity Remuneration Mechanism and the Low Carbon Tender.*

*This chapter is structured around five sections.*

*Section 16.2 establishes the general principles on Transparency and Motivation.*

*Section 16.3 describes the prequalification results that are published in order to enable transactions on the Secondary Market.*

*Section 16.4 explains the information that ELIA publishes related to the Opt-out Volumes, volume corrections of the Demand Curve and Auction results, distinguishing between information for the submitted Bids and information for selected Bids.*

*Section 16.5 specifies the information that is included in the pre-delivery activity reports.*

*Finally, section 16.6 details the information provided in the reports published before the start of a Delivery Period.*

## 16.2 GENERAL PRINCIPLES

1014. ELIA ensures at all times compliance with the transparency obligation, specifically for the purpose of giving CRM Actors the information necessary for performing their obligations, ensuring the correct operation of the market and exchanges, and facilitating CREG supervision in connection with the CRM or LCT.
1015. In connection with the transparency obligation as defined below, ELIA publishes all relevant CRM or LCT-related information, except when such publication is prohibited by law or is likely to negatively impact the correct operation of the CRM or LCT. Without prejudice to information which must be divulged in accordance with the sections below, when ELIA deems that information must not be published, it will inform CREG of the reasons for said decision. If CREG deems that these reasons are not justified or that balancing out the interests at hand justifies such publication, it can require that ELIA publish the information in question.
1016. The provisions set out in the sections below determine the information which ELIA must at a minimum publish in connection with the CRM or LCT. Such information may be further specified in connection with the adoption of a subsequent version of the Functioning Rules. The transparency obligations pertaining to the secondary market and the availability of capacity will be stipulated, at the latest, within the framework of the establishment of the Functioning Rules following the first Auction.
1017. In connection with the processing of each stage of an Actor's involvement in the CRM or LCT implying a decision by ELIA, ELIA shall ensure full compliance with the obligation to provide reasons in respect of said Actor. To that end, ELIA will send to the CRM Actor in question, in a timely fashion, the *de facto* and/or *de jure* reasons on which its decision is based. In addition, ELIA send CREG the necessary information, in an intelligible format, in order to enable it to take a decision on the validity of the Auction.

## 16.3 PREQUALIFICATION RESULTS

1018. ELIA publishes a list of Prequalified CMUs on its website including the following information:

- name of the CMU;
- contact details as provided by the Prequalified CRM Candidate via the application form during the Prequalification Process (according to § 68);

At the latest ten calendar days after each of the following dates ELIA updates the list of Prequalified CMUs by adding new Prequalified CMUs and removing CMUs whose prequalification is not valid anymore or for which the CRM Actor has requested to archive the CMU (according to section 5.6):

- January 1;
- April 1;
- July 1 (containing a screenshot of the situation before 15/6, so without consideration of the results of the Prequalification Process for the upcoming Auctions later that year);
- November 1 (i.e. after the publication of the Auction results. Hence this timing is postponed in case of a delay in the Auction results publication as described in section 15.4.3).

## 16.4 AUCTION REPORT

1019. For each conducted Auction, and pursuant to CREG's Auction result validation decision, ELIA publishes an Auction report on its website by October 31 at the latest. The Auction report includes, at the very least, the information described in the sections below.

### 16.4.1 Opt-out Volumes

1020. For every Y-4 Auction, the Auction report includes the following aggregated information:

- the total Opt-out Volume contributing to adequacy (category "IN") (derated<sup>31</sup>) – and a split per technology – is included in the Auction report and is calculated in accordance with section 5.4.2.2.1.
- the total Opt-out Volume not contributing to adequacy (category "OUT") (derated<sup>32</sup>) is included in the Auction report and is calculated in accordance with section 5.4.2.2.1 and split over:
  - the total Opt-out Volume associated with a definitive closure or a definitive structural reduction of capacity notification in accordance with article 4bis of the Electricity Act;
  - the total Opt-out Volume associated with additional production capacity as part of a "full opt-out", for which no Connection Contract was signed with ELIA or the DSO, as applicable, or for which, based on the information available in the Connection Contract signed with ELIA or with the DSO, as applicable, it appears that the capacity will not be available by

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<sup>31</sup> Based on the Derating Factors provided by the CRM Candidate as part of the Prequalification File submission.

<sup>32</sup> Based on the Derating Factors provided by the CRM Candidate as part of the Prequalification File submission.

the start of the Delivery Period to which the Opt-out Notification relates;

- the total Opt-out Volume associated with a “full opt-out” of New Build CMUs;
- the total Opt-out Volume associated with a “partial opt-out” of CMUs with an SLA category;
- the total Opt-out Volume associated with a “partial opt-out” of Energy Constrained CMUs with Daily Schedule;
- the total Opt-out Volume associated with the non-firm capacity as part of a connection with flexible access, referred to in article 170 of the Federal Grid Code.

1021. For every Y-1 Auction, the Auction report includes the following information on the Opt-out Volumes:

- the total Opt-out Volume contributing to adequacy (category “IN”) (derated) – and a split per technology – is included in the Auction report and is calculated in accordance with section 5.4.2.2.2.
- the total Opt-out Volume not contributing to adequacy (category “OUT”) (derated) is included in the Auction report and is calculated in accordance with section 5.4.2.2.2 and split over:
  - the total Opt-out Volume associated with a definitive closure or definitive structural reduction of capacity notification in accordance with article 4bis of the Electricity Act;
  - the total Opt-out Volume associated with a temporary closure or temporary structural reduction of capacity notification in accordance with article 4bis of the Electricity Act;
  - the total Opt-out Volume associated with additional production capacity as part of a “full opt-out”, for which no Connection Contract was signed with ELIA or the DSO, as applicable, or for which, based on the information available in the Connection Contract signed with ELIA or with the DSO, as applicable, it appears that the capacity will not be available by the start of the Delivery Period to which the Opt-out Notification relates;
  - the total Opt-out Volume associated with a “full opt-out” of New Build CMUs;
  - the total Opt-out Volume associated with a “partial opt-out” of CMUs with an SLA category;
  - the total Opt-out Volume associated with a “partial opt-out” of Energy Constrained CMUs with Daily Schedule;
  - the total Opt-out Volume which is indicated as not contributing to adequacy during the Delivery Period to which the Opt-out Notification relates, provided that a motivational letter to support this indication is provided by the CRM Actor as part of its Opt-out Notification.

## 16.4.2 Volume corrections of the Demand Curve

1022. ELIA publishes the details of corrections made to the demand curve. These include detailed information received during the prequalification process (which was not yet known during the demand curve calibration), and on the basis of which ELIA corrects the volume to be procured during the Auction.

## 16.4.3 Results of the Auction

1023. The Auction report includes specific information on the selected Bids in connection with the Auction. This information pertains, at the very least, to the maximum volume offered by each CMU as well as the volume of the selected bid, the particulars of the CMU (with the type(s) of technology and status) and of the Prequalified CRM Candidate whose bid was selected, link(s) between the bids (“Linked Bids”), if any, and the duration of the Capacity Contract.

1024. In addition, the Auction Report contains the aggregated data set out in sections 16.4.3.1 and 16.4.3.2.

### **16.4.3.1 Submitted Bids**

#### **16.4.3.1.1 Bid information**

1025. The report contains aggregated information on the valid Bids that have been submitted in the Auction. As shown in annex 18.6.2 the following information is provided:

- bid volume weighted average price of Bids, split into Bids that are subject to the Intermediate Price Cap and Bids that are not subject to the Intermediate Price Cap;
- average capacity volume of all Bids;
- total number of submitted Bids;
- total number of submitted CMUs;
- total number of unique CRM Candidates that have participated in the Auction.

In addition, information is provided on the share of mutually exclusive Bids:

- number of mutually exclusive Bids (in % of total number of submitted Bids);
- total volume of mutually exclusive Bids together with the maximum volume of mutually exclusive Bids that can be selected in the Auction.

#### **16.4.3.1.2 Capacity volume information**

1026. As shown in annex 18.6.2, the offered capacity volumes (expressed in MW) are separately aggregated by:

- Capacity Contract Duration (from minimum one year to maximum fifteen years); Within the category of capacity volumes with a Capacity Contract Duration of one year, difference is made between capacities subject to the Intermediate Price Cap or not;
- CMU status (Existing CMU, Additional CMU (excluding New Build CMUs), New Build CMU or Virtual CMU);
- technology classes, in line with the Derating Factor categories determined in the *[placeholder to amendment of Royal Decree on Methodology]* ;
- TSO-connected vs. DSO-connected vs. Unproven Capacity.

### **16.4.3.2 Selected Bids**

#### **16.4.3.2.1 Bid information**

1027. The report contains aggregated information on the Bids that have been selected in the Auction. As shown in annex 18.6.3, the following information is provided:

1028. Bid volume weighted average price of Bids, split into Bids that are subject to the Intermediate Price Cap and Bids that are not subject to the Intermediate Price Cap;

- average capacity volume of all selected Bids;
- total number of selected Bids;
- total number of selected CMUs;
- total number of unique CRM Candidates that have been selected in the Auction.

#### **16.4.3.2.2 Auction price information**

1029. In view of a pay-as-bid pricing rule the report contains information on the highest selected Bid Price.

#### **16.4.3.2.3 Capacity volume information**

1030. As shown by annex 18.6.3.3, the offered capacity volumes (expressed in MW) are separately aggregated by:

- Capacity Contract Duration (from minimum one year to maximum fifteen years); Within the category of capacity volumes with a Capacity Contract Duration of one year, difference is made between capacities subject to the Intermediate Price Cap or not.
- CMU status (Existing CMU, Additional CMU (excluding New Build CMUs), New Build CMU or Virtual CMU );
- Technology classes, in line with the Derating Factor categories determined in the *[placeholder to amendment of Royal Decree on Methodology]* ;
- ELIA Grid-connected vs. DSO-connected vs. Unproven Capacity.

## **16.5 PRE-DELIVERY ACTIVITY REPORT**

1031. No later than March 31 of every calendar year and starting on March 31 2023, ELIA publishes on its website a pre-delivery activity report for every Delivery Period covered by the pre-delivery controls during the past year.

1032. As shown by annex 18.6.4, the pre-delivery activity report contains the following information presented for every forthcoming Delivery Period separately:

- For Existing CMUs:
  - Contracted Capacities of Transactions with a Transaction Period covering the respective Delivery Period, aggregated over the CMUs with an 'existing' status;
  - Missing Volumes identified during the pre-delivery controls during the past year, aggregated over the CMUs with an 'existing' status.
- For Additional CMUs:
  - Contracted Capacities of Transactions with a Transaction Period covering the respective Delivery Period, aggregated over the CMUs with an 'additional' status;
  - Missing Volumes identified during the pre-delivery controls during the past year and before the volume determination for the Y-1 Auction, aggregated over the CMUs with an 'additional' status;
  - Missing Volumes identified during the pre-delivery controls during the past year and after

the volume determination for the Y-1 Auction, aggregated over the CMUs with an 'additional' status.

- For Virtual CMUs:
  - Contracted Capacities of Transactions with a Transaction Period covering the respective Delivery Period, aggregated over the Virtual CMUs.
  - Missing Volumes identified during the pre-delivery controls during the past year and before the volume determination for the Y-1 Auction, aggregated over the Virtual CMUs;
  - Missing Volumes identified during the pre-delivery controls during the past year and after the volume determination for the Y-1 Auction, aggregated over the Virtual CMUs.

## **16.6 YEARLY REPORT BEFORE THE START OF THE DELIVERY PERIOD**

1033. Next to the publication of the results of the Auction, ELIA publishes on its website, no later than three months before the start of the Delivery Period, a yearly report containing information on the upcoming Delivery Period. As shown by annex 18.6.5, this yearly report includes, among others, the following elements:

- Contracted Capacities, aggregated over the CMUs, awarded in the Y-4 and Y-1 Auctions for the Delivery Period.
- Contracted Capacities, aggregated over the CMUs, awarded during earlier Auctions related to previous Delivery Periods, for which the Transaction Period covers the Delivery Period covered by the report (together with the weighted-average Strike Price).
- the Calibrated Strike Price applicable to the Y-4 Auction for that Delivery Period.
- the Calibrated Strike Price applicable to the Y-1 Auction for that Delivery Period.
- the calibrated AMT Price for that Delivery Period.

# 17 DIRECT AND INDIRECT FOREIGN CAPACITY PARTICIPATION

## 17.1 INTRODUCTION

*Following article 26 (1) of Regulation (EU) 2019/943 a capacity mechanism should be open for cross-border participation. Also, following article 26 (11) of Regulation (EU) 2019/943, the participation complies with the methodologies provided in ACER Decision 36-2020.*

*The Electricity Act distinguishes the participation by a Direct Foreign Capacity and by an Indirect Foreign Capacity. Pursuant to the definitions as defined in article 2, 86° of the Electricity Act, the participation of the Direct Foreign Capacity is foreseen in the CRM and is considered as a domestic capacity and not as cross-border participation as per art 26 of the Regulation (EU) 2019/943. In accordance with the definition as defined in the article 2, 85° of the Electricity Act, the participation of the Indirect Foreign Capacity is foreseen in the CRM.*

*The Electricity Act further stipulates in article 7undecies §8 that the conditions for the Indirect Foreign Capacities participation in the CRM Prequalification Process are to be specified in a Royal Decree. Furthermore it is stated that it is to be foreseen that those conditions are to be determined as from the first Delivery Period.*

*The Royal Decree on "Indirect Foreign Capacities" defines the principles, conditions and modalities applicable to the Eligible Direct Foreign Capacity Holder and Eligible Indirect Foreign Capacity Holder for their participation in the Belgian CRM Prequalification Process and refers for several aspects to the CRM Functioning Rules for the exact details on the modalities.*

*While the Functioning Rules should foresee further details on a number of aspects to ensure the participation of Direct Foreign Capacity and Indirect Foreign Capacity for the first Delivery Period, it is to be noted that for the participation of Indirect Foreign Capacity this will be done progressively in the following versions of the Functioning Rules prior the first Delivery Period. The need to engage in a close collaboration with entities in neighbouring EU Member States, in particular the TSOs, and the need to conclude on a TSO-TSO agreement as also foreseen by the Royal Decree on "Indirect Foreign Capacities" and ACER Decision 36-2020 do not allow to already provide a full set of rules in this version of the Functioning Rules for participation in the first Y-4 Auction for the first Delivery Period starting in November 2025. Also, as the development may proceed differently for each concerned border with neighbouring Member State, a phased approach cannot be excluded.*

*Nevertheless, in order to provide any Capacity Holder with a sufficient degree of information related to the participation of Indirect Foreign Capacity in the first Delivery Period, this chapter already puts forward the high-level aspects to be arranged in further detail in future versions of the Functioning Rules related to the participation of Indirect Foreign Capacity.*

*The participation of Direct Foreign Capacity is enabled by the current version of the Functioning Rules as from the first Y-4 Auction for the Delivery Period starting in November 2025.*

## 17.2 DIRECT FOREIGN CAPACITY PARTICIPATION



1034. Given the definition of Direct Foreign Capacity in article 2, 86° of the Electricity Act, this capacity is considered on the same terms as domestic capacity, and the Eligible Direct Foreign Capacity Holders are allowed to participate in the Belgian CRM at the same conditions as the Belgian Capacity Holders, while taking into account the additional specific conditions and modalities mentioned in article 7undecies §8 of the Electricity Act and any other legal requirement applicable on them.
1035. This means that as a general rule, unless specifically stated otherwise in the Functioning Rules, that the same rules apply to Direct Foreign Capacity and their Capacity Holders as for any other (domestic) Capacity and Capacity Holder.
1036. Nevertheless, several aspects related to the Prequalification Process of the Direct Foreign Capacity participation of the Eligible Direct Foreign Capacity Holder are specified in section 5.2.3.1.1.
1037. The pre-delivery process as foreseen in chapter 8 is impacted by the here above elements of the Prequalification Process.
1038. Any dispute with respect to the participation of the Eligible Direct Foreign Capacity Holder to the CRM will be ruled according to chapter 14.

## 17.3 INDIRECT FOREIGN CAPACITY PARTICIPATION

1039. This section describes the general aspects applicable to the Eligible Indirect Foreign Capacity Holder for their participation in the Belgian CRM Prequalification Process.
1040. The Eligible Indirect Foreign Capacity Holder participation in the Prequalification Process is facultative.
1041. The Eligible Indirect Foreign Capacities Holders are allowed to participate in the Belgian CRM at the same conditions as the Belgian Capacity Holders with additional specific conditions and modalities mentioned in article 2 of the Royal Decree on "Indirect Foreign Capacities", which will be developed later in the relevant CRM Functioning Rules chapters.
1042. Pursuant to the art. 2 §§ 1 and 2 and article 4 of the Royal Decree on "Indirect Foreign Capacities", the Eligible Indirect Foreign Capacity Holders participation of an Adjacent Member State in the Belgian CRM is decided by the Authorities and facilitated by agreements between ELIA and the Adjacent TSOs of the Adjacent Member State. Since none of them currently exist or shall exist prior the adoption of the Functioning Rules, it implies a phasing over time of the implementation for each of the borders.
1043. Pursuant to article 2, § 1, of the Royal Decree on "Indirect Foreign Capacities", the participation of the Eligible Indirect Foreign Capacity Holders of a border takes into account the modalities of the TSO-TSO agreement. The Functioning Rules shall refer explicitly to the TSO-TSO agreement requiring an update of the Functioning Rules to incorporate those elements in the impacted chapters which shall thus be elaborated and detailed further, once Indirect Foreign Capacity participation is possible (conform article 2 §2 of the Royal Decree on "Indirect Foreign Capacities") and at the latest prior to the last Auction targeting the first Delivery Period.

The impacted aspects governed by the Functioning Rules include mainly:

- in chapter 6: the addition of specific rules for the organisation of the Pre-Auction for a border on which the Indirect Foreign Capacity participation is enabled in order to allow to the Eligible Indirect Foreign Capacity Holder to participate to the Prequalification Process of the Belgian

CRM as well as the taking into account of the Bids from Indirect Foreign Capacity participation in the Auction. In any case, in the Pre-auction bidding, the Eligible Indirect Foreign Capacity Holders are subject to the same price, volume and contract duration limits and constraints as any Belgian Prequalified CRM Candidates in the Auction bidding. The maximum number of winning Bids from Indirect Foreign Capacity for a border is limited by the maximum entry capacity for that border.

- in chapter 5: the addition of specific rules per border in accordance with the TSO-TSO agreements with (each of) the Adjacent TSO(s) of the Adjacent Member State including the organisation of the process prior the Pre-auction to determine the Eligible Indirect Foreign Capacity Holders and the facilitation of the further Prequalification Process taking place after the Pre-Auction;

Any dispute with respect to the participation of the Eligible Indirect Foreign Capacity Holder to the CRM will be ruled according to chapter 14. Any other chapter may undergo light changes to ensure full clarity of the rules applicable in each case in line with the overall framework for cross-border participation, including the specific TSO-TSO agreements.

# 18 ANNEXES

## 18.1 ANNEX A: PREQUALIFICATION PROCESSES

### 18.1.1 ANNEX A.1: METERING REQUIREMENTS

All Existing Delivery Points prequalifying through the Standard and Specific Prequalification Processes (TSO, DSO and CDS-connected Delivery Point) shall have one or several meter(s) installed that meets the following minimum requirements.

#### 18.1.1.1 General metering requirements

Regardless of the Delivery Point, the meter must be an AMR (Automatic Meter Reader) that measures quarter-hourly values of active power in both directions (injection or offtake) at the concerned Delivery Point. However, it is recommended that the meter is also able to measure reactive power, to align with the metering requirements for other products operated by ELIA, such as the ancillary services.

#### 18.1.1.2 Specific metering requirements

##### 18.1.1.2.1 TSO-connected Delivery Points:

In case of headmetering, the meter must be a Headmeter listed in the Annex 4 of the Connection Contract concluded between the Grid User and ELIA, and used for the invoicing of access to the ELIA Grid.

