POSITION

Subject: Public consultation on the CRM Functioning Rules
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Preliminary comments

FEBEG thanks Elia for having the opportunity to answer Elia's Public consultation on the CRM Functioning Rules[1] and for all the efforts & processes put in place for the development of the CRM functioning rules.

FEBEG particularly appreciates the opportunity given to the different stakeholders to ask for clarifications and provide feedback in a transparent and constructive way both during the numerous Task Force meetings and in bilateral meetings.

While FEBEG does not fully support all rules proposed by Elia in the consulted functioning rules (nor on some underlying principles for which FEBEG has expressed its concerns at different occasions and once more in the framework of this consultation), FEBEG fully supports the implementation of the CRM in Belgium and invites Elia to continue the work in order to ensure a swift implementation of the CRM as well as a successful first auction in 2021.

In general, while FEBEG understands that the functioning rules aim to ensure that the reliable capacity providers are present during the delivery period, such guarantee should not be detrimental to the overall process by causing excessive burdens and/or risks to the capacity providers as this could result in an increase of the CRM cost and/or a reduction of competition. We invite Elia to carefully consider these elements during the review of the functioning rules in order to ensure a balance between these two objectives.

The comments hereafter aims to provide a complete view of FEBEG's position on the functioning rules (including past comments made on the principles put forward in the initial design notes) and should be considered as improvements to the current proposal made by Elia.

For the sake of clarity, the comments to the different chapters are split in three parts. First we address the general comments related to the functioning rules, then we provide detailed comments and finally we provide FEBEG's position on the underlying design principles at the basis of the functional rules and which have already been provided to Elia in the framework of the consultation on the various CRM design notes.

For practical reasons, the comments of FEBEG are based on the English version of the Functioning Rules. The comments and suggestions of FEBEG are not confidential.

[1] https://www.elia.be/en/public-consultation/20200828_public-consultation-crm-functioning-rules

I. Unaddressed elements

General comments

1 Transfer of contract

FEBEG considers it of utmost importance that Elia facilitates the transfer of a CMU (or CMU's, possibly linked) that is selected in the capacity auction and that is part of the capacity remuneration contract. FEBEG understands that it is not the intention to foresee such arrangements in the functioning rules, but that they will be embedded in the capacity remuneration contract.

The capacity remuneration contract – still to be consulted upon – should, hence, foresee the necessary arrangements that a CMU (or CMU's, possibly linked) can be removed from the capacity remuneration contract and **be transferred – with all the rights and obligations linked to that specific CMU** (or CMU's, possibly linked) – to a third party, i.e. a (new) CRM Candidate or (new) Capacity Provider **without passing through the secondary market.**

II. Legal & Governance

General comments

The functioning rules of the capacity remuneration mechanism should describe the operation of the mechanism, which should be an attachment to the contract to be signed between the CRM Contractor (ELIA) and the Capacity Provider, if elected. However, **the legal terms which thus govern the contractual relation between the CRM Contractor (ELIA) and the Capacity Provider should be integrated in the Contract, rather than in the functioning rules**. In this respect we would thus propose that all aspects such as termination, penalties, dispute resolution, liability are shifted to the Contract.

It is of essence that the liabilities of the parties are clearly governed under the capacity remuneration mechanism. This should be governed in the Contract as suggested above. In the view of FEBEG, **the liabilities of the capacity provider should be limited in any case to the annual remuneration that will be received under the (capacity remuneration) Contract and for direct damages only**. FEBEG refers to a similar clause in the ELIA Connection Agreement.

The Capacity Providers are responsible for the timely execution and operation of the CRM related projects. However, certain events that could be incurred are outside the control