In case of submetering, the specific requirements are described in the document "General technical requirements for submetering" available on the ELIA website<sup>33</sup>

In case a Delivery Point not subject to Daily Schedule is situated upstream of a Delivery Point subject to Daily Schedule, the metering data of the Delivery Point not subject to Daily Schedule can not include the metering data from the Delivery Point subject to Daily Schedule. As a consequence, for the Delivery Point not subject to Daily Schedule, two options are available :

1. If in the context of another ancillary service, an equation based on Headmeter and Submeter(s) is used for providing the metering data : the exact same equation can be used for providing the metering data in the context of the CRM or LCT.
2. In all other cases : a Submeter must be installed

##### 18.1.1.2.2 DSO-connected Delivery Points:

For both headmetering and submetering, the CRM Candidate should refer to DSO-CRM Candidate

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<sup>33</sup> <https://www.elia.be/en/electricity-market-and-system/system-services/technical-documentation-concerning-the-provision-of-ancillary-services>

Agreement. All communications and agreements regarding the metering requirements should be discussed with the applicable DSO.

### **18.1.1.2.3 CDS-connected Delivery Points:**

When the meters associated to Delivery Points are already used for the invoicing obligations in relation to a CDS Market Access Point, these meters are also considered valid for the obligations in the context of the CRM or LCT. In all other cases, the metering installations (meter, current transformer, voltage transformer) must comply with the technology and accuracy classes as described in the "General technical requirements for submetering" document available on the ELIA website<sup>34</sup>.

In all cases, the metering data shall be validated by the CDSO and communicated:

- to ELIA in case of TSO-connected CDS (as set in the CDSO cooperation agreement detailed in annex 18.1.5). Further specifications can be found in the "Metering data exchanges for CDS Operators" document available on the ELIA website<sup>35</sup> or;
- to the relevant DSO in case of a DSO-connected CDS (as agreed between the CDSO and the corresponding DSO in accordance with the data requirements for the operation of the CRM).

For a TSO-connected CDS, any metering data related to a Delivery Point downstream of a CDS Market Access Point must be provided with the metering data coming from the Headmeter(s) of the same CDS Market Access Point.

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<sup>34</sup> <https://www.elia.be/en/electricity-market-and-system/system-services/technical-documentation-concerning-the-provision-of-ancillary-services>

<sup>35</sup> <https://www.elia.be/en/customers/metering> (referred at time of publication as "Metering Manual for closed distribution system (CDS) operators")

## 18.1.2 ANNEX A.2: GRID USER / CDS USER DECLARATION

In the event the CRM Actor differs from the Grid User or the CDS User (for CDS-connected Delivery Points) differs from the CRM Actor, the CRM Actor submits to ELIA a copy of the Grid User/CDS User Declaration as part of his Prequalification File. A single Grid User Declaration or CDS User Declaration can include one or more Delivery Point(s) related to the concerned Grid User or CDS User respectively.

### 18.1.2.1 Grid User Declaration

The Grid User Declaration contains at least the following clauses:

- the present Grid User Declaration only applies for the Delivery Point(s) listed in table A.1.
- the Grid User hereby acknowledges that all given information in this Grid User Declaration is true and accurate.
- the Grid User confirms to ELIA that his commitment to provide Service – if any – does not breach existing contracts with third parties (with whom the Grid User has a contractual or regulated relationship, such as, but not limited to, the supplier of the Grid User).
- the Grid User hereby gives permission to the CRM Actor to offer the Service to ELIA or to participate to a Fast Track Prequalification Process from DD/MM/YYYY to DD/MM/YYYY.
- the Grid User hereby acknowledges that the list of Delivery Point(s) in table A.1 will only be used by one CRM Actor at a time (the candidate being the CRM Actor concerned by this Grid User Declaration) during the period of time defined in the previous bullet point.
- the Grid User acknowledges that the present document is valid for each Delivery Point listed in table A.1 until either respective expiry date of the Grid User Declaration or the submission by another party of a new Grid User declaration, for one (or more) of the Delivery Point(s) listed in table A.1, signed and validated by the Grid User. The present Grid User Declaration remains valid until its expiry date for all Delivery Points listed in table A.1 not concerned by the aforementioned new Grid User Declaration.
- the Grid User hereby gives explicit permission to ELIA to inform the CRM Actor of the measurements of the Delivery Point(s) listed in table A.1.
- all Delivery Points listed in table A.1 shall respect the metering requirements set forth in the Functioning Rules.
- for each Delivery Point listed in table A.1 and whenever relevant, the Grid User gives the CRM Actor access to the information related to the production permit in order for the CRM Actor to be able to properly complete the Prequalification File(s) including the Delivery Point(s) listed in table A.1.
- for each Delivery Point already submitted in a Prequalification File, it is the Grid User's responsibility to provide the related Delivery Point's ID (This ID being initially communicated to the Grid User by the CRM Actor who was the first to participate to a Prequalification Process with the Delivery Point) for this Grid User Declaration.
- details of the concerned Delivery Point(s):

Delivery Point name	Delivery Point identification (EAN code if applicable)	CRM ID of the Delivery Point	Expected Nominal Reference Power (in MW)

Table A.1 – List of Delivery Points concerned by the Grid User Declaration

### 18.1.2.2 CDS User Declaration

The CDS User Declaration contains at least the following clauses:

- the present CDS User Declaration only applies for the Delivery Point(s) listed in table A.2.
- the CDS User hereby acknowledges that all given information in this CDS User Declaration is true and accurate.
- the CDS User confirms to ELIA that the CRM Candidate is aware that his commitment to provide Service may not breach existing contracts with third parties (with whom the CDS User has a contractual or regulated relationship, such as, but not limited to, the Supplier of the CDS-user or the CDSO).
- the CDS User hereby gives permission to the CRM Actor to offer the Service to ELIA from DD/MM/YYYY to DD/MM/YYYY.
- the CDS User hereby acknowledges that the list of Delivery Point(s) in table A.2 will only be used by one CRM Actor (the candidate being the CRM Actor concerned by this CDS User Declaration) during the period of time defined in the previous bullet point.
- the CDS User acknowledges that the present document is valid for each Delivery Point listed in table A.2 until either respective expiry date of the CDS User Declaration or the submission by another party of a new CDS User declaration, for one (or more) of the Delivery Point(s) listed in table A.2, signed and validated by the CDS User. The present CDS User Declaration remains valid until its expiry date for all Delivery Points listed in table A.2 not concerned by the aforementioned new CDS User Declaration.
- the CDS User hereby gives explicit permission to ELIA to inform the CRM Actor of the measurements of the Delivery Point(s) listed in table A.2.
- for each Delivery Point listed in table A.2 and whenever relevant, the CDS User gives the CRM Actor access to the information related to the production permit in order for the CRM Actor to be able to properly complete the Prequalification File(s) including the Delivery Point(s) listed in table A.2.
- for each Delivery Point already submitted in a Prequalification File, it is the CDS User's responsibility to provide the related Delivery Point's ID (this ID being initially communicated to the CDS User by the CRM Actor who was the first to participate to a Prequalification Process with the Delivery Point) for this CDS User Declaration.

- details of the concerned Delivery Point(s):

Delivery Point name	Delivery Point identification (EAN code, if applicable)	CRM ID of the Delivery Point	Maximum Nominal Reference Power allowed (in MW)

Table A.2 – List of Delivery Point(s) concerned by the CDS User Declaration

### 18.1.3 ANNEX A.3: CDSO DECLARATION

The CRM Candidate upload this declaration via the CRM IT Interface. The CDS-connected Delivery Point(s) is(are) can only successfully complete the Prequalification Process upon signature of this declaration.

#### 18.1.3.1 Declaration by a CDSO for a Standard or Specific Prequalification Process

With this declaration, [company name], a company incorporated under [nationality] law, enterprise number [number], with registered office at [address], validly represented by Mr/Mrs [name] and Mr/Mrs [name], respectively in their quality of [function] and [function], identified for the purposes hereof as "the CDSO", hereby grants permission for the Delivery Point(s) identified below, which is(are) part of its CDS with power measured by CDSO meters, to participate, for the period DD/MM/YYYY to DD/MM/YYYY, to the Service organized by ELIA or to participate to a Fast Track Prequalification Process, as defined in the Functioning Rules.

In the knowledge that this(these) Delivery Point(s) correspond(s) fully or partly with the CDS Market Access Point of [company name], a company incorporated under [nationality] law, enterprise number [number], with registered office at [address], recognized as a User of the CDS that is managed by the CDSO,

And

Undertakes to conclude a cooperation agreement with ELIA in accordance with the model described in annex 18.1.5 which can be found on ELIA website or can be obtained upon request to ELIA and which describes the conditions for exchanging metering data between ELIA and the CDSO, and to do so within the timing foreseen in the Service Time Schedule.

Detail of the Delivery Point(s):

CDS User	EAN code of the Access Point	EAN code of the CDS Market Access Point	ID of the technical agreement	Delivery Point ID (EAN, if applicable) <sup>36</sup>	Single line diagram

Table A.3 – Overview of the Delivery Points related details

Risk of full or partial load transfer (to be described by the CDS Operator):

.....  
 .....

<sup>36</sup> The EAN code is not mandatory for an Additional Delivery Point. In this situation, only the Delivery Point ID is required.



.....  
.....  
.....  
.....

And

Confirms that it has obtained express permission from the CDS User to send to ELIA the confidential information, including metering data (quarter-hourly values of active power) for the above-identified Delivery Point and the corresponding CDS Market Access Point, since such communication is necessary for the correct invoicing of the Service with respect to the Capacity Provider, which to that end makes use of the CDS User's Delivery Point.

And

The document 'CDS Metering Technical Info Checklist' (as referred to in annex 18.1.5) is attached to this declaration. The CDS Metering Technical Info Checklist is available on the ELIA website<sup>37</sup>

And

Hereby acknowledges that all given information in this CDSO Declaration is true and accurate.

Done in [location], on DD/MM/YYYY

Signature of the CDS Operator:

Name:

Title:

**18.1.3.2 Declaration by a CDSO for a Fast Track Prequalification Process**

With this declaration, [company name], a company incorporated under [nationality] law, enterprise number [number], with registered office at [address], validly represented by Mr/Mrs [name] and Mr/Mrs [name], respectively in their quality of [function] and [function], identified for the purposes hereof as "the CDSO", hereby provides the information below for the Delivery Point(s) corresponding fully or partly with the CDS Market Access Point of [company name], a company incorporated under [nationality] law, enterprise number [number], with registered office at [address], recognized as a User of the CDS that is managed by the CDSO.

\_\_\_\_\_

<sup>37</sup> <https://www.elia.be/en/electricity-market-and-system/system-services/technical-documentation-concerning-the-provision-of-ancillary-services>

Detail of the Delivery Point(s):

CDS User	EAN code of the Access Point	EAN Code of CDS Market Access Point	CRM ID of the Delivery Point	Delivery Point Identification (EAN)

*Table A.4 - Overview of the Delivery Points related details*

The CDSO hereby acknowledges that all given information in this CDSO Declaration is true and accurate.

Done in [location], on DD/MM/YYYY

Signature of the CDS Operator:

Name:

Title:

## 18.1.4 ANNEX A.4: PROJECT EXECUTION PLAN

This annex defines what a project execution plan is. This plan is sent during the Prequalification Process by a CRM Candidate who wants to participate to the Service with an Additional or a Virtual CMU. As already stated in section 5.2.3.2, a project execution plan can be linked to more than one CMU and a CMU can be linked to more than one project execution plan.

The main purpose of the project execution plan is to ensure to ELIA that the Contracted Capacity(ies) become(s) Existing Capacity(ies) before the start of the related Transaction Period(s).

The project execution plan is prepared and adapted by the CRM Candidate himself in function of his project's specificities. The information and format provided here can therefore differ from the list below, given as an example.

### 18.1.4.1 Content of the project execution plan

A project execution plan describes how the CRM Candidate plans to get its Contracted Capacity(ies) prequalified as "Existing Capacity(ies)" prior the start of the concerned Delivery Period(s) it is offered to in the Auction. It identifies, among other things, the potential key issues and critical activities specific to the project and lists the decisions to be taken by the CRM Candidate in subsequent phase(s). Through the project execution plan, the CRM Candidate defines and states the objectives of the project and the means used to ensure its effective realization.

There is no template for such a plan. However and to facilitate its preparation, ELIA lists below some information the document as provided by the CRM Candidate to ELIA could contain:

- a description of the project;
- the **key milestones dates** (see section 18.1.4.2);
- the **strategy** adopted to achieve each of the identified key milestones in a timely manner (see section 18.1.4.2);
- the list of the potential **key issues (risks)** that could be met during the realization phase of the project and the identification of non-exhaustive "mitigation measures" taken by the CRM Candidate to cover them;
- the list of the **required Infrastructure Works**, DSOs and/or gas infrastructure operator identify as a pre-requisite to the CRM Candidate's project effective realization (the Infrastructure Works identified in that list may be subject to the fallback procedure described in section 8.5);
- a signed conditional **offer to connect to the gas network infrastructure** (for gas technology, a signed conditional offer from the gas network infrastructure is provided to ELIA by the CRM Candidate as part of the project execution plan);
- the identification of **permits** which are relevant for the project:
  - environmental permit;

- construction permit (included right of way and permits);
- governmental approval;
- etc.

The validity date of each permit is also to be mentioned and should cover at least the related Delivery Period(s).

- for Virtual CMUs specifically, the details on how the 75 % and 100 % targets will be respected.

Update of such information is to be provided on a regular basis, through the quarterly reports provided by the Capacity Provider to ELIA during the Pre-delivery Period(s) related to the CMU. The project execution plan is also considered as a referential framework. Therefore, any slippage or major change impacting the project execution introduced with the Prequalification File is to be detailed in one of the quarterly report, along with a mitigation plan (according to chapter 5).

### 18.1.4.2 List of key milestones

In the table below, ELIA proposes key milestones that might be relevant for the CRM Candidate’s project. There is only one milestone (see asterisk) that the CRM Candidate has the obligation to provide in his project execution plan if it is relevant for the project. Except from this milestone, it is the CRM Candidate’s responsibility to provide the milestones which he considers relevant and applicable for his project as well as to detail them as part of the project execution plan.

Key milestones	Description of the key milestones	Key milestone date
#1 Spatial plan	At this stage, the CRM Candidate indicates at which date he plans to receive the modification of the sector plan (if required for implementation of its project)	.../.../...
#2 Workforce and capacity planning	A workforce and capacity planning is a process of determining and planning the workforce to ensure that the Capacity Provider has the right mix and numbers of staff, with the right skills and knowledge, to meet demand, now and in the future. The key milestone indicates when this planning is scheduled to be written in its final form.	.../.../...
#3 Signature of the EPC contract	An EPC contract is a contract by which the supplier becomes responsible for the overall design of a project, including design, procurement from subcontractors, transportation of the various components, hiring of workers, coordination of assembly and on-site installation with the various parties involved (suppliers, service providers and contractors).	.../.../...
#4 Permitting Milestone*	This key milestone, defined in section 3.1, is reached when all necessary permits for the construction of the project have been delivered in the last administrative instance, be definitive, enforceable and cannot be disputed any more before the State Council or the Council for permitting contestations (Raad voor vergunningsbetwistingen).	.../.../...
#5 Start of construction works	The date for this key milestone represents the moment at which the two following milestones are achieved : - whether an engineering, procurement and construction (EPC) contract (or any contract or suite of contracts having the same effect) is in full force and effect in respect of each new or refurbished production/consumption unit providing the Contracted Capacity(ies); - whether work specific to on-site construction of each actual new or refurbished production/consumption unit providing the Contracted Capacity(ies) has commenced which, for the avoidance of doubt, does not include design work, minor civil works or works to prepare the site for construction work. In the case of the construction of a CCGT, for example, it is the start of the piling activities.	.../.../...

<p>#6 Final purchase order for the main equipment</p>	<p>The key milestone is reached when the last main equipment has been ordered through a purchase order (PO) and the delivery date is known by the CRM Candidate. The last main equipment is:</p> <ul style="list-style-type: none"> <li>- in respect of a new or refurbished production/consumption unit, the primary mechanism to generate electricity (whether this is via a turbine, any mechanical or electrical device or installation of any other technology, e.g. photo voltaic);</li> </ul>	<p>.../.../...</p>
<p>#7 Mechanical completion</p>	<p>The key milestone is achieved:</p> <ul style="list-style-type: none"> <li>- when the primary mechanism to generate electricity (whether this is via a turbine, any mechanical or electrical device or installation of any other technology, e.g. photo voltaic) is installed on-site.</li> </ul> <p>In the case of the construction of a CCGT, for example, it can be considered as the first firing.</p>	<p>.../.../...</p>
<p>#8 Commissioning tests</p>	<p>The key milestone is achieved when the required offline and online commissioning tests are finalized and successful. The online commissioning tests required by ELIA for the commissioning of a production/consumption unit are not linked to the CRM and therefore not specified here. For further information on this subject, the Capacity Provider is invited to contact his Key Account Manager within ELIA.</p>	<p>.../.../...</p>
<p>#9 Final completion</p>	<p>The key milestone is achieved when:</p> <ul style="list-style-type: none"> <li>- the project has achieved all the technical and performance requirements set out in the construction contract;</li> <li>- the contractor has transferred to the owner of the project title to all materials and equipment used in the construction of the project;</li> <li>- all the Additional Capacities contracted and related to that project are compliant with the metering requirements (as per annexes 18.1.1);</li> <li>- the Capacity Provider is able to complete his file(s) by changing his Contracted Capacity(ies) considered as Additional Capacity(ies) to Existing Capacity(ies)</li> </ul>	<p>.../.../...</p>

Table A.5 - Overview of the key milestones

### 18.1.4.3 Template for the project execution plan

The following template is mandatory for all Additional – New Build CMUs and Virtual CMUs. For all other CMUs, the template is optional but recommended.

The template lists the elements that need to be included in the project execution plan at the very minimum. The Capacity Provider has the freedom to add any other information that he deems relevant.

[•] (Name of Capacity Provider)

Quarterly report – [•] (Project Name)

[•] (Submission Date)

---

[•] (Contact details of Capacity Provider)

---

Identification number: [•] (CRM Actor ID)

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### Table of Content

Key Milestone Overview

Key Risk Analysis

Permit Overview

### Key Milestone Overview

Milestone Name	Original Milestone Date	Current Milestone Date	Status	Comment
Spatial plan	[•] (Date in DD/MM/YY)	[•] (Date in DD/MM/YY)	[•] (Select one of the following options) [Achieved] <i>OR</i> [On Track] <i>OR</i> [Causing delay] <i>OR</i> [Causing residual delay]	[•] (Any additional information regarding the milestones)
Workforce and capacity planning				
Signature of the EPC contract				
Permitting Milestone				
Start of construction works				
Final purchase order for the main equipment				
Mechanical Completion				
Commissioning tests				
Final completion				

(The Capacity Provider can add or remove milestones when necessary. In the case of quarterly reports, the elements listed in section 18.2.3 need to be included)

### Key Risk Analysis

Risk Name	Description	Likelihood	Impact	Mitigation plan
[•] (Risk name)	[•] (Short description of risk)	[•] (Select one of the following options) [Low] <i>OR</i> [Medium] <i>OR</i> [High]	[•] (Select one of the following options) [Low] <i>OR</i> [Medium] <i>OR</i> [High]	[•] (Brief explanation on how the Capacity Provider will react if risk occurs)

(The Capacity Provider can add more rows depending on the amount of perceived risks)



**Permit Overview**

Permit	Status	Impact on Transaction Period	Mitigation Plan
<p>[•] (Type of permit) [•] (File number)</p>	<p>(Select one of the following options) [Held] <i>OR</i> [Not Held]</p>	<p>[•] (if relevant: describe how lack of permit would impact the Transaction Period )</p>	<p>[•] (if relevant: describe how the Capacity Provider aims to resolve a lack of permit)</p>

(The Capacity Provider can add more rows depending on the amount of required permits. In the case of quarterly reports, the Capacity Provider also includes the permits once they are obtained as per § 387)

Signature

Function:

Date:

## 18.1.5 ANNEX A.5: COOPERATION AGREEMENT ELIA – CDSO ON THE EXCHANGE OF DATA REQUIRED FOR THE PROVISION OF THE SERVICE

Between:

ELIA Transmission Belgium SA/NV, a company incorporated under Belgian law with its registered office at Boulevard de l'Empereur 20, B-1000 Brussels, registered under company number 731.852.231 and represented by its duly authorized agents XXX and XXX,

hereinafter referred to as 'ELIA'

and

[••••], a company established under [••••] law with the company registration number [••••], having its registered office at [••••], validly represented in this matter by ..... and ....., in their respective capacities of ..... and .....,

hereinafter referred to as the 'Closed Distribution System Operator' as identified in Appendix 6 of the access contract concluded with ELIA (reference .....).

ELIA and/or the Closed Distribution System Operator may also be referred to individually as the 'Party' or jointly as the 'Parties'.

Whereas:

- ELIA has been appointed as grid operator at Belgian federal and regional level.
- the Closed Distribution System Operator operates a Closed Distribution System as identified in Appendix 6 of the access contract concluded with ELIA (reference ....., hereinafter referred to as the 'Access Contract').
- within the framework of the Capacity Remuneration Mechanism (hereinafter referred to as the 'CRM') or Low Carbon Tender (hereinafter referred to as the 'LCT'), ELIA organizes an Auction for which a ministerial instruction has been issued pursuant to the Electricity Act. In view of the CRM/LCT, the CRM Candidate has initiated the Prequalification Process in order to make a Transaction and provide the Service pursuant to the Functioning Rules applicable to the relevant Delivery Period (hereinafter referred to as the 'Functioning Rules').
- as the Delivery Point is located within the Closed Distribution System, this cooperation agreement between ELIA and the Closed Distribution System Operator sets out the Parties' rights and obligations needed to allow the CRM Candidate to participate in the provision of the Service. This cooperation agreement outlines the operational terms and conditions governing the exchange of metering data between ELIA and the Closed Distribution System Operator concerning the energy flows specific to the supply thereof.
- this cooperation agreement is concluded between ELIA and the Closed Distribution System Operator (i.e. signed by both parties) at the latest 35 Working Days after the submission of the Prequalification File. This CRM Candidate may be the Closed Distribution System User or may take over the Closed Distribution System User's Delivery Point, possibly as part of a portfolio of Delivery Points.

The following has been agreed:

#### ARTICLE 1: CONNECTION TO THE ACCESS CONTRACT

The Closed Distribution System Operator must have signed Appendices 6 and 6bis of the Access Contract with ELIA prior to concluding this cooperation agreement.

This cooperation agreement outlines the Parties' rights and obligations regarding the operational terms and conditions governing the exchange of metering data between ELIA and the Closed Distribution System Operator concerning the energy flows specific to the provision of the Service as well as communication of other specific data necessary for the provision of said Service. They supplement those rights and obligations set out in the Access Contract concluded by ELIA and the Closed Distribution System Operator, particularly in Appendix 6 of said Access Contract. In case of conflict of interpretation between this cooperation agreement and one or more provisions of the Access Contract, the provisions of the Access Contract prevail.

Each Party is aware of the mutual coherence between this cooperation agreement, the Access Contract and the Capacity Contract concluded after the Transaction Validation Date of a first Transaction by the Capacity Provider and ELIA, all of which are essential for the implementation of this cooperation agreement. The Parties ensure that the proper implementation of this cooperation agreement is based on the existence and proper implementation of the necessary contracts with the third parties concerned, and that these contracts take into account, as and where necessary, the obligations imposed by this cooperation agreement.

This cooperation agreement also forms part of the Functioning Rules, which must be adhered to for the provision of the Service.

#### ARTICLE 2: DEFINITIONS

The various terms used in this cooperation agreement, whether capitalized or not, are to be understood within the meaning of the concepts defined in the Electricity Act, the decrees and/or ordinances relating to the organization of the electricity market, the Functioning Rules and/or the various applicable grid codes, as well as, on a secondary and subsidiary basis, the Access Contract.

#### ARTICLE 3: PURPOSE OF THE AGREEMENT

This cooperation agreement governs the Parties' rights and obligations to allow the Closed Distribution System User to provide the Service, with regard to the operational terms and conditions governing the exchange of metering data between ELIA and the Closed Distribution System Operator.

The Closed Distribution System User is located on the following Closed Distribution System:

<b>Name of the Closed Distribution System</b>	<b>Access Point (EAN code)</b>	<b>Address of the Closed Distribution System site</b>

The Closed Distribution System User(s) covered by this cooperation agreement is/are:

[••••], a company established under [••••] law with the company registration number [••••], having its registered office at [••••]

[••••], a company established under [••••] law with the company registration number [••••], having its registered office at [••••]

A list of the Delivery Point(s) from which the Service is provided and concerned by the exchange of metering data and the communication of other specific data necessary for the provision of this Service is provided below. Prior to the activation of the Service, the Delivery Point(s) must possess a meter that satisfies the technical requirements set out in the applicable grid code as a minimum.

Annex 2.1 contains all the technical details concerning these Delivery Points, including the list of the individual meters associated with the Delivery Point(s) in question and the corresponding metering equation where applicable, for example when several meters are associated with a single Delivery Point.

At ELIA's request and when required, pursuant to Article 6 of this agreement, the Closed Distribution System Operator shall also provide the contractual information described in Annex 2.2 for the specified Delivery Point(s) associated with the provision of the Service.

#### ARTICLE 4: GENERAL OBLIGATIONS CONCERNING THE EXCHANGE OF METERING DATA

##### 4.1. Obligations concerning the exchange of metering data

Pursuant to Article 5 of Appendix 6 of the Access Contract concluded between ELIA and the Closed Distribution System Operator, the Closed Distribution System Operator provides ELIA with the metering data recorded by the meters associated with the Delivery Point(s) in question using the protocols and data exchange formats specified in Annex 1 of this cooperation agreement.

Pursuant to Article 5 of Appendix 6 of the Access Contract concluded between ELIA and the Closed Distribution System Operator and to Article 5.3 of this cooperation agreement, the Closed Distribution System Operator shall be liable for the correct values and validation of the metering data communicated to ELIA. Such data shall comprise metering data associated with the Delivery Point(s) in question and with the corresponding CDS Market Access Point(s) as per Annex 2.1.

The Closed Distribution System Operator shall be responsible for installing, managing, maintaining and inspecting the meters belonging to its closed distribution system, as well as the data management systems used to communicate and exchange with ELIA those metering data referred to in this cooperation agreement. Any and all costs associated with the collection, validation and communication of metering data under this cooperation agreement shall be borne by the Closed Distribution System Operator and/or the Closed Distribution System User, based on any agreements concluded between them.

##### 4.2. Confidentiality and ownership of metering data concerning the User of the Closed Distribution System and of other information communicated for the purpose of the provision of the Service

The Closed Distribution System Operator declares that it has received explicit authorization from the Closed Distribution System User to send to ELIA the metering data (quarter-hourly values of active power) for its Delivery Point and the corresponding CDS Market Access Point, as well as the additional information necessary for the provision of the Service pursuant to

the templates in Annexes 2.1 and 2.2.

Such authorization is set down in the CDSO Declaration that the CRM Candidate submits to ELIA as part of the Prequalification File.

This specific communication takes place in line with the confidentiality obligation which the Parties are bound to observe with regard to data of the Closed Distribution System User. Furthermore, the Parties accept that the confidentiality of the data cannot be invoked between them, nor with regard to the Closed Distribution System User and/or the CRM Candidate when the latter is not the Closed Distribution System User, all of whom are involved in the implementation of this cooperation agreement.

The communication of the data of the Closed Distribution System User to ELIA shall under no circumstances entail a transfer of ownership of said data to ELIA or the Closed Distribution System Operator.

## ARTICLE 5: IMPLEMENTATION OF METHODS FOR COMMUNICATING AND EXCHANGING METERING DATA

### 5.1. Tests for meters

The methods for communicating and exchanging data as set out in Annex 1 must be authenticated, tested, implemented and functional between the Parties

- prior to the successful completion of the prequalification of the related Delivery Point(s) in the case of Existing Delivery Point(s) and
- in the process of conversion of the Additional Delivery Point(s) into (an) Existing Delivery Point(s)(see section 8.6.1 of the Functioning Rules).

The Closed Distribution System Operator and ELIA shall organize the tests needed in order to implement the methods for communicating and exchanging data prior to the end of the Prequalification Process of the Delivery Point(s) in question.

The Closed Distribution System Operator shall contact ELIA to deal with the practical organization of these tests. Each Party shall bear any costs that it incurs in relation to the communication tests.

### 5.2. Checking metering data and means of communication

Throughout the provision of the Service, ELIA has the right to test/inspect (or have others test/inspect), at any time and with prior justification, each of the elements involved in the transmission of metering data, including the meters listed in Annex 2.1 and the metering data management/validation system of the Closed Distribution System in order to verify that they meet the criteria set out in this cooperation agreement and/or the technical documents describing the provision of the Service.

In case the test results highlight problems with the metering data, particularly with regard to the conformity of the meters or the processes for transmitting metering data, ELIA and the Closed Distribution System Operator shall consult one another to find appropriate operational solutions.

During the term of this cooperation agreement, the Parties undertake to notify one another, as quickly as possible, should one Party become aware of any event or information which said

Party can reasonably assume will likely have an unfavorable impact on the other Party's fulfilment of its obligations.

### 5.3. Liability

As an exception to Article 1 of this cooperation agreement, the liability regime applicable between the Parties is as detailed below.

The Party responsible shall compensate the other Party for all demonstrable costs incurred by the latter and arising directly from these prejudicial situations as well as all demonstrable costs which it might be required to pay to a third party, where necessary, owing to the occurrence of these situations:

- The meters, the methods for communicating metering data or the metering data themselves, as well as the other necessary additional information as per Annex 2.2, do not appear to comply with the criteria set out in this cooperation agreement and/or the technical documents describing the provision of the Service.
- One of the Parties experiences problems regarding the data or the exchange of data referred to in this cooperation agreement that would prevent the provision of the Service, the Availability Monitoring and/or the Availability Testing, including delays or errors in the transmission of the metering and/or allocation data to ELIA in relation to the criteria set out in Annex 1.
- There is a delay affecting the installation of the equipment required to ensure the conformity of the meters or the transmission of the metering data, this delay being caused by a serious error on the part of the Closed Distribution System Operator or the Closed Distribution System User who provides the Service to ELIA, making it difficult or impossible to provide the Service.
- One of the Parties fails to honor the other obligations set out in this cooperation agreement, provided that the principle of damage limitation is not adhered to.

Said demonstrable costs are hereinafter referred to as 'Damage'.

The Parties are liable to one another only for Damage caused by fraud, willful misconduct or gross negligence committed by one of the Parties against the other under this cooperation agreement.

Total liability for Damage due to gross negligence is capped at €1 million per instance of Damage per year and at €5 million per year for all claims from the Parties and third parties that are based entirely or primarily on the same confirmed or suspected cause. Claims from the Parties and third parties shall, where appropriate, be settled proportionately.

This limitation of liability shall not apply to Damage caused by fraud or willful misconduct.

During the term of this cooperation agreement, the Parties shall make every effort to avoid and, where necessary, limit any Damage caused by one Party and affecting the other. In case of an incident or event giving rise to one of the Parties' liability, the Parties shall consult one another to take all appropriate measures that may reasonably be expected of them in order to limit the Damage to the other Party.

### 5.4. Data hierarchy

The Parties expressly acknowledge that the metering data collected by ELIA via Headmetering

as specified in the Connection Contract between ELIA and the Closed Distribution System Operator shall be considered the single and universal reference for ELIA's invoicing of energy to the Closed Distribution System Operator, as per the Access Contract concluded by the Parties, and the Closed Distribution System Operator shall under no circumstances be able to challenge these data on the basis of data from the Delivery Points.

#### ARTICLE 6 OBLIGATION CONCERNING CONTRACTUAL INFORMATION FOR THE DELIVERY POINTS IN QUESTION

The Closed Distribution System Operator shall ensure that the Closed Distribution System User providing the Service to ELIA has a Balance Responsible Party for its Delivery Point prior to the provision of the Service pursuant to Article 5.1 of Appendix 6 of the Access Contract.

The information communicated to ELIA in accordance with the template in Annex 2.2 shall only be valid for the duration of the provision of the Service. Should the Service be renewed, the Closed Distribution System Operator shall resend this information to ELIA in accordance with the template in Annex 2.2, even if this information has not changed.

Furthermore, if the Delivery Point covered by this cooperation agreement is excluded from the provision of the Service pursuant to the Capacity Contract or the Functioning Rules for any reason whatsoever, ELIA shall notify the Closed Distribution System Operator as soon as possible.

#### ARTICLE 7 RECORDINGS

As most of the information exchanged between the Parties under this agreement may, in one way or another, influence ELIA's management of its grid, it is important to have sufficient traces of such exchanges. The Parties consequently accept that oral communication, including telecommunication, is recorded. The Parties shall inform their representatives and employees, who may communicate with the other Party through such means, that their conversations are recorded. The Parties shall take appropriate measures to keep these recordings safe and to limit access thereto to those who have a reasonable need thereof. The recordings in question shall at no time be used for any claim whatsoever against any natural person.

#### ARTICLE 8 INFORMATION ON THE RISK OF LOAD TRANSFER WITHIN THE CLOSED DISTRIBUTION SYSTEM

Pursuant to Article 4 of Appendix 6 of the Access Contract concluded between ELIA and the Closed Distribution System Operator, the Closed Distribution System Operator shall inform ELIA, prior to the conclusion of the contract for the provision of the Service, whether the load of the User of the Closed Distribution System as the Capacity Provider or for the Capacity Provider based on the CDS User Declaration could be switched to another point on the Closed Distribution System when providing the Service, for Availability Monitoring or for Availability Testing . In this case, the Closed Distribution System Operator shall inform ELIA, at ELIA's request, of any switching of the load of the User of the Closed Distribution System as the Capacity Provider or for the Capacity Provider based on the CDS User Declaration, of which the Closed Distribution System Operator becomes aware when providing the Capacity Provider's Service, for Availability Monitoring or for Availability Testing.

Should the Closed Distribution System Operator fail to fulfil this obligation, it shall be liable to ELIA for any damaging consequences, pursuant to Article 5.3 of this cooperation agreement, without prejudice to any recourse by the Closed Distribution System Operator against the User

of the Closed Distribution System in the event of a breach by the latter of its obligation not to transfer the load.

#### ARTICLE 9 AGREEMENT AMENDMENTS

ELIA may unilaterally amend this cooperation agreement in the event of changes to the Capacity Contract or the Access Contract in order to align it with these modified contracts, subject to a minimum notice period of 6 months from the first calendar day of the month following the month in which the registered letter was sent. Rejection of the amended cooperation agreement before the expiry of the notice period automatically triggers the termination of this agreement, given also that said minimum notice period is extended until the end (contractually agreed, where applicable, in advance) of the Capacity Contract. In this case, the amended conditions of this cooperation agreement shall apply for the remaining term of the Capacity Contract.

#### ARTICLE 10 ENTRY INTO FORCE AND TERM

This agreement shall come into force for an indefinite period of time once it has been signed by both Parties, subject to the suspensive condition that all appendices have been sent to ELIA.

A Party may terminate the agreement by means of registered letter addressed to the other Party, subject to a minimum notice period of 6 months from the first calendar day of the month following the month in which the registered letter was sent, given also that said minimum notice period is extended until the end (contractually agreed, where applicable, in advance) of the Capacity Contract. This does not affect the rights and obligations of the terminating Party during the notice period and does not automatically entitle the other Party to compensation.

Done in Brussels on [date] in duplicate, with each Party acknowledging receipt of one original copy.

ELIA System Operator NV/SA

Name:

Title:

[•]

Name:

Title:

#### APPENDIX 1 COMMUNICATION METHODS - DATA EXCHANGE FORMATS

The communication methods and formats of data exchanges between ELIA and the Closed Distribution System Operator are described in the document 'Metering data exchanges for



CDS Operator' available on the Elia website<sup>38</sup>

## APPENDIX 2 FEATURES OF DELIVERY POINT METERING AND CONTRACTUAL INFORMATION CONCERNING THE DELIVERY POINTS IN QUESTION

### 2.1 Features of Delivery Point metering

The features of metering at the Delivery Points must be communicated to ELIA in the 'CDS Metering Technical Info Checklist'.

This checklist is formally communicated by the CRM Candidate to the Closed Distribution System Operator during the Prequalification Process, since the Closed Distribution System Operator must complete this document to allow the qualification of the Delivery Point for the provision of the Service<sup>39</sup>.

The CDS Metering Technical Info Checklist is available on the ELIA website<sup>40</sup> :

### 2.2 Contractual information concerning the Delivery Points in question

Closed Distribution System Operator: [name]

Date on which the contractual information was sent to ELIA: xxx

CDS User	CDS Market Access Point	Identification of the Delivery Point

## APPENDIX 3 POINTS OF CONTACT

For ELIA:

Monitoring of the contract:
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<sup>38</sup> Web page at time of redaction : <https://www.elia.be/en/customers/metering>

<sup>39</sup> This document is added to the signed CDSO Declaration that is submitted to ELIA by the CRM Candidate.

<sup>40</sup> Web page at time of redaction : <https://www.elia.be/en/electricity-market-and-system/system-services/technical-documentation-concerning-the-provision-of-ancillary-services>

Monitoring of the metering data:

For the CDSO:

Monitoring of the contract:

Monitoring of the metering data:

## **18.1.6 ANNEX A.6: GUIDELINES FOR THE QUANTIFICATION OF CO<sub>2</sub> EMISSIONS FOR THE PREQUALIFICATION TO THE CAPACITY REMUNERATION MECHANISM IN BELGIUM**

This document contains guidelines for the quantification of the CO<sub>2</sub> emissions for the pre-qualification to the Capacity Remuneration Mechanism (CRM) or Low Carbon Tender (LCT) in Belgium, as laid down by the law of 29 April 1999 on the organisation of the electricity market, as amended by the law of 22 April 2019<sup>41</sup>. For under article 22(4) of the Regulation (EU) 2019/934 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity<sup>42</sup>, taking part in a Capacity Remuneration Mechanism or Low Carbon Tender implies observing the CO<sub>2</sub> emission limits.

Article *Undecies*, § 12, of the Electricity Act specifies that the Functioning Rules must determine, *inter alia*, the CO<sub>2</sub> emissions cap to ensure compliance with limits set down in article 22, § 4 a) and b) of Regulation (EU) 2019/943.

For the Auction T-4 2022 for the 2026-2027 Delivery Period, the distinction between production capacities that started commercial production on or after 4 July 2019, on the one hand, and before 4 July 2019, on the other hand, will be eliminated. A uniform cap on CO<sub>2</sub> emissions from fossil fuels per kWh of electricity, applicable to production capacities, is set at 550 g/kWh

These directives are mostly inspired by ACER's Opinion No 22/2019<sup>43</sup>, to which the Capacity Holders are requested to refer.

These guidelines are an integral part of the CRM Functioning Rules.

### **18.1.6.1 Prequalification conditions**

In accordance with article 22(4) of the Regulation (EU) 2019/934, production capacity that started commercial production on or after 4 July 2019 shall not emit more than 550 g of CO<sub>2</sub> of fossil fuel origin per kWh of electricity (Equation 1) in order to be incorporated in a Capacity Remuneration Mechanism.

In addition, Regulation (EU) 2019/934 stipulates that from 1 July 2025 at the latest, production capacity that started commercial production before 4 July 2019 shall not emit more than 550 g of CO<sub>2</sub> of fossil fuel origin per kWh of electricity or more than 350 kg CO<sub>2</sub> of fossil fuel origin on average per year per installed kWe in order to be incorporated in a Capacity Remuneration Mechanism.

However, in light of the latest scientific knowledge available on climate change, the targets of the Paris Agreement and current European targets as defined in Regulation (EU) 2021/1119,

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<sup>41</sup> Belgian Official Gazette of 16 May 2019.

<sup>42</sup> OJ L 158 of 14 June 2019.

<sup>43</sup> Opinion no 22/2019 of the European Union Agency for the Cooperation of Energy Regulators of 17 December 2019 on the calculation of the values of CO<sub>2</sub> emission limits referred to in the first subparagraph of Article 22(4) of Regulation (EU) 2019/943 of 5 June 2019 on the internal market for electricity (recast).

as well as to facilitate the energy transition to a sustainable and climate-neutral energy system, the annual emissions limit is set at zero. All production capacities, including those that started commercial production before 4 July 2019, must therefore comply with the specific emissions cap.

By way of reminder, units that are entitled to long-term contracts, undertake to achieve climate neutrality by 2050 and shall establish a concrete roadmap for this purpose.

$$\text{Specific Emissions (CRM)} \leq 550 \frac{g}{kWh}$$

Equation 1: condition for the emission limits specifically for CO<sub>2</sub> of fossil fuel origin for the pre-qualification of the Capacity Remuneration Mechanism.

$$\text{Specific Emissions (LCT)} \leq 29 \frac{g}{kWh}$$

Equation 2: condition for the emission limits specifically for CO<sub>2</sub> of fossil fuel origin for the pre-qualification of the Low Carbon Tender.

### 18.1.6.2 Quantification of specific emissions

The specific emissions are calculated on the basis of the design efficiency of the production unit, namely the net efficiency at nominal capacity (Equation 2).

$$\text{Specific Emissions} = \frac{0,0036 (1 - t_{CO_2}) \sum_f s_f \cdot EF_{f,CO_2}}{\eta_{des}} = \frac{[g CO_2]}{[kWh_e]}$$

Equation 2: methodology for the quantisation of the emissions for CO<sub>2</sub> specifically

Table 1: variables of Equation 2 for the quantisation of the emissions for CO<sub>2</sub> specifically

Variable	Unit	Specifications	Methodology
f	-	Fossil fuel coefficient	Other fossil fuels, cf ACER's opinion <sup>44</sup>
t <sub>CO<sub>2</sub></sub>	%	Fraction of CO <sub>2</sub> that is transferred or captured in comparison to the total CO <sub>2</sub> emitted	Article 49 of the Regulation (EU) 2018/2066 <sup>45</sup>
s <sub>f</sub>	%	Fuel fraction f in comparison to the fuel total	ACER's Opinion <sup>46</sup>

<sup>44</sup> Opinion no 22/2019 of the European Union Agency for the Cooperation of Energy Regulators of 17 December 2019 on the calculation of the values of CO<sub>2</sub> emission limits referred to in the first subparagraph of Article 22(4) of Regulation (EU) 2019/943 of 5 June 2019 on the internal market for electricity (recast).

<sup>45</sup> Regulation (EU) 2018/2066 of the Commission of 19 December 2018 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council and amending Commission Regulation (EU) No 601/2012.

<sup>46</sup> Opinion no 22/2019 of the European Union Agency for the Cooperation of Energy Regulators of 17 December 2019 on the calculation of the values of CO<sub>2</sub> emission limits referred to in the first subparagraph of Article 22(4) of Regulation (EU) 2019/943 of 5 June 2019 on the internal market for electricity (recast).

$EF_{f,CO_2}$	$\frac{kg}{TJ}$	Emission factor for CO <sub>2</sub>	"EU ETS" Methodology <sup>47</sup>
$\eta_{des}$	-	Design efficiency	Net efficiency at nominal capacity

### 18.1.6.2.1 Fuel fraction

The fractions of each fuel are determined by Equation 4 of section 7.1 of ACER's Opinion.

The hypotheses concerning the share of each fuel (sf) are to be explained by means of a description of the installations and the use of different fuels. All components of the facility are to be considered, including emergency generators.

### 18.1.6.2.2 Fraction of CO<sub>2</sub> that is captured or transferred

The determination of the transferred CO<sub>2</sub> factor (tCO<sub>2</sub>) has to be based on evidence of the existence of or a plan for carbon capture and storage facilities that contain the technical specifications thereof (measures in the case of an existing facility and technical documents in the case of an installation project) pursuant to point 7.4 of ACER's opinion 22/2019.

### 18.1.6.2.3 Emission factor

Emission factors can:

- a) originate from ETS documents if it concerns an existing capacity that is subjected to this system, as determined in section 7.2.1 of ACER's Opinion;
- b) if the capacity is not subjected to the ETS system, be determined by dividing the certified CO<sub>2</sub> emissions by the fuel consumption that is registered by the TSO and/or the DSO or is certified by a third party, as resumed by equation 5 of the section 7.2.1 of ACER's Opinion;
- c) if the two previous options are not applicable, in particular concerning new capacity, originate from annex 1 of ACER's Opinion, resuming the standard values recommended by the IPCC.

The emission factors of the capacity that does not use fossil fuels and the emission factors linked to the energy storage fed<sup>48</sup> by the network is considered to be carbon neutral.

The emission factor of the biomass fraction of the mixed fuel capacity is considered to be carbon neutral today. The biomass fraction is determined pursuant to article 39 of the Regulation (EU) 2018/2066. The production units that use biomass have to correspond to article 29 of the Directive (EU) 2018/2001. In future, each adaptation to the European legislation concerning biomass emission factors shall have to be taken into account.

The emission factors of the waste-to-energy capacity have to be determined on a case-by-case basis in function of the percentage and the type of biomass.

The emission factors of synthetic fuels will have to be determined on a case-by-case basis in accordance with articles 32 to 35 of the Regulation (EU) 2018/2066. Pursuant to Article 28(5) of Directive (EU) 2018/2001, European methodologies for estimating greenhouse emissions for synthetic fuels shall be adopted by 31 December.

<sup>47</sup> Regulation (EU) 2018/2066 of the Commission of 19 December 2018 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council and amending Commission Regulation (EU) No 601/2012.

<sup>48</sup> Concerning the energy storage units that are directly connected to a generation unit, the capacity provider will have to provide the documents that prove the unit is in conformity with the emission limits.

#### **18.1.6.2.4 Design efficiency**

The design efficiency is determined pursuant to section 7.3 of ACER's Opinion, taking into account the net efficiency at nominal capacity under the ISO standards (15°C, 1 ATM and 60% HR), or is calculated on the basis of the values that are measured at the calibrated meters of the TSO and/or the DSO. In this case, the "heat and mass balance" of the capacity and a lawful document that indicates the net efficiency at nominal capacity should be provided. The correction curves are used in order to obtain the design efficiency at the ISO standards (15°C, 1 ATM and 60% HR)<sup>49</sup>.

The design efficiency can also originate from other certified or attested technical documents, such as the results of the most recently executed performance tests.

In the case of new capacity, the design efficiency can originate from parts of the tender that indicate the anticipated performance of the capacity according to the ISO standards.

Concerning the cogeneration units, the design efficiency can be calculated according to the method determined in annex VII(8) of the Commission Delegated Regulation (EU) 2019/331 of 19 December 2018 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council<sup>50</sup>. For it seems logical to take into account the thermal output that originates from the same fuel consumption as the one for electricity and as such contributes to the increase in performance of the cogeneration units in the quantification of CO<sub>2</sub> emissions for the determination of the design efficiency of these units.

It is nevertheless important to recall the ban on cumulative aid<sup>51</sup> during the delivery period, as specified in the Royal Decree on "Eligibility Criteria".

On an exceptional basis, and until 1 July 2025, operators of production capacity that does not comply with the CO<sub>2</sub> Emissions Cap at the pre-qualification stage could submit a monitoring action plan in attachment, describing the measures that will be taken in order for the production capacity to comply with the specific emissions limit at the start of the delivery period, at the latest.

#### **18.1.6.3 Practical arrangements**

The required information has to be provided in an Excel table available on the CRM IT Interface of the transmission system operator, Elia. This information contains:

- the values of the parameters necessary for the quantification of the CO<sub>2</sub> emissions;
- all documents necessary to prove the communicated values.

The CO<sub>2</sub> emissions will be calculated automatically in the Excel table according to the quantification methods that are described in these guidelines.

Production units below 5 MW will only have to submit a self-declaration that confirms the compliance with the CO<sub>2</sub> Emissions Cap. For these units, the system operator is authorized to carry out random on-the-spot checks by asking for the documents that confirm the communicated values.

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<sup>49</sup> Concerning the pre-qualification 2021, the existing generation units that do not have a correction curve can exceptionally submit the design efficiency to the reference conditions for the site.

<sup>50</sup> OJ L 59 of 27 February 2019.

<sup>51</sup> The green certificates as meant in article 7, §1, 1<sup>st</sup> paragraph, 1<sup>o</sup>, of the law of 29 April 1999; 2<sup>o</sup> the green certificates as meant in article 28 of the edict concerning the organisation of the electricity market in the Brussels-Capital Region; 3<sup>o</sup> the green certificates and the combined heat and power certificates as meant in articles 7.1.1 and 7.1.2. of the Flemish decree of 8 May 2009 containing general provisions on energy policy; 4<sup>o</sup> the green certificates as meant in article 37 of the Walloon decree of 12 April 2001 on the organisation of the regional electricity market; 5<sup>o</sup> all forms of operating aid of which the foreign capacity granted directly or indirectly by the concerned Member States disposes.

#### 18.1.6.4 Checks

The information that is provided as part of the pre-qualification will be subject to different checks, called "ex ante":

- a conformity check;
- an accuracy check;

The conformity check is intended to verify if the required information has been provided, whereas the accuracy check will be intended to ascertain that the parameter values match the values that are indicated in the items of evidence and that they are plausible.

These checks shall be performed within 20 working days following the submission of the pre-qualification file.

For your information, ex-post validations will also be performed at the end of each calendar year of the delivery period. These checks will be intended to verify the compliance with the CO<sub>2</sub> Emissions Cap of the production units that participate in the CRM. They will be performed for the production units of or above 5 MW of installed capacity<sup>52</sup> that are listed below:

- a) production units of which the emission factor is or the emission factors are variable in the course of time:
  - i. production units using mixed fuels;
  - ii. waste-to-energy production units;
  - iii. production units in which CO<sub>2</sub> is captured and transferred;
- b) the production units that have submitted a monitoring action plan;
- c) the production units of which the specific emissions are between 500 and 550 g/kWh at the moment of the pre-qualification.

The capacity holders will have to perform these conformity validation by an accredited or certified professional. The ex-post certificates of compliance will have to be submitted to the system operator, Elia. In the case of non-compliance with the CO<sub>2</sub> Emission Cap and failure to submit these certificates, the Commission for Electricity and Gas Regulation shall impose an administrative fine.

The system operator is responsible for the treatment of the personal data as indicated in section 2.9 of the operational rules:

"In the context of the CRM, ELIA and the CRM Actor shall process personal data in accordance with the Data Protection Legislation".

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<sup>52</sup> The generation units burning commercial standard fuels below 5 MW of installed capacity are exempted from this check.

CMU ID

unité de production

	Fuel 1	Fuel 2	Fuel 3	Fuel 4	Fuel 5	Fuel 6	Fuel 7
Fraction du combustible f (%)							
émissions CO <sub>2</sub> ETS (kg CO <sub>2</sub> )							
Fuel consumption ETS (TJ)							
Facteurs d'émissions du combustible f (kg co <sub>2</sub> /TJ)	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
Fraction du CO <sub>2</sub> transféré ou capté (%)							
Efficacité de conception							
<b>émissions spécifiques (g CO<sub>2</sub>/kWh)</b>	<b>#DIV/0!</b>						

	2018	2019	2020
Production électrique (GWh)			
Capacité installée (MW)			
émissions spécifiques (g CO <sub>2</sub> /kWh)			
Nombre d'années considérés	3		

OK/NOK

	2018	2019	2020

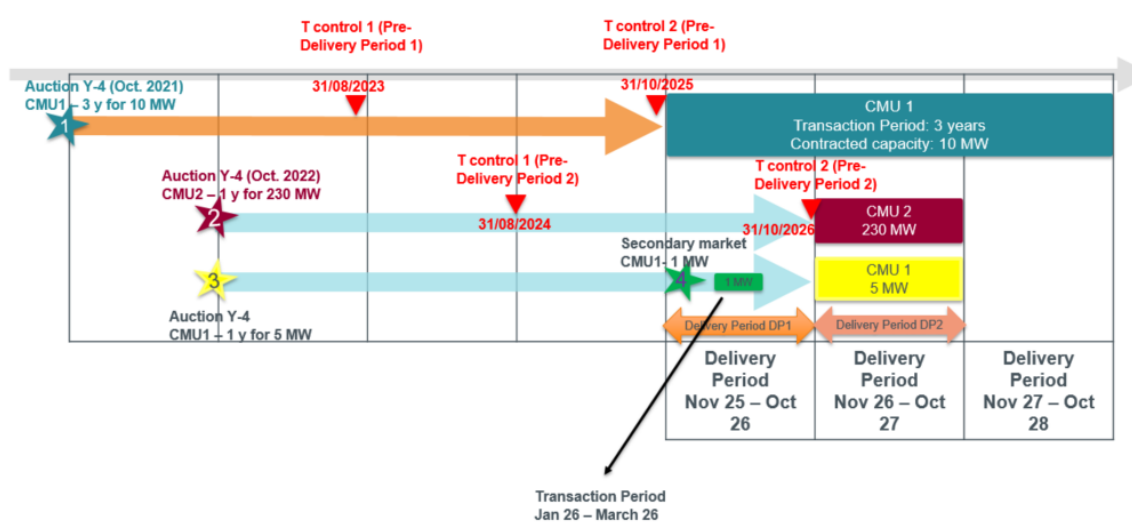
**émissions annuelles (kg CO<sub>2</sub>/kWe) #DIV/0!**



## 18.2 ANNEX B: PRE-DELIVERY CONTROL

### 18.2.1 ANNEX B.1: PRE-DELIVERY PERIOD DEFINITION AND TOTAL CONTRACTED CAPACITY DETERMINATION

This Annex presents a concrete example that illustrates how a Pre-delivery Period is defined (as per section 8.2) and how ELIA determines the Total Contracted Capacity subject to the Pre-delivery control (as per section 8.3.2).



In this way, the illustration above represents four Transactions on two different CMUs (CMU 1 and CMU2).

Some Transactions (Transactions 1 and 4) start during (or at beginning of) Delivery Period 1 (November 2025 – October 2026) while other Transactions (Transactions 2 and 3) starts with Delivery Period 2 (November 2026 – October 2027).

#### 18.2.1.1 Pre-delivery Period Definition

Per definition of section 8.2, the 1<sup>st</sup> pre-delivery period (Pre-delivery Period 1) determined out of the illustration above starts from Y-4 Auction result notification (end Oct. 2021) to end with the start of the Delivery Period (2025-2026); Delivery Period DP1. It is represented by the arrow in orange.

The 2<sup>nd</sup> Pre-Delivery Period starts from Y-4 Auction result notification (end Oct. 2022) to end with the start of the corresponding Delivery Period (2026 – 2027), Delivery Period DP2. It is represented by the arrows in light blue.

### 18.2.1.2 Moments of control

Per definition of section 8.3.1, the following moments of control are determined for each pre-delivery Period:

During Pre-delivery Period 1; the first moment of control ( $t_{control 1}$ ) is on August 31 2023 while second moment of control ( $t_{control 2}$ ) is the last day of the Pre-delivery Period, October 31 2025.

During Pre-delivery Period 2, the first moment of control ( $t_{control 1}$ ) is on August 31 2024 while the second moment of control ( $t_{control 2}$ ) is the last day of the pre-delivery Period, October 31 2025.

### 18.2.1.3 Total Contracted Capacity determination

In application of the criteria's of § 373, the Total Contracted Capacity is determined per moment of control and per corresponding Pre-delivery Period. It is equal to the sum of a CMU's Contracted Capacities, provided that it respects the following conditions:

- the corresponding Transaction Validation Date is prior to the start of the Delivery Period; and
- the corresponding Transaction Period covers partially or totally the Delivery Period; and
- the corresponding Transaction period has not started at the moment of the Pre-delivery control; and
- in case of a Transaction Period that covers multiple Delivery Periods: the moment of control relates to the first Delivery Period of the Transaction Period.

#### **Moment of control on 31th August 2023**

The Total Contracted Capacity is determined at CMU level. This moment of control concerns the Pre-delivery Period 1, related to the Delivery Period 1 (November 2025 to October 2026).

To determine the Total Contracted Capacity, ELIA considers – per CMU – the Contracted Capacities that fulfill the three criteria reminded above in section 18.2.1.3.

For CMU 1:

- the Contracted Capacity of Transaction 1 (10 MW) respects the three criteria;
  - the Contracted Capacity of Transaction 3 (5 MW) does not respect the second criterion as the corresponding Transaction Period does not cover partially or totally the Delivery Period 2025-2026);
  - the Contracted Capacity of Transaction 4 (1 MW) does not respect the first criteria.
- The Total Contracted Capacity of CMU 1 is then equal to 10 MW.

For CMU 2:

- the Contracted Capacity of Transaction 2 (230 MW) does not respect the second criterion as the corresponding Transaction Period does not cover partially or totally the Delivery Period 2025-2026);

→ The Total Contracted Capacity of CMU 2 is then equal to 0 MW.

### **Moment of control on 31th August 2024**

This moment of control concerns the Pre-delivery Period 2, related to the Delivery Period 2 (November 2026 to October 2027).

To determine the Total Contracted Capacity, ELIA considers – per CMU – the Contracted Capacities that fulfill the three criteria above.

#### For CMU 1:

- the Contracted Capacity of Transaction 1 (10 MW) respects the three criteria;
- the Contracted Capacity of Transaction 3 (5 MW) respects the three criteria;
- the Contracted Capacity of Transaction 4 (1 MW) does not respect the second criteria as the corresponding Transaction Period does not cover partially or totally the Delivery Period 2026-2027).

→ The Total Contracted Capacity of CMU 1 is then equal to 15 MW.

#### For CMU 2:

- the Contracted Capacity of Transaction 2 (230 MW) respects the three criteria;

→ The Total Contracted Capacity of CMU 2 is then equal to 230 MW.

### **Moment of control on 31th October 2025**

The Total Contracted Capacity is determined at CMU level. This second moment of control concerns the Pre-delivery Period 1, related to the Delivery Period 1 (November 2025 to October 2026).

To determine the Total Contracted Capacity, ELIA considers – per CMU – the Contracted Capacities that fulfill the three criteria.

#### For CMU 1:

- the Contracted Capacity of Transaction 1 (10 MW) respects the three criteria;
- the Contracted Capacity of Transaction 3 (5 MW) does not respect the second criterion as the corresponding Transaction Period does not cover partially or totally the Delivery Period 2025-2026);
- the Contracted Capacity of Transaction 4 (1 MW) does not respect the first criterion.

→ The Total Contracted Capacity of CMU 1 is then equal to 10 MW.

#### For CMU 2:

- the Contracted Capacity of Transaction 2 (230 MW) does not respect the second criterion as the corresponding Transaction Period does not cover partially or totally the Delivery Period 2025-2026);

→ The Total Contracted Capacity of CMU 2 is then equal to 0 MW.

## **Moment of control on 31th October 2026**

The Total Contracted Capacity is determined at CMU level. This moment of control concerns the Pre-delivery Period 2, related to the Delivery Period 2 (November 2025 to October 2026).

To determine the Total Contracted Capacity, ELIA considers – per CMU – the Contracted Capacities that fulfill the three criteria.

### For CMU 1:

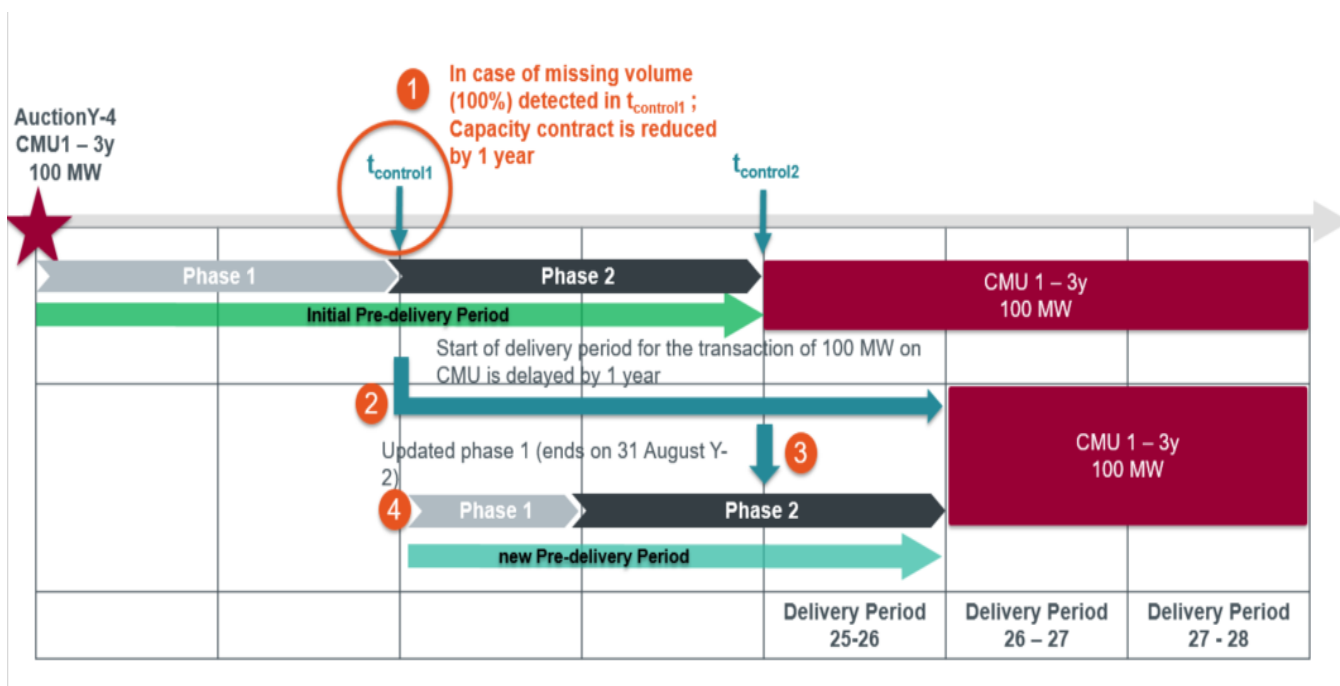
- the Contracted Capacity of Transaction 1 (10 MW) does not respect the third criterion;
  - the Contracted Capacity of Transaction 3 (5 MW) respects the three criteria;
  - the Contracted Capacity of Transaction 4 (1 MW) does not respect the third criteria.
- ➔ The Total Contracted Capacity of CMU 1 is then equal to 5 MW.

### For CMU 2:

- the Contracted Capacity of Transaction 2 (230 MW) respects the three criteria;
- ➔ The Total Contracted Capacity of CMU 2 is then equal to 230 MW.

## 18.2.2 ANNEX B.2: IMPACT OF ADDITIONAL PRE DELIVERY CONTROL ON CONTRACTED CAPACITIES ON ADDITIONAL CMUS

This Annex illustrates the requirement of § 369 with a concrete example of CMU 1, with a Contracted Capacity of 100 MW and a Transaction Period of 3 years.



In this example, the Pre-delivery Period starts with the Y-4 Auction results notification and ends with the Delivery Period 25 – 26. First moment of control is scheduled on August 31 2023; while second moment of control happens on October 31 2025.

CMU 1 is an Additional CMU. At first moment of control, ELIA applies the corresponding pre-delivery control and determines a Missing Volume of 100 MW (hence equal to the entire Contracted Capacity). This is illustrated in the 1<sup>st</sup> step on the graph above.

In consequence, ELIA applies both penalties: a financial sanction (as per section 8.4.3.1) and a reduction of the initial Transaction Period (as per section 8.4.3.3). The Initial Transaction period of three years (from start of Delivery Period 25-26 to end of Delivery Period 27-28) is reduced by one year, and now corresponds to a start in Delivery Period 26-27 and an end in Delivery Period 27-28. This action is illustrated in the step 2 of the graph above.

Consecutive to this update of the Transaction Period of CMU1, a new Pre-delivery Period must be determined. Indeed, the corresponding Delivery Period is no longer Delivery Period 25-26 but now becomes Delivery Period 26-27.

As a consequence, phase 1 and phase 2 are updated, for this new Pre-delivery Period. Updated phase 1 now ends on August 31 of Y-2 (being August 2024), with the first moment of control set on August 31 2024. This is illustrated in steps 3 and 4 in the graph above.

At moment of control on August 31 2024, Elia applies the exact same pre-delivery controls. If the CMU is still an Additional CMU on that occasion, the same penalties apply once more.

### **18.2.3 ANNEX B.3: CONTENT OF A QUARTERLY REPORT**

The following table lists the different elements that need to be included in the quarterly report. The Capacity Provider can add more elements if he wants to. Note that the requirements are different for Additional – Others compared to Additional New Build and Virtual.

	<b>Explanation</b>	<b>Information to be transferred</b>	<b>Obligatory for Additional – Other CMU</b>	<b>Obligatory for Additional – New Build and Virtual CMU</b>
<b>Delivery Period</b>	The Delivery Period(s) that is/are concerned by the quarterly report.	Delivery Period	Yes	Yes
<b>Permitting Milestone</b>	This key milestone, defined in section 3.1, is reached when all necessary permits for the construction of the project have been delivered in the last administrative instance, be definitive, enforceable and cannot be disputed any more before the State Council or the Council for permitting contestations (Raad voor vergunningsbetwistingen).	As per §§ 387 - 388: <ul style="list-style-type: none"> <li>- If the Capacity Provider holds all required permits, he includes a copy of said permits;</li> <li>- If the Capacity Provider does not hold all required permits, he indicates the permits that he does not have and includes in the mitigation plan (cfr. Infra) the steps to cope with this situation, as well as a copy of the permits that the Capacity Provider does hold</li> </ul>	Yes	Yes
<b>Start of Construction Work</b>	The date for this key milestone represents the moment at which the two following milestones are achieved: <ul style="list-style-type: none"> <li>- whether an engineering, procurement and construction (EPC) contract (or any contract or suite of contracts having the same effect) is in full force and effect in respect of each new or refurbished production/consumption unit</li> </ul>	<ul style="list-style-type: none"> <li>- In case the Construction Work has not started yet: the expected date of the start of construction work;</li> <li>- In case Construction Works have started: proof of the start needs to be transferred in the form of attestation by supplier that there are no more postponing or dissolving conditions that could in any way delay the delivery, attestation by the contractor that he is the contractor and that construction works have commenced, or any other document of the same legal value, potentially backed up by minutes of construction site</li> </ul>	No	Yes

	<p>providing the Contracted Capacity(ies);</p> <ul style="list-style-type: none"> <li>- whether work specific to on-site construction of each actual new or refurbished production/consumption unit providing the Contracted Capacity(ies) has commenced which, for the avoidance of doubt, does not include design work, minor civil works or works to prepare the site for construction work. In the case of the construction of a CCGT, for example, it is the start of the piling activities</li> </ul>	meetings.		
<b>Final Completion</b>	The key milestone is achieved when the required offline and online commissioning tests are finalized and successful. The online commissioning tests required by ELIA for the commissioning of a production/consumption unit are not linked to the CRM and therefore not specified here. For further information on this subject, the Capacity Provider is invited to contact his Key Account Manager within ELIA.	Date	Yes	Yes
<b>Major Risks</b>	A risk analysis includes an overview of the different risks that are perceived	- If no risks are perceived, a brief explanation is	Yes	Yes



	by the Capacity Provider	<p>provided why this is the case;</p> <ul style="list-style-type: none"> <li>- If one or more risks are perceived, the Capacity Provider includes both the likelihood and potential impact, as well as a brief written explanation for each risk.</li> </ul>		
<b>Delay and related Transaction</b>	A Delay is defined as per § 389	<ul style="list-style-type: none"> <li>- Amount of time and Transaction, as well as a brief explanation why the Delay takes this amount of time.</li> <li>- In case no Delay is identified, a brief explanation why no Delays are expected.</li> </ul>	Yes	Yes
<b>Mitigation Plan</b>	Following § 385, if the Capacity Provider identifies a Delay he includes a Mitigation Plan with steps to deal with the Delay	(only in the case of and identified Delay)	Yes	Yes
<b>Residual Delay and related missing Volume</b>	<p>In each of his quarterly report, the Capacity Provider is invited to communicate the amount of the Missing Volume (even when it is equal to zero). In case of Missing Volume, the Capacity Provider also provides the details and the justifications of his calculations to reach the amount of this Missing Volume.</p> <p>This information indicates for how long there will be a Missing Volume.</p>	(only in the case of an identified Residual Delay)	Yes	Yes

Note that for Additional – New Build CMUs, this information is still to be provided using the template included in section 18.1.4.3.

## 18.2.4 ANNEX B.4: TEMPLATE FOR THE PERMIT REPORT

[•] (Name of Capacity Provider)

Permit report – [•] (Project Name)

August [•] (Year)

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[•] (Contact details of Capacity Provider)

---

Identification number: [•] (CRM User ID)

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(Select one of the two paragraphs below: the first paragraph applies for a CMU for which the Capacity Provider holds all required permits for the Transaction Period(s) in Delivery Period X, the second paragraph applies when the Capacity Provider does not hold all required permits for the Transaction Period(s) in Delivery Period X)

[[•] (Name of Capacity Provider) confirms that it holds all required permits for the Transaction Period(s) in Delivery Period [•] (Delivery Period).]

**OR:** [[•] (Name of Capacity Provider) hereby notifies ELIA that it does not hold all required permits for the Transaction Period(s) in Delivery Period [•] (Delivery Period).]

The following is an overview of all relevant permits and their current status:

Permit	Status	Impact on Transaction Period	Mitigation Plan
[•] (Type of permit) [•] (File number)	(Select one of the following options) [Held] <b>OR</b> [Not Held]	[•] (if relevant: describe how lack of permit would impact the Transaction Period )	[•] (if relevant: describe how the Capacity Provider aims to resolve a lack of permit)

(The Capacity Provider can add more rows depending on the amount of required permits)

As per §§ 379 - 380, the Capacity Provider lists and adds a copy of the relevant permits or relevant documents (showing their current status of the permit request) to this Report.

Signature

Function:

Date:

## 18.3 ANNEX C: AVAILABILITY OBLIGATION

### 18.3.1 ANNEX C.1: BASELINE METHODOLOGY

This annex serves as a description of the baselining methodology for the purpose of these Functioning Rules. It aligns to the highest extent possible with the latest known Transfer of Energy (ToE) rules<sup>53</sup>, as the goal in the long-term is to contribute to the uniformity of products in the grid. This is beneficial, as CRM products are contracted to be performant and available in the energy market.

In this regard, it is important to note that this is merely an ad hoc view and that evolutions of the ToE rules are still possible. In this case, the CRM design should follow ToE design rather than stick to this initial design (to the extent it doesn't harm the integrity of the product).

#### 18.3.1.1 09/09/2019 baselining methodology

Of the baselining methodologies listed in the latest ToE draft proposal, the baselining methodology for Day-ahead/Intra-Day products aligns closest to the CRM product (as it is inherently design to respond to day-ahead). These products adhere to the 'Highest X of Y\*' methodology. The latest version of the design for ToE DA/ID can be found on Elia's website. As a summary:

- identify Y reference days (i.e. 'weekend/holiday' vs 'workday');
- take X days of highest average consumption out of Y reference days;
- the Baseline is the average consumption during the same quarter-hour over the X days.

X = 4 and Y = 5 for workdays and X = 2 and Y = 3 for weekend/holidays.

There are some criteria to exempt certain days (see chapter 9.4 for the exhaustive list).

The Capacity Provider can also request an adjusted Baseline in accordance with section 9.4.3.2.3.3 if they can prove, by demonstrating a lower RMSE deviation.

#### 18.3.1.2 Applying the CRM Baseline

In the largest part, the ToE baselining is suitable for the CRM Product. There are a few optimizations specific for the CRM which are described in the following sections.

##### 18.3.1.2.1 Quarter-hour vs hourly value

Since the CRM product is defined as an hourly product, the Baseline for Availability Monitoring should be taken as the average for the four quarter hours.

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<sup>53</sup> <https://www.elia.be/en/electricity-market-and-system/electricity-market-facilitation/transfer-of-energy>

This is specified in the section 9.4.3.2.3.3.

#### **18.3.1.2.2 Exemption due to high market price**

One criterion for exemption is the occurrence of a high market price, which is fixed in the ToE rules at a value of 150€/MWh. For the CRM design, it is best suited to be able to exclude any day where at least one of the CMU's declared prices was surpassed.

However, the CRM-specific criteria could also be specified in the Functioning Rules (as is the case today).

#### **18.3.1.2.3 Derogation for different methodology**

The request for an adjusted Baseline according to the ToE rules (i.e. via RMSE-verification) is allowed in CRM as well. The standard method shall apply in case no derogation was requested by the Capacity Provider for the CMU.

#### **18.3.1.2.4 Exemption on days where maintenance took place (optional)**

The ToE rules state the following: "In case the justification of the exclusion of a potential representative day corresponds to one of the circumstances ii-iv indicated above, the justification is only valid in case those circumstances do not also apply for the day of the activation (e.g. a day with maintenance cannot be excluded if on the day of the activation there was also a maintenance)".

For the CRM, demand response products may desire to continue to be monitored during maintenance if their consumption is reduced during the maintenance. This is not possible with the higher-mentioned rule. This is why the CRM product is exempted from this particular rule.

#### **18.3.1.2.5 Proposal for application of baseline:**

For Delivery Points with a net off-take, a Baseline will be established for every quarter-hour falling within a monitored AMT Hour or Availability Test start and end time according to the 'Highest X of Y\*' methodology in the Transfer of Energy rules. (Additional to the criteria mentioned therein to exclude certain days, the Capacity Provider can exclude days for which one of its declared prices were surpassed).

The hourly Baseline value for the Availability Monitoring is the average of the four quarter-hourly Baseline values during the AMT Hour under consideration.

## 18.4 ANNEX D: SECONDARY MARKET PROCESS

### 18.4.1 ANNEX D.1: SECONDARY MARKET EXCHANGE MANDATE FORM

Prequalified CRM Candidate / Capacity Provider:

[[•]](mandatory field)]

Prequalified CRM Candidate ID, as specified in the CRM IT Interface during the Prequalification Process / Capacity Provider ID, as specified in his Capacity Contract annex A, and as specified in the CRM IT Interface:

[[•]](mandatory field)]

Address:

[[•]](mandatory field)]

Represented by:

[[•]](mandatory field)]

Function:

[[•]](mandatory field)]

Hereafter the "Prequalified CRM Candidate / Capacity Provider"

And,

Exchange:

[[•]](mandatory field)]

Address:

[[•]](mandatory field)]

Represented by:

[[•]](mandatory field)]

Function:

[[•]](mandatory field)]

Hereafter the "**Exchange**".

Please select the appropriate option:

**Option A.** Secondary Market Exchange Mandate granting: The **Prequalified CRM Candidate / Capacity Provider** gives a Secondary Market Exchange Mandate to the **Exchange** in order to notify Secondary Market transactions in the CRM as of **[[•](mandatory field)]**. The Exchange commits to inform ELIA on its compliance with the Exchange definition of the CRM, including as a result of any modification of the legislation referred to in the definition of Exchange in Chapter 3. In case the Exchange cannot demonstrate such compliance, Elia will revoke the affected Exchange’s mandate with immediate effect 5 Working Days after the notification of that decision to the affected Exchange.

Or,

**Option B.** Secondary Market Exchange Mandate revocation:

Option B.1: The **Prequalified CRM Candidate / Capacity Provider** revokes unilaterally the ongoing Secondary Market Exchange Mandate given to the **Exchange**.

<p>For the Prequalified CRM Candidate / Capacity Provider,</p> <p>Read and approved,</p> <p>Name:</p> <p>Function:</p> <p>Place:</p> <p>Date:</p> <p>Signature:</p>
---

Option B.2: The **Prequalified CRM Candidate / Capacity Provider and the Exchange** terminate by mutual agreement the ongoing Secondary Market Exchange Mandate given to the **Exchange**.

<p>For the Prequalified CRM Candidate / Capacity Provider,</p> <p>Read and approved,</p> <p>Name:</p> <p>Function:</p> <p>Place:</p>	<p>For the Exchange,</p> <p>Read and approved,</p> <p>Name:</p> <p>Function:</p> <p>Place:</p>
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Date: Signature:	Date: Signature:
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## 18.5 ANNEX E: FINANCIAL SECURITIES

### 18.5.1 ANNEX E.1: STANDARD BANK GUARANTEE FORM ASSOCIATED WITH THE FUNCTIONING RULES [●]

Bank guarantee at first request issued by [●] in favour of: [●] (**Elia Transmission Belgium NV/SA**), hereafter called the Beneficiary, in the context of the Capacity Remuneration Mechanism or the Low Carbon Tender introduced by respectively article *7undecies* or *7duodecies* of the Belgian Act of 29 April 1999 on the organization of the electricity market (hereafter called the Electricity Act).

Our payment guarantee references: [●] (**to be filled in by the financial institution**) (to be mentioned in all correspondence).

(Select one of the two paragraphs below: the first paragraph applies to a Transaction on the Primary Market, the second paragraph to a transaction on the Secondary Market).

[Our client [●] (**name of the CRM Actor**) informs us that on [●] (**date of foreseen submission of Prequalification File**) it has submitted/will submit a Prequalification File to Elia Transmission Belgium NV/SA for the CMU with identification number [●] (**identification number of the Capacity Market Unit**) in relation to the Functioning Rules<sup>54</sup> referred to in article *7undecies* of the Electricity Act.]

**OR:** [Our client [●] (**name of the CRM Actor**) informs us that on [●] (**date of the foreseen notification of transaction on the Secondary Market**) it will notify to Elia Transmission Belgium NV/SA a Secondary Market transaction with the reference [●] for the CMU with identification number [●] (**identification number of the Capacity Market Unit**) in relation to the Functioning Rules referred to in article *7undecies* of the Electricity Act.]

The terms of the Functioning Rules provide for the issue of an irrevocable bank guarantee payable at first demand for the amount of [●] (**Euro and amount in figures and words**) in order to secure the requested and punctual fulfilment by our client of its obligations in respect of the pre-delivery control processes (including the signature of a Capacity Contract) with respect to the CMU [or, as the case may be, (a) future CMU(s) of our client to which the obligations of a Virtual CMU are transferred] (**to be added for a Virtual CMU**).

Accordingly we, [●] (**to be filled in by the financial institution**), hereby irrevocably and unconditionally undertake to pay, in one or more payments, the amount of which corresponds to the penalty applied to the non-fulfilment of a pre-delivery obligation (including the non-signature of a Capacity Contract), up to a maximum amount of [●] (**Euro and amount in figures and words**) upon a simple request on the Beneficiary's part and being unable to dispute the grounds for such payment.

This guarantee shall enter into force as of today.

This guarantee can only be invoked by the Beneficiary as of [the publication of the Auction

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<sup>54</sup> Terms in this template starting with a capital letter, if not already defined in this template, are defined terms under the Functioning Rules.

results (validated by CREG), confirming the selection of (part of) the CMU in the Auction] **OR;** [the notification by the Beneficiary to our client of the validation of a transaction for (part of) its CMU in the Secondary Market]. We are aware that the pre-delivery obligations of our client are monitored in an undivided way on the level of a CMU and that our obligation under this guarantee is proportionately limited to the part that the capacity covered by this guarantee takes in that CMU, as the case may be.

To be valid, any invoking of this guarantee respects the following modalities:

- must reach us by [•] (expiry date of the guarantee) and
- be accompanied by [the publication of the Auction results (validated by CREG), confirming the selection of its CMU in the auction], OR: [the notification by the Beneficiary to our client of the validation of a transaction in the Secondary Market]; and
- be accompanied by the Beneficiary's written statement to the effect that our client has not fulfilled its pre-delivery obligations under the Functioning Rules, as further specified, as the case may be, in a Capacity Contract with respect to the CMU, [or, as the case may be, (a) future Capacity Market Unit(s) of our client to which the obligations of a Virtual CMU are transferred] (to be added for a Virtual CMU) and has not made the payment(s) concerned on the due date; and
- be accompanied by a copy of the credit note (or invoice) related to the unpaid due penalties and a copy of the Beneficiary's letter of default.

If the guarantee is not invoked in accordance with the conditions stated above or unless an extension is granted as approved by us, this guarantee automatically becomes null and void on the first calendar day after [•] (**expiry date of the guarantee**).

This guarantee is governed by and interpreted in accordance with Belgian law and only the Belgian tribunals and courts shall be competent to resolve any disputes with regard to this guarantee.

Signature

Function:

Date:

## 18.5.2 ANNEX E.2: STANDARD AFFILIATE GUARANTEE FORM ASSOCIATED WITH THE FUNCTIONING RULES [●]

Guarantee at first request issued by [●] in favour of: [●] (**Elia Transmission Belgium NV/SA**), hereafter called the Beneficiary, in the context of the Capacity Remuneration Mechanism or the Low Carbon Tender introduced by respectively article *7undecies* or *7duodecies* of the Belgian Act of 29 April 1999 on the organization of the electricity market (hereafter called the Electricity Act).

Our payment guarantee references: [●] (**to be filled in by the guarantor**) (to be mentioned in all correspondence).

(Select one of the two paragraphs below: the first paragraph applies to a Transaction on the Primary Market, the second paragraph to a transaction on the Secondary Market).

[Our affiliate [●] (**name of the CRM Actor**) informs us that on [●] (**date of foreseen submission of Prequalification File**)) it has submitted/will submit a Prequalification File to Elia Transmission Belgium NV/SA for the CMU with identification number [●] (**identification number of the Capacity Market Unit**) in relation to the Functioning Rules<sup>55</sup> referred to in article *7undecies* of the Electricity Act.]

**OR:** [Our affiliate [●] (**name of the CRM Actor**) informs us that on [●] (**date of the foreseen notification of transaction on the Secondary Market**) it will notify to Elia Transmission Belgium NV/SA a Secondary Market transaction with the reference [●] for the CMU with identification number [●] (**identification number of the Capacity Market Unit**) in relation to the Functioning Rules referred to in article *7 undecies* of the Electricity Act.]

The terms of the Functioning Rules provide, as an alternative to an irrevocable bank guarantee payable at first demand, for the issue of an irrevocable affiliate guarantee payable at first demand for the amount of [●] (**Euro and amount in figures and letters**) in order to secure the requested and punctual fulfilment by our affiliate of its obligations in respect of the pre-delivery control processes (including the signature of a Capacity Contract) with respect to the CMU [or, as the case may be, (a) future Capacity Market Unit(s) of our affiliate to which the obligations of a Virtual CMU are transferred] (**to be added for a Virtual CMU**).

Accordingly we, [●] (**to be filled in by the guarantor**), hereby irrevocably and unconditionally undertake to pay, in one or more payments, the amount of which corresponds to the penalty applied to the non-fulfilment of a pre-delivery obligation (including the non-signature of a Capacity Contract), up to a maximum amount of [●] (Euro and amount in both figures, and words) upon a written request on Beneficiary's part and being unable to dispute the grounds for such payment. A legal opinion provided by an internationally recognized law firm should confirm that the guarantee is legal, valid, binding and enforceable under the applicable law.

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<sup>55</sup> Terms in this template starting with a capital letter, if not already defined in this template, are defined terms under the Functioning Rules.

This guarantee shall enter into force as of today.

This guarantee can only be invoked by the Beneficiary as of [the publication of the Auction results (validated by CREG), confirming the selection of (part of) its CMUs in the Auction] **OR**, [the notification by the Beneficiary to our subsidiary of the validation of a transaction for (part of) its CMU in the Secondary Market]. We are aware that the pre-delivery obligations of our subsidiary are monitored in an undivided way on the level of a CMU and that our obligation under this guarantee is proportionately limited to the part that the capacity covered by this guarantee takes in that CMU, as the case may be.

To be valid, any invoking of this guarantee respects the following modalities:

- must reach us by [•] (expiry date of the guarantee); and
- be accompanied by [the publication of the Auction results (validated by CREG), confirming the selection of its CMU in the Auction], OR: [the notification by the Beneficiary to our subsidiary of the validation of a transaction in the Secondary Market]; and
- be accompanied by the Beneficiary's written statement to the effect that our subsidiary has not fulfilled its pre-delivery obligations under the Functioning Rules, as further specified, as the case may be, in a Capacity Contract with respect to a CMU [or, as the case may be, future Capacity Market Unit(s) of our subsidiary to which the obligations of the Virtual CMU are transferred] and has not made the payment(s) concerned on the due date; and
- be accompanied by a copy of the credit note (or invoice) related to the unpaid due penalties and a copy of the Beneficiary's letter of default.

If the guarantee is not invoked in accordance with the conditions stated above or unless an extension is granted as approved by us, this guarantee automatically becomes null and void on the first calendar day after [•] (**expiry date of the guarantee**).

This guarantee is governed by and interpreted in accordance with Belgian law and only the Belgian tribunals and courts shall be competent to resolve any disputes with regard to this guarantee.

Signature

Function:

Date:

### **18.5.3 ANNEX E.3: STANDARD BANK GUARANTEE AMENDMENT FORM ASSOCIATED WITH THE FUNCTIONING RULES [●]**

Reference number

**[reference number of the original bank guarantee]**

**Topic**

Bank guarantee – amendment

The signee, [●] (**issuer of the bank guarantee**) confirms that he has changed the bank guarantee with number [●] (**reference number of the original bank guarantee**) with regard to [●] (**name of the CRM Actor**) for CMU(s) with identification number(s) [●] (**identification number of the Capacity Market Unit**) as follows.

**(Select as appropriate)**

[The amount of the bank guarantee has changed from EUR [●] (**initial amount of the bank guarantee**) to EUR [●] (**increased amount of the bank guarantee**). The total commitment of the signee under this guarantee has therefore been brought and now amounts to EUR [●] (**increased amount of the bank guarantee**).]

**AND/OR:**

[The expiry date from the bank guarantee is changed from [●] (**initial expiry date from the bank guarantee**) to [●] (**new expiry date of the bank guarantee**). The commitment of the signee under this guarantee has thus been extended and now runs until [●] (**new expiry date of the bank guarantee**).]

This amendment shall enter into force as of the date of the signature of the amendment.

This amendment can only be invoked by the Beneficiary as of [the publication of the Auction results (validated by CREG), confirming the selection of (part of) the CMU(s) referred above in the Auction] **OR:**, [the notification by the Beneficiary to our subsidiary of the validation of a transaction for (part of) the CMU(s) referred above in the Secondary Market].

All other conditions of the original affiliate guarantee remain unchanged and apply mutatis mutandis.

Signature :

Function:

Date:

## 18.5.4 ANNEX E.4: STANDARD AFFILIATE GUARANTEE AMENDMENT FORM ASSOCIATED WITH THE FUNCTIONING RULES [●]

Reference number

[reference number of the original affiliate guarantee]

### **Topic**

Affiliate guarantee – amendment

The signee, [●] (**issuer of the affiliate guarantee**) confirms that he has changed the affiliate guarantee with number [●] (**reference number of the original affiliate guarantee**) with regard to [●] (**name of the CRM Actor**) for CMU(s) with identification number(s) [●] (**identification number of the Capacity Market Unit**) as follows.

**(Select as appropriate)**

[The amount of the affiliate guarantee has changed from EUR [●] (**initial amount of the affiliate guarantee**) to EUR [●] (**increased amount of the affiliate guarantee**). The total commitment of the signee under this guarantee has therefore been brought and now amounts to EUR [●] (**increased amount of the affiliate guarantee**).]

**AND/OR:**

[The expiry date from the affiliate guarantee is changed from [●] (**initial expiry date from the affiliate guarantee**) to [●] (**new expiry date of the affiliate guarantee**). The commitment of the signee under this guarantee has thus been extended and now runs until [●] (**new expiry date of the affiliate guarantee**).]

This amendment shall enter into force as of the date of the signature of the amendment.

This amendment can only be invoked by the Beneficiary as of [the publication of the Auction results (validated by CREG), confirming the selection of (part of) the CMU(s) referred above in the Auction] **OR:**, [the notification by the Beneficiary to our subsidiary of the validation of a transaction for (part of) the CMU(s) referred above in the Secondary Market].

All other conditions of the original affiliate guarantee remain unchanged and apply mutatis mutandis.

Signature :

Function:

Date:

## 18.5.5 ANNEX E.5: ILLUSTRATION OF DETERMINATION OF VOLUME TO BE GUARANTEED

The Volume to be Guaranteed for one CMU can change over time in function of the Transactions on the Primary Market and/or on the Secondary Market as illustrated by the fictive examples below.

### 18.5.5.1 Example of Transactions in the Primary Market

In this example, the CRM Actor closes three consecutive Transactions in the Primary Market: in the Y-4 Auction in 2021 (for Delivery Period starting in 2025  $DP_{25}$ ), the Y-4 Auction in 2022 (for Delivery Period starting in 2026  $DP_{26}$ ) and in the Y-1 Auction in 2024 (for Delivery Period starting in 2025  $DP_{25}$ ), as illustrated in Figure 1 below.

The figure below also shows that:

- a Validity Period is always linked to a Transaction.
- overlapping Validity Periods are possible.
- the Maximum Expected Contracted Capacity over a Delivery Period varies over time in function of Transactions on the Primary Market.

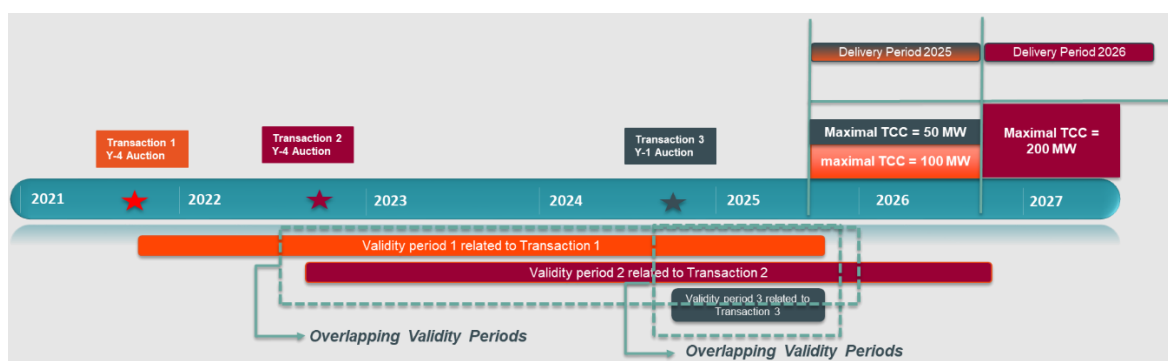


Figure 1: Overview of 3 consecutive Transactions on the Primary Market

### 18.5.5.2 Transaction 1

For the Y-4 Auction in October 2021 and  $DP_{25}$ , the CRM Actor prequalifies 150MW for a CMU, of which 100 MW is finally selected in the Auction.

Parameter	Value
Year Y-4 Auction	October 2021
Validity Period related to the Transaction	October 2021 – October 2025
Start Delivery Period	November 2025
Eligible Volume (after the Prequalification Process)	150 MW
Contracted Capacity (after the Auction)	100 MW



At any moment  $t$  of the Validity Period 1, associated to Transaction 1, the Volume to be Guaranteed is calculated as follows:

Before the Transaction Validation Date related to Transaction 1 :

The Maximum Expected Contracted Capacity over *all  $\tau$  part of  $DP_{25}$*  is calculated on the assumption that the maximum volume that is prequalified, is selected in the Auction:

$$\begin{aligned} \text{Volume to be Guaranteed (CMU, } t) &= \max_{\tau} [\text{Expected Contracted Capacity (CMU, } \tau \text{ part of } DP_{25}, t)] \\ &= \text{Eligible Volume of the CMU} = 150 \text{ MW} \end{aligned}$$

After the Transaction Validation Date related to Transaction 1 :

The Maximum Expected Contracted Capacity over *all  $\tau$  part of  $DP_{25}$*  and thus the Volume to be Guaranteed is reduced to 100MW, now being equal to the actual Total Contracted Capacity over *all  $\tau$  part of  $DP_{25}$*  :

$$\begin{aligned} \text{Volume to be Guaranteed (CMU, } t) &= \max_{\tau} [\text{Expected Contracted Capacity (CMU, } \tau \text{ part of } DP_{25}, t)] \\ &= \text{Total Contracted Capacity of the CMU} = 100 \text{ MW} \end{aligned}$$

### 18.5.5.3 Transaction 2

For the Y-4 Auction in October 2022 and  $DP_{26}$ , the CRM Actor renews the prequalification of the CMU for an Eligible Volume of 200 MW, of which 200 MW are finally selected in the Auction.

Parameter	Value
Year Y-4 Auction	October 2022
Validity Period related to the Transaction	October 2022 – October 2026
Start Delivery Period	November 2026
Eligible Volume (after the Prequalification Process)	200 MW
Contracted Capacity (after the Auction)	200 MW

At any moment  $t$  of the Validity Period 2, associated to Transaction 2, the Volume to be Guaranteed should be covered by a Financial Security. This Volume to be Guaranteed is calculated as follows:

Before the Transaction Validation Date related to Transaction 2:

It concerns the second Transaction for the CMU, so the previous Transaction is to be taken into account to calculate the maximal expected contracted capacity over a Delivery Period.

The maximal expected contracted capacity over *all  $\tau$  part of  $DP_{26}$*  is calculated on the assumption that the maximum volume that is prequalified, is selected in the Auction.

Part 1 of Validity Period 2: Overlapping with Validity Period 1:

At any moment  $t$  part of Validity Period 1 and Validity Period 2 that relate to  $DP_{25}$  and  $DP_{26}$  respectively, the Volume to be Guaranteed equals the maximum of the expected contracted capacity over *all  $\tau$  part of  $DP_{25}$  and  $DP_{26}$* :

$$\begin{aligned}
 \text{Volume to be Guaranteed}(CMU, t) &= \\
 \max_{\tau} [\text{Expected Contracted Capacity}(CMU, \tau \text{ part of } DP_{25} \text{ and } DP_{26}, t)] &= \\
 \max_{\tau} \left\{ \begin{array}{l} \text{Expected Contracted Capacity}(CMU, \tau \text{ part of } DP_{25}, t); \\ \text{Expected Contracted Capacity}(CMU, \tau \text{ part of } DP_{26}, t) \end{array} \right\} &= \max\{100 \text{ MW}; 200 \text{ MW}\} = 200 \text{ MW}
 \end{aligned}$$

Part 2 of Validity Period 2: No overlap with Validity Period 1 :

At any moment  $t$  part of Validity Period 2, the Volume to be Guaranteed equals the Maximum Expected Contracted Capacity over *all*  $\tau$  part of  $DP_{26}$ .

$$\begin{aligned}
 \text{Volume to be Guaranteed}(CMU, t) &= \max_{\tau} [\text{Expected Contracted Capacity}(CMU, \tau \text{ part of } DP_{26}, t)] \\
 &= 200 \text{ MW}
 \end{aligned}$$

After the Transaction Validation Date related to Transaction 2 :

The full Eligible Volume was selected in the Auction, so the Volumes to be Guaranteed above remain unchanged.

### 18.5.5.4 Transaction 3

For the Y-1 Auction in October 2024 and  $DP_{25}$ , the CRM Actor renews the prequalification for the CMU for a Remaining Eligible Volume of 100 MW, of which 50 MW is finally selected in the Auction.

Parameter	Value
Year Y-1 Auction	October 2024
Validity Period related to the Transaction	October 2024 – October 2025
Start Delivery Period	November 2025
Remaining Eligible Volume (after the Prequalification Process)	100 MW
Contracted Capacity (after the Auction)	50 MW

At any moment  $t$  of the Validity Period 3, associated to Transaction 3, the Volume to be Guaranteed should be covered by a Financial Security. This Volume to be Guaranteed is calculated as follows:

Before the Transaction Validation Date related to Transaction 3 :

It concerns the third Transaction for the CMU, so the previous Transactions are to be taken into account to calculate the maximal expected contracted capacity over a Delivery Period.

The maximal expected contracted capacity over *all*  $\tau$  part of  $DP_{25}$  is calculated on the assumption that the maximum volume that is prequalified, is selected in the Auction.

Validity Period 3 : Overlapping with Validity Periods 1 and 2 :

At any moment  $t$  part of Validity Period 1, Validity Period 2 and Validity Period 3 that relate to  $DP_{25}$  and  $DP_{26}$ , the Volume to be Guaranteed equals the maximum of the expected contracted capacity over *all*  $\tau$  part of  $DP_{25}$  and  $DP_{26}$  :

$$\begin{aligned}
& \text{Volume to be Guaranteed}(CMU, t) \\
&= \max_{\tau} [\text{Expected Contracted Capacity}(CMU, \tau \text{ part of } DP_{25} \text{ and } DP_{26}, t)] \\
&= \max_{\tau} \left\{ \begin{array}{l} \text{Expected Contracted Capacity}(CMU, \tau \text{ part of } DP_{25}, t) ; \\ \text{Expected Contracted Capacity}(CMU, \tau \text{ part of } DP_{26}, t) \end{array} \right\} \\
&= \max\{200 \text{ MW} ; 200 \text{ MW}\} = 200 \text{ MW}
\end{aligned}$$

No additional Financial Security is to be provided for this Transaction as the Volume to be Guaranteed has not increased.

After the Transaction Validation Date related to Transaction 3:

The Contracted Capacity is lower than the Remaining Eligible volume, so the Requested Volume is calculated as follows:

$$\begin{aligned}
& \text{Volume to be Guaranteed}(CMU, t) \\
&= \max_{\tau} [\text{Expected Contracted Capacity}(CMU, \tau \text{ part of } DP_{25} \text{ and } DP_{26}, t)] \\
&= \max_{\tau} \left\{ \begin{array}{l} \text{Expected Contracted Capacity}(CMU, \tau \text{ part of } DP_{25}, t) ; \\ \text{Expected Contracted Capacity}(CMU, \tau \text{ part of } DP_{26}, t) \end{array} \right\} \\
&= \max\{150 \text{ MW} ; 200 \text{ MW}\} = 200 \text{ MW}
\end{aligned}$$

### 18.5.5.5 Conclusion

During the overlapping Validity Periods, no double Financial Security obligation applies, only the Maximum Expected Contracted Capacity over the related Delivery Periods is to be covered.

### 18.5.5.6 Example of Transactions in the Secondary Market

In this example, the Capacity Provider closes three consecutive Transactions, starting with a Transaction in the Primary Market (Y-4 Auction in 2021), followed by two Transactions in the Secondary Market.

The figure below shows that the Maximum Expected Contracted Capacity can change within a Delivery Period in function of Transactions on the Secondary Market.

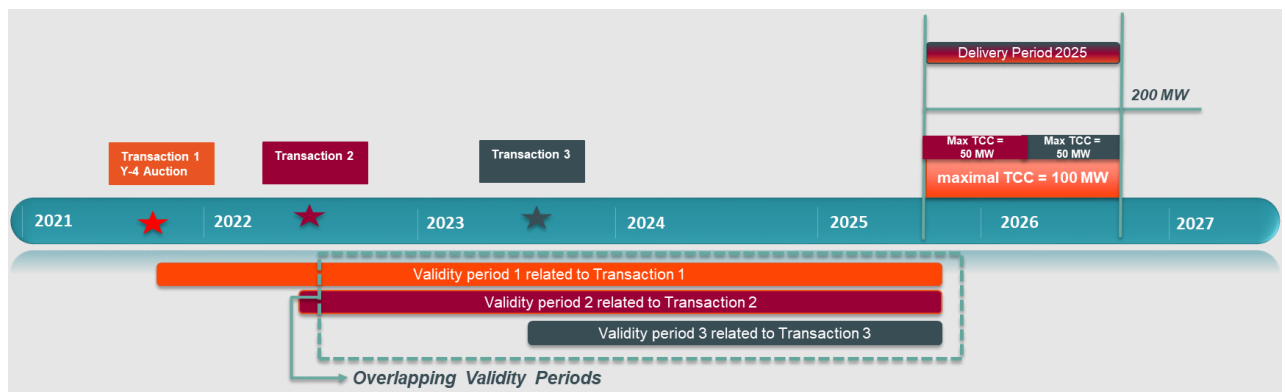


Figure 2: Overview of 3 consecutive Transactions, one on the Primary Market and two on the Secondary Market

### 18.5.5.7 Transaction 1

As detailed in section 18.5.5.2

### 18.5.5.8 Transaction 2

As a second Transaction, the Capacity Provider buys an additional volume of 50MW for the CMU on the Secondary Market at a Transaction Date before the start of the Delivery Period containing the start date of the Transaction Period. The Transaction Period covers the first six months of the Delivery Period starting in 2025.

At any moment  $t$  of the Validity Period 2, associated to Transaction 2, the Volume to be Guaranteed is calculated as follows:

Before the Transaction Validation Date related to Transaction 2 :

It concerns the second Transaction for the CMU, so the previous Transaction is to be taken into account to calculate the Maximum Expected Contracted Capacity for a Capacity Delivery Period.

The Maximum Expected Contracted Capacity over *all  $\tau$  part of  $DP_{25}$*  is calculated on the assumption that ELIA approves the notified transaction.

Validity Period 2: Overlapping with Validity Period 1:

At any moment  $t$  part of Validity Period 1 and Validity Period 2 that both relate to  $DP_{25}$ , the Volume to be Guaranteed equals the Maximum Expected Contracted Capacity over *all  $\tau$  part of  $DP_{25}$* :

$$\begin{aligned} \text{Volume to be Guaranteed (CMU, } t) &= \max_{\tau} [\text{Expected Contracted Capacity}(\text{CMU, } \tau \text{ part of } DP_{25}, t)] \\ &= 150 \text{ MW} \end{aligned}$$

After the Transaction Validation Date related to Transaction 2 :

The transaction on the Secondary Market was approved, so the Volume to be Guaranteed above remains unchanged.

### 18.5.5.9 Transaction 3

As a third Transaction, the Capacity Provider buys an additional volume of 50MW for the CMU on the Secondary Market at a Transaction Date before the start of the Delivery Period containing the start date of the Transaction Period. The Transaction Period covers the last six months of the Delivery Period starting in 2025.

At any moment  $t$  of the Validity Period 3, associated to Transaction 3, the Volume to be Guaranteed is calculated as follows:

Before the Transaction Validation Date related to Transaction 3 :

It concerns the third Transaction for the CMU, so the previous Transactions are to be taken into account to calculate the Maximum Expected Contracted Capacity over a Delivery Period.

The Maximum Expected Contracted Capacity over *all  $\tau$  part of  $DP_{25}$*  is calculated on the assumption that ELIA approves the notified transaction.

Validity Period 3 : Overlapping with Validity Periods 1 and 2:

At any moment  $t$  is part of Validity Period 1, Validity Period 2 and Validity Period 3 that all relate to the  $DP_{25}$ , the Volume to be Guaranteed equals the Maximum Expected Contracted Capacity over *all  $\tau$  part of  $DP_{25}$*  :

$$\begin{aligned} \text{Volume to be Guaranteed (CMU, } t) &= \max_{\tau} [\text{Expected Contracted Capacity (CMU, } \tau \text{ part of } DP_{25}, t)] \\ &= 150 \text{ MW} \end{aligned}$$

No additional Financial Security is to be provided to cover the third Transaction as the Volume to be Guaranteed is not increased.

After the Transaction Validation Date related to Transaction 3 :

The transaction on the Secondary Market was approved, so the Volume to be Guaranteed above remains unchanged.

### **18.5.5.10 Conclusion**

As a result of Transactions on the Secondary Market, the Total Contracted Capacity can be different during a given Delivery Period. During the Delivery Period(s) concerned, the Volume to be Guaranteed is always calculated in function of the Maximum Expected Contracted Capacity over the Delivery Period.

## 18.6 ANNEX F: TRANSPARENCY

### 18.6.1 ANNEX F.1: OVERVIEW OF THE OPT-OUT VOLUMES IN THE AUCTION REPORT

The annex represents the information on the Opt-out Volumes that at least will be presented in the Auction report. However, the type of information that is provided can be extended (e.g. graphs, figures, etc.), building further around the same kind of data.

#### 18.6.1.1 For every Auction report related to a Y-4 Auction

Opt-out Volumes classified as "IN"	Opt-out Volumes classified as "OUT"						
<b>Total</b>	<i>Definitive closure/structural reduction of capacity (art. 4bis of the Electricity Act)</i>	<i>Additional production capacity without production permit and/or Connection Contract "full opt-out"</i>	<i>New Build CMUs "full opt-out"</i>	<i>CMUs with an SLA category "partial opt-out"</i>	<i>Energy Constrained CMUs with Daily Schedule "partial opt-out"</i>	<i>Non-firm capacity as part of connection with flexible access</i>	<i>Conditional opt-out</i>
<b>Opt-out Volumes (derated) (MW<sub>d</sub>)</b>							

#### 18.6.1.2 For every Auction report related to a Y-1 Auction

Opt-out Volumes classified as "IN"	Opt-out Volumes classified as "OUT"							
<b>Total</b>	<i>Definitive closure/structural reduction of capacity (art. 4bis of the Electricity Act)</i>	<i>Temporary closure/structural reduction of capacity (art. 4bis of the Electricity Act)</i>	<i>Additional production capacity without production permit and/or Connection Contract "full opt-out" and</i>	<i>New Build CMUs "full opt-out"</i>	<i>CMUs with an SLA category "partial opt-out"</i>	<i>Energy Constrained CMUs with Daily Schedule "partial opt-out"</i>	<i>Non-firm capacity as part of connection with flexible access</i>	<i>Conditional opt-out</i>
<b>Opt-out Volumes (derated) (MW<sub>d</sub>)</b>								

## 18.6.2 ANNEX F.2: OVERVIEW OF THE INFORMATION ON THE SUBMITTED BIDS IN THE AUCTION REPORT

The annex represents the information on the submitted Bids that at least will be presented in the Auction report. However, the type of information that is provided can be extended (e.g. graphs, figures, etc.), building further around the same kind of data.

### 18.6.2.1 Bid information

		Submitted Bids
Bid volume weighted average price (EUR/MW)	Subject to IPC	
	Not subject to IPC	
Average capacity volume (MW)		
Total number of Bids	Total	
	Of which mutually exclusive (in %)	
Total volume of mutually exclusive Bids (MW)		
Maximum volume of mutually exclusive Bids that can be selected (MW)		
Total number of CMUs		
Total number of unique CRM Candidates		

### 18.6.2.2 Capacity volume information

		Submitted Bids (MW)
<b>Total capacity volumes</b>	Total	
<b>Capacity Contract Duration</b>	15 years	
	14 years	
	13 years	
	12 years	
	11 years	
	10 years	
	9 years	
	8 years	
	7 years	
	6 years	
	5 years	
	4 years	
	3 years	
	2 years	
1 year	IPC	
	No IPC	
<b>CMU Status</b>	Existing	
	Additional (excluding New Build CMUs)	
	New Build	
	Virtual	

<b>Technology classes</b>	<i>In function of categories in [placeholder to amendment of Royal Decree on Methodology] .</i>	
<b>Type of connection</b>	TSO-connected	
	DSO-connected	
	Unproven Capacity	



### 18.6.3 ANNEX F.3: OVERVIEW OF THE INFORMATION ON THE SELECTED BIDS IN THE AUCTION REPORT

The annex represents the information on the selected Bids that at least will be presented in the Auction report. However, the type of information that is provided can be extended (e.g. graphs, figures, etc.), building further around the same kind of data.

#### 18.6.3.1 Bid information

		Selected Bids
Bid volume weighted average price (EUR/MW)	Subject to IPC	
	Not subject to IPC	
Average capacity volume (MW)		
Total number of Bids		
Total number of CMUs		
Total number of unique CRM Candidates		

#### 18.6.3.2 Auction clearing price

Auction price (EUR/MW)

#### 18.6.3.3 Capacity volume information

		Selected Bids (MW)
<b>Total capacity volumes</b>	Total	
<b>Capacity Contract Duration</b>	15 years	
	14 years	
	13 years	
	12 years	
	11 years	
	10 years	
	9 years	
	8 years	
	7 years	
	6 years	
	5 years	
	4 years	
	3 years	
	2 years	
	1 year	IPC
	No IPC	

<b>CMU Status</b>	Existing	
	Additional (excluding New Build CMUs)	
	New Build	
	Virtual	
<b>Technology classes</b>	<i>In function of categories in [placeholder to amendment of Royal Decree on Methodology] .</i>	
<b>Type of connection</b>	TSO-connected	
	DSO-connected	
	Unproven Capacity	

## 18.6.4 ANNEX F.4: OVERVIEW OF THE INFORMATION IN THE PRE-DELIVERY ACTIVITY REPORT

The annex represents the information on the pre-delivery controls that at least will be presented in the pre-delivery activity report. However, the type of information that is provided can be extended (e.g. graphs, figures, etc.), building further around the same kind of data.

	<b>Contracted Capacities (in MW)</b>	<b>Missing Volumes (in MW)</b>	
		Identified before Y-1 volume determination	Identified after Y-1 volume determination
<b>Existing CMU</b>			
<b>Additional CMU</b>			
<b>Virtual CMU</b>			

## 18.6.5 ANNEX F.5: OVERVIEW OF THE INFORMATION IN THE REPORT BEFORE THE START OF THE DELIVERY PERIOD

The annex represents the information on the Delivery Period that at least will be presented in the report. However, the type of information that is provided can be extended (e.g. graphs, figures, etc.), building further around the same kind of data.

	<b>Information on Delivery Period starting on '1 Nov of Year x' until '31 Oct of Year x +1'</b>		
	<b>Contracted Capacities (in MW)</b>	<b>Calibrated Strike Price (in EUR/MW)</b>	<b>Calibrated AMT Price (in EUR/MW)</b>
<b>Y-4 Auction</b>			
<b>Y-1 Auction</b>			
<b>Contracted Capacities in earlier Auctions</b>			

## 18.7 ANNEX G: DISPUTES

### Rules of Procedure for the CRM Disputes Committee

#### 1. General principles

##### 1.1. *Mission*

1. The mission of the CRM Disputes Committee is to handle CRM-related disputes with a view to offering a rapid and effective solution for resolving disputes as well as avoiding, as far as possible, any significant delay in the operation of the CRM.
2. The CRM Disputes Committee helps the parties to resolve their disputes by adopting a Recommendation and/or a Binding Decision.

##### 1.2. *Remit*

3. The CRM Disputes Committee is authorised to rule on any dispute arising in connection with the CRM that is brought before it by a CRM Actor or by ELIA.
4. The dispute is examined in accordance and in compliance with regulation (EU) 2019/943 on the internal market for electricity, the Electricity Act of 29 April 1999, the ensuing Royal Decrees, the Functioning Rules and, where applicable, the Capacity Contract and any other applicable legislation or regulation.

#### 2. Composition and organisation

##### 2.1. *Organisation of the CRM Disputes Committee*

5. The CRM Disputes Committee comprises three members and is assisted by a Secretariat.

##### 2.2. *Secretariat*

6. The Secretariat of the CRM Disputes Committee is responsible for receiving and managing dispute resolution applications of which it is notified ("Notifications"), checking that the Notification contains all the information required and that the object of the dispute falls *prima facie* within the remit of the CRM Disputes Committee, and for sending any procedure-related information to the parties.

### 2.3. *Members of the CRM Disputes Committee*

7. The CRM Disputes Committee comprises three members: the chairman and two ad hoc members appointed by the parties..

The chairman is, depending on the case, the person appointed by CREG in accordance with paragraph 13 (the "Chairman of the CRM Disputes Committee"), or an *ad hoc* chairman appointed by the parties (the "*ad hoc* Chairman"). The term "chairman" below refers, depending on the case, to the Chairman of the CRM Disputes Committee or the *ad hoc* Chairman.

The Chairman of the CRM Disputes Committee holds a permanent position.

The *ad hoc* Chairman and the *ad hoc* members hold their position only in connection with the dispute for which they have been appointed.

### 2.4. *Criteria for appointing the members of the CRM Disputes Committee*

8. All of the members of the CRM Disputes Committee are natural persons.
9. In accepting his mission, a member of the CRM Disputes Committee undertakes to carry out said mission until its completion, in accordance with the provisions of the present Functioning Rules.
10. The chairman must have legal training with proven experience in energy law and/or disputes.
11. The two other members must have legal training and/or technical training relevant to the CRM context.
12. All members must have a good command of French and Dutch, as well as a passive knowledge of English.
13. The members of the CRM Disputes Committee shall be impartial in the exercise of their functions.

The Chairman of the CRM Disputes Committee shall be completely independent, particularly from all CRM Actors and from ELIA.

The *ad hoc* members of the CRM Disputes Committee and, where applicable, the *ad hoc* Chairman, may not under, any circumstances, be in a dependent or authority-based relationship in respect of the party/parties that appoint them.

### 2.5. *Appointment procedure*

#### 2.5.1. Procedure for appointing the Chairman

14. The Chairman of the CRM Disputes Committee is appointed by CREG pursuant to a public tender.

However, if a Party submitting a request to the CRM Disputes Committee deems it preferable to appoint an *ad hoc* Chairman, it shall propose such an appointment in its Notification and communicate the identity of the person that it is proposing to appoint.

Within five (5) Working Days of receipt of the Notification from the Secretariat, the other party shall communicate a notice of response ("Notice of Response") to the Secretariat in which it indicates its position regarding the proposal to appoint an *ad hoc* Chairman, as well as the identity of the person proposed. Within three (3) Working Days of receipt of the Notice of Response, and if they agree on the appointment of a specific *ad hoc* Chairman, the parties shall submit the identity of the *ad hoc* Chairman that they are requesting to appoint to the Secretariat.

In the event of disagreement between the parties, or in the event of failure to respect the prescribed deadline, the Chairman of the CRM Disputes Committee shall proceed on his or her own initiative to appoint an *ad hoc* Chairman.

15. The Chairman of the CRM Disputes Committee is responsible for organising the CRM Disputes Committee and the Secretariat for the duration of his term of office. His appointment is published on the CREG website.

#### 2.5.2. Procedure for appointing *ad hoc* members

16. The two other members of the CRM Disputes Committee are appointed by the parties to the dispute. One is appointed by the plaintiff in the main proceedings and the other by the defendant in the main proceedings.
17. If there are multiple plaintiffs and/or defendants, one member is chosen by the plaintiffs jointly and the other member by the defendants jointly.
18. The Interested Party appoints, in its Notification, an *ad hoc* member. Within five (5) Working Days of receipt of the Notification from the Secretariat, the other party, in turn, communicates to the Secretariat, in its Notice of Response, the identity of the *ad hoc* member that it is appointing. This time period of five (5) Working Days is increased to fifteen (15) Working Days in case of multiple defendants to the main claim.
19. If a party does not appoint a member of the CRM Disputes Committee within the required time period, the Chairman of the CRM Disputes Committee automatically appoints a member.

20. When all members of the Disputes Committee are appointed, the Secretariat confirms the composition of the CRM Disputes Committee to the parties.

#### 2.6. *Disqualification of a member of the CRM Disputes Committee*

21. The parties may not disqualify the Chairman of the CRM Disputes Committee.

An *ad hoc* member of the CRM Disputes Committee or an *ad hoc* Chairman may be disqualified by one or both parties if it/they deem(s) that the *ad hoc* member or *ad hoc* Chairman is clearly not fulfilling the requirements and conditions to take part in the dispute resolution.

22. Any request to disqualify an *ad hoc* member of the CRM Disputes Committee or the *ad hoc* Chairman, must be sent to the Secretariat in writing. The request must clearly state the facts and circumstances justifying any such disqualification.
23. A disqualification request must be submitted within three (3) Working Days following the receipt by the party requesting the disqualification of identity of the *ad hoc* member or *ad hoc* Chairman, or within three (3) Working Days following the day on which the party requesting the disqualification became aware of the reason for the disqualification, if this date is later than the receipt of the aforementioned communication.
24. The Secretariat will submit the request to the Chairman of the CRM Disputes Committee and will inform the *ad hoc* members, where necessary, the *ad hoc* Chairman and the other party(ies).
25. The Chairman of the CRM Disputes Committee will rule on the eligibility and substance of the request after inviting the member in question, or the *ad hoc* Chairman, and the other party(ies) and, where applicable, the other member, to submit any observations in writing within a specified time period. These observations will be communicated to the parties and to the other member of the CRM Disputes Committee.
26. The party whose member has been disqualified will appoint a new member within five (5) Working Days as of the disqualification decision of the Chairman of the CRM Disputes Committee. If another member is not appointed within that period, the Chairman of the CRM Disputes Committee will appoint the member himself.

In the event that the *ad hoc* Chairman is disqualified, the Chairman of the CRM Disputes Committee shall appoint, in consultation with the parties, a new *ad hoc* Chairman within five (5) Working Days of its disqualification decision.

2.7. *Replacement of the ad hoc members of the CRM Disputes Committee and the ad hoc Chairman*

27. If an *ad hoc* member of the CRM Disputes Committee or the *ad hoc* Chairman must be replaced during the proceedings, he will be replaced within five (5) Working Days following the event that necessitated his replacement.
28. In the event of the replacement or disqualification of an *ad hoc* member, or the *ad hoc* Chairman, the Secretariat shall notify the parties, within two (2) Working Days of the date of the appointment of the new *ad hoc* member, or the new *ad hoc* Chairman, of the modified composition of the CRM Disputes Committee. The proceedings will resume at the stage where the replaced or disqualified member or *ad hoc* Chairman ceased exercising his functions, unless decided otherwise by the Chairman of the CRM Disputes Committee or agreed by the parties.

3. *Characteristics*

3.1. *Location and communication*

29. The CRM Disputes Committee is headquartered on the premises of CREG. Unless opposed by the parties, the CRM Disputes Committee may meet at any location it deems appropriate for its deliberations, including for hearings.
30. The Committee's meetings may also take place via any means of communication deemed appropriate.

3.2. *Language*

31. The languages of the proceedings will be either French or Dutch. Unless otherwise decided by the chairman, the parties may, by mutual agreement, decide to choose English as the language of the proceedings. The party that submits the dispute to the CRM Disputes Committee will state the language for the proceedings in its Notification.
32. If documents submitted in a language other than the language of the proceedings, they shall be translated by the party submitting them, unless indicated otherwise by the CRM Disputes Committee and/or the other party to the dispute.

3.3. *Assistance and representation*

33. The parties may be assisted or represented by a lawyer and/or by a duly mandated person.
34. A form of proxy must be appended to any representation, save when a party is represented by a lawyer.



### 3.4. Experts

35. If the dispute submitted to the CRM Disputes Committee pertains to a complex technical, economic or financial matter, the CRM Disputes Committee may call on the services of one or more independent experts to give an opinion on the matter within a timeframe determined by it.
36. A copy of the expert's mandate will be communicated to the parties.
37. Within the time period ordered by the CRM Disputes Committee, the parties must inform the CRM Disputes Committee if they have objections regarding the expert's qualifications, impartiality or independence. The CRM Disputes Committee will immediately decide on the merits of the objections raised and the measures to take, where applicable.
38. The parties must provide the expert with all relevant information the expert deems useful for his analysis. Any dispute between a party and an expert regarding the relevance of requested information will be submitted to the CRM Disputes Committee, which will decide after having heard the expert and the parties.
39. Upon receipt of the expert's report, the CRM Disputes Committee will send a copy of the report to the parties, who have the option of expressing, in writing, their observations on the report. At the request of one party, the expert may be heard at a hearing during which the parties may ask him or her questions.

### 3.5. Communications

40. The Secretariat is, in principle, responsible for communication between the CRM Disputes Committee and the parties. Nevertheless, when the parties have appointed an *ad hoc* Chairman, such person shall ensure the follow-up of communications with the *ad hoc* members and with the parties within the context of the dispute. These communications and the case documents are stored in a centralised IT tool made available by the Secretariat.
41. Unless a party expressly requests that communications be sent to the postal address mentioned in the Notification, communications will be validly sent to the parties' respective e-mail addresses.
42. Communication sent to a party's counsel, or to any other authorised representative, is deemed to have been sent to the party itself.
43. The parties must communicate any change of address. Any communication sent to the last address communicated to the CRM Disputes Committee is valid.

### 3.6. Schedule

44. Any time period provided by these Rules of Procedure shall start on the following day. The expiry date is included in the time period. If the last day is a public holiday or a weekend, the period will expire the next Working Day.
45. The chairman may, either on his own initiative or at the justified request of a party, shorten or extend time periods. In such cases, the parties will immediately be consulted prior to the decision.
46. The president may, under unusual circumstances, on his or her own initiative or pursuant to a justified request from a party suspend proceedings underway for a specified period of time.
47. If the parties wish to oppose the schedule, they may send their observations to the CRM Disputes Committee, which will take a decision that takes into account the viewpoints expressed.

### 3.7. Costs

48. The costs for bringing a matter before the CRM Disputes Committee ("dispute resolution fees") include the costs, including fees, for the Chairman of the CRM Disputes Committee or, where applicable, the *ad hoc* Chairman and the *ad hoc* members, and the administrative costs.
49. The dispute resolution fees are determined in advance and as accurately as possible by the Chairman of the CRM Disputes Committee, in consultation with the Secretariat, taking into account the importance, urgency and complexity of the dispute and the resolution requested. The decision on dispute resolution fees will be communicated by the Secretariat to the parties to the dispute within five (5) Working Days as of the acknowledgement of receipt of the Notification.

When an *ad hoc* Chairman has been appointed by the parties, or designated by the Chairman of the CRM Disputes Committee, the decision on the dispute resolution fees is reviewed and, where necessary, adapted in consultation with the *ad hoc* Chairman, within two (2) Working Days of his or her appointment/designation.

During the proceedings, and after having heard the parties, the Chairman of the CRM Disputes Committee may decide to adjust the amount of the dispute resolution fees when the circumstances of the case, or the submission of additional claims, show that the level of complexity or scope of the dispute is different to that initially noted. However, any such adaptation may only be authorised after the Chairman of the CRM Disputes Committee has solicited the views of the parties to the dispute and, where necessary, the *ad hoc* Chairman.

In the event of the joinder of several cases, the CRM Disputes Committee shall revise the dispute resolution fees in consultation with the parties.

50. When he has decided on the fees, the Chairman of the CRM Disputes Committee undertakes to comply, insofar as possible, with the following minimum and maximum amounts:

- Recommendation procedure: minimum of €4,500 and maximum of €15,000;
- Binding Decision procedure: minimum of €4,500 and maximum of €75,000;
- Additional costs incurred for urgency proceedings: minimum of €7,500 and maximum of €45,000.

The overall amounts are divided between the members of the CRM Disputes Committee.

For proceedings seeking compensation for damage suffered in connection with the CRM, the Chairman of the CRM Disputes Committee may depart from the above-mentioned amounts and must give his reasons for doing so.

In all other cases, the Chairman of the CRM Disputes Committee may only depart from the aforementioned amounts where doing so is justified by objective information relating to the amount of the dispute, the complexity of the matter or the time needed to manage the case by the members of the CRM Disputes. However, such derogation can only be authorised after the Chairman of the CRM Disputes Committee has solicited the views of the parties to the dispute.

All members of the CRM Disputes Committee must maintain a detailed sheet containing a description of tasks carried out and the time devoted thereto.

51. Each party will bear its own costs.
52. In principle, the dispute resolution fees as well as the experts' fees will be borne by the party(ies) incurring them. However, the CRM Disputes Committee may allocate these fees between the parties if it deems that such allocation is reasonable in light of the circumstances of the particular case.
53. The Chairman of the CRM Disputes Committee may ask the parties to pay, as a provision, an amount corresponding to part or all of the dispute resolution fees pertaining to the appointment of experts. He or she may suspend the proceeding until payment of this provision.

The Chairman of the CRM Disputes Committee may, during the proceedings and following his or her decision to adapt the amount of the dispute resolution fees, adapt the amount of the provision to be paid by the parties.

At their request, and in consultation with the members of the CRM Disputes Committee, the Secretariat may, subject to a reasoned request and the sending of supporting documentation, pay an advance on their costs and fees to the president and the *ad hoc* members.

### 3.8. Evidence

54. Each party is responsible for proving the facts evoked in support of its complaint or defence.

55. The CRM Disputes Committee will determine the eligibility, relevance, materiality and importance of the evidence provided.

### *3.9. Confidentiality*

56. The members of the CRM Disputes Committee, as well as the experts, are bound by a confidentiality obligation.
57. The chairman may not inform the other members of the CRM Disputes Committee, or the experts, of confidential information of which he becomes cognisant during the recommendation procedure.
58. Information divulged by the parties during the recommendation procedure are confidential, unless indicated otherwise.
59. Information exchanged between the parties during the binding decision procedure are confidential with regard to third parties, unless indicated otherwise.
60. If the parties deem that certain information divulged to the CRM Disputes Committee or to the expert appointed by the CRM Disputes Committee is confidential in respect of one or more third parties, they must expressly indicate which information they consider confidential, the reasons justifying the confidential nature of such data, and the party in respect of whom confidentiality is requested. In the event of an objection, the Chairman of the CRM Disputes Committee shall decide on the confidential nature of the information or document concerned.
61. The CRM Disputes Committee will take all necessary measures to ensure the confidential processing of information deemed confidential by a party during the procedure, and whose confidential nature has been confirmed, taking care to adequately protect trade secrets and commercially sensitive or personal information.

### *3.10. Rules governing proceedings before the CRM Disputes Committee*

62. Proceedings before the CRM Disputes Committee are governed by these Rules of Procedure and, if not mentioned in the Rules of Procedure, by any other rule which the parties or, in the absence thereof, the CRM Disputes Committee can agree on in consultation with the parties.

If the specific circumstances of the dispute require that certain changes be made to the applicable rules of procedure, the CRM Disputes Committee may, in consultation with the parties, determine by reasoned decision countersigned by the parties, which alternative rules of procedure shall apply. In the absence of agreement, the present Rules of Procedure shall apply.

## *4. Proceedings*

### *4.1. Notification*

63. The party that initiates the proceedings must send the Notification to the Secretariat.
64. The Notification must contain the following information:
- a) Name, address, telephone number, e-mail address, BCE registration number;
  - b) Type of procedure and decision requested (recommendation procedure and/or binding decision procedure, with or without the status of an arbitral award);
  - c) The identity of the *ad hoc* member he or she is appointing;
  - d) If applicable, a proposal to appoint an *ad hoc* Chairman and his or her identity;
  - e) Summary of the grievances and subject of the requests;
  - f) Where applicable, the urgent nature of the request that can justify the application of the emergency procedure or the granting of provisional measures;
  - g) Choice of language for the proceedings (French, Dutch or English);
  - h) Any document relevant to the dispute;
  - i) Where applicable, a copy of the Capacity Contract.
65. Within three (3) Working Days following the receipt of the Notification, the Secretariat will acknowledge receipt of the Notification to the party initiating the procedure and will communicate the Notification to the other party/to the other parties.

Within five (5) Working Days of receipt of the Notification from the Secretariat, the other party(ies) shall communicate its/their Notice of Response to the Secretariat. In the event of multiple defendants, this time period is increased to fifteen (15) days. The Notice of Response must contain the following information:

- a) Agreement or refusal to bring their dispute before the CRM Disputes Committee;
  - b) Its/their position regarding the choice of type of procedure and decision and, where applicable, regarding the appropriateness of initiating emergency proceedings;
  - c) Where applicable, position regarding giving the Binding Decision the status of an arbitral award;
  - d) The identity of the *ad hoc* member that it(they) is(are) appointing;
  - e) Where applicable, its/their position regarding the appropriateness of appointing the *ad hoc* Chairman and his or her identity;
  - f) If it(they) wish(es), purely for information purposes, a short response to the other information included by the applicant in its Notification.
66. Even if a recommendation procedure has been requested, the *ad hoc* members must already be appointed in order to take part, where applicable, in any binding decision procedure.

#### 4.2. *Verification of the Notification*

67. The Secretariat verifies whether the Notification contains all the relevant information, or whether additional information needs to be provided. It also verifies whether the dispute falls *prima facie* within the remit of the CRM Disputes Committee and notifies the Chairman of the CRM Disputes Committee.

The Chairman of the CRM Disputes Committee may, if he or she deems it appropriate before deciding, invite the parties to submit their observations on the issue of the competence of the CRM Disputes Committee, within a time period it determines.

The Chairman of the CRM Disputes Committee may, where necessary, give additional time to enable a party to complete its observations.

Within five (5) Working Days of acknowledging receipt of the Notification, the Secretariat notifies the parties, if applicable, of the decision of the Chairman of the CRM Disputes Committee:

- To give more time to the applicant to provide additional and/or missing information;
- To invite the parties to submit their observations, within a time period that it determines, on the issue of the competence of the CRM Disputes Committee.

The granting of additional time shall have the effect of suspending the proceedings.

68. The CRM Disputes Committee may decide, of its own accord or at the request of the parties, to combine disputes which are closely linked or which, for reasons of economy of procedure, must be examined together.

The CRM Disputes Committee may, in consultation with the Secretariat, examine on a preliminary basis, after receipt of the Notification, the appropriateness of joining the case with other cases that have been referred to it. If it deems it appropriate, it may question the parties in the different cases, making sure not to reveal any confidential information.

Joinder is possible both for the recommendation procedure and for the binding decision procedure, after soliciting the views of the parties.

In order to join the disputes, the CRM Disputes Committee adopts a decision of joinder.

Except in case of non-divisibility, and if it contributes to more efficient handling of the case, the CRM Disputes Committee may decide *ex officio*, or at the request of the parties, and after having heard the parties, to split a dispute into two or more cases, each dealing with one part of the dispute.

The parties may decide by mutual agreement to split their dispute and to only submit a part thereof to the CRM Disputes Committee. Where the dispute cannot be divided, and after having heard the parties, the CRM Disputes Committee shall declare that it lacks competence to split the dispute.

#### 4.3. Recommendation procedure

69. The recommendation procedure applies when the parties ask the CRM Disputes Committee for informal assistance with their dispute.
70. The recommendation procedure is handled by the chairman acting as an intermediary to reconcile the parties.

71. The chairman begins the informal discussions to this end, or if necessary, meetings with the parties. He may also request additional information, if necessary.
72. Pursuant to discussions and after no more than thirty (30) Working Days (as of the acknowledgement of receipt of the Notification), the chairman will issue a written recommendation to the parties in order to enable them to reach an agreement ("Recommendation").
73. If an amicable solution is found within ten (10) Working Days as of the issuance of the Recommendation, a period which may be extended via the written agreement of each party, the conditions for said solution will be formalised, by the parties, in a written agreement. These conditions must comply strictly with the applicable legislation and regulations.

#### 4.4. *Value of the Recommendation*

74. The Recommendation issued by the chairman contains a written proposed resolution to the dispute that complies with the applicable legislation and regulations. The Recommendation does not imply any decision regarding the arguments or requests issued by the parties.
75. The Recommendation is not binding.

#### 4.5. *Failure of the recommendation procedure*

76. If no amicable solution is found following the recommendation procedure, the first party to act may either ask the CRM Disputes Committee to issue a Binding Decision, or may bring the matter before the relevant tribunal or court.
77. If the first party to act decides to request a Binding Decision, it must send a new notification to the Secretariat ("Additional Notification"). The Additional Notification must comply with the same requirements as those set out in section 4.1 of these Rules of Procedure. The Secretariat will send an acknowledgement of receipt of the Additional Notification to each party.
78. Upon receipt of the acknowledgement of receipt of the Additional Notification, the parties will inform the Secretariat of the names of the *ad hoc* members that they are appointing in accordance with section 2.5.2 of these Rules of Procedure.

#### 4.6. *Binding decision procedure*

79. If a binding decision procedure is initiated, the parties shall agree on a calendar for the exchange of arguments.
80. The CRM Disputes Committee may organise a hearing during which each party may present its point of view within a specified period of time. The parties will be informed in good time in advance of the date, time and place of the hearing.
81. The CRM Disputes Committee may also ask the parties to produce any information or additional document(s) that it deems necessary in order to resolve the dispute.
82. The CRM Disputes Committee will issue a Binding Decision within a period not exceeding three (3) months as of the acknowledgement of receipt of the Notification by the Secretariat, or within a period not exceeding two (2) months as of the acknowledgement of receipt of the Additional Notification.

The CRM Disputes Committee may, with the agreement of the parties, extend this period in order to issue a Binding Decision.



#### 4.7. *Intervention by a third party*

83. Any party demonstrating a sufficient interest may intervene voluntarily in a binding decision procedure. To that end, it must submit a reasoned request to the Secretariat.

The CRM Disputes Committee will decide on the eligibility of the intervention request after consulting with the parties. If the request is eligible, the intervening party may submit a document explaining its position on the object of the dispute.

A party may also ask another party to intervene in the procedure by virtue of a contractual or legal provision.

84. A third party may only intervene in proceedings after having accepted, in writing, the present Rules of Procedure and on condition that its intervention has been deemed admissible by the CRM Disputes Committee. In this case, the intervening party may, within a time period determined by the CRM Disputes Committee, submit a statement document in which it presents its observations relating to the dispute.
85. Intervention by a third party has no impact on the composition of the CRM Disputes Committee.
86. CREG may not intervene or be forced to intervene as a third party in a procedure before the CRM Disputes Committee.

#### 4.8. *Emergency procedure*

87. If the dispute is of an urgent nature, the interested party may request in the Notification (or in the Additional Notification) to use the emergency procedure making it possible to issue a Binding Decision within a shorter period of time.
88. Within five (5) Working Days of receipt of of the (Additional) Notification from the Secretariat, the other party shall take a position, in its Notice of Response, on the question of urgency. The Chairman of the CRM Disputes Committee will decide on the appropriateness of the emergency procedure, taking into account the points of view expressed by the parties. He or she shall inform the parties of his or her decision on whether or not to initiate an emergency procedure.
89. If an emergency procedure is initiated, the Chairman of the CRM Disputes Committee will itself determine a schedule for the exchange of statement documents and will issue a Binding Decision within a minimum of fifteen (15) and a maximum of twenty-five (25) Working Days as of the acknowledgement of receipt of the Notification or Additional Notification by the Secretariat.
90. Each of the parties may ask the Chairman of the CRM Disputes Committee to adopt provisional measures. A provisional measure is a temporary measure whereby, at any time prior to the

adoption of the Binding Decision, the Chairman of the CRM Disputes Committee may order a party, for example, to:

- maintain or re-establish the *status quo* pending the resolution of the dispute;
- take measures which prevent, or refrain from taking measures likely to cause, (i) immediate or imminent harm or (ii) harm to the process itself;
- save the items of evidence which can be relevant and important for the resolution of the dispute.

91. The party which requests a provisional measure may be held liable for the costs and damage caused by the requested measure if the Chairman of the CRM Disputes Committee subsequently finds that the measure should not have been granted. The Chairman of the CRM Disputes Committee may grant remedy for said costs and damage at any time during the procedure.

#### 4.9. *Binding Decision*

##### 4.9.1. *Form and content of the Binding Decision*

92. The CRM Disputes Committee will take its decision in compliance with the applicable legislation and regulations.
93. The Binding Decision will be adopted by the majority of the members of the CRM Disputes Committee, except within the context of an emergency procedure or a procedure requesting provisional measures, in which the Chairman of the CRM Disputes Committee decides alone.

Prior to its adoption, the Secretariat verifies that the Binding Decision complies with the formal and substantive requirements of the present Rules of Procedure.

94. In addition to the reasons justifying the decision, the Binding Decision will contain the following information:
- a) the names of the members of the CRM Disputes Committee;
  - b) the names and addresses of the parties;
  - c) the object of the dispute;
  - d) the order to pay the dispute resolution fees and, where applicable, the experts' fees;
  - e) the date of the decision;
  - f) the location of the seat of the CRM Disputes Committee;
  - g) the signatures of the members of the CRM Disputes Committee.
95. When the Binding Decision has the status of a binding third-party decision, it is final. The parties undertake to execute it without delay.
- When the parties have chosen the arbitration procedure, in accordance with § 917 of the Functioning Rules, the decision of the Disputes Committee has the status of an arbitral award, within the meaning of articles 1676 *et seq.* of the Judicial Code.

##### 4.9.2. *Notification of the decision to the parties and publication of the decision*

96. The Secretariat will inform the parties of the Binding Decision signed by the members of the CRM Disputes Committee.
97. The Binding Decision will be published in full on the CREG website, unless one party asks that specifically identified information in the Binding Decision be treated confidentially. Said request must be justified and submitted within five (5) Working Days following the communication of the Binding Decision by the Secretariat. In the event of doubt regarding the confidentiality of the publication, the Chairman of the CRM Disputes Committee may submit the question to the CREG for an opinion.

#### *4.9.3. Interpretation of the Binding Decision*

98. Within thirty (30) Working Days following the receipt of the Binding Decision, a party may, via written Notification sent to the other parties, ask the CRM Disputes Committee to provide an interpretation of its Binding Decision or to correct its Binding Decision if it contains a calculation error, a typographical error or any other error or omission of that nature. If the CRM Disputes Committee deems that the request is justified, it will issue the interpretation or correction within thirty (30) Working Days following receipt of the request.

*5. Limitation of liability*

99. The members of the CRM Disputes Committee will not be liable for any act or omission related to their activity, save in the event of fraud, gross negligence or wilful misconduct.

## 18.8 ANNEX H: APPLICATION OF PROVISIONS OF FUNCTIONING RULES TO CAPACITY CONTRACTS ALREADY CONCLUDED

This annex is a follow-up to § 9 of the Functioning Rules. It lists the provisions of the present Functioning Rules that do not apply to Capacity Contracts already concluded and, at the same time, the provisions of the Functioning Rules in force at the time of signing of the Capacity Contract that remain applicable.

An asterisk denotes that none of the provisions of the Functioning Rules in force at the time of signing of the Capacity Contract apply.

“2022 Functioning Rules” means the present Functioning Rules. “2021 Functioning Rules” means the Functioning Rules established by CREG via decision (B)2227 of 14 May 2021 and approved by the Royal Decree of 30 May 2021.

Provisions of “2022 Functioning Rules” not applicable to Capacity Contracts already concluded	Provisions of “2021 Functioning Rules” applicable to Capacity Contracts already concluded
Section 5.2 and corresponding annexes	Section 5.2 and corresponding annexes
Section 8.3.3	Section 8.3.3
§§ 371, 372, 373	*
§§ 381, 382	*
§ 392	*
§§ 399, 400	§ 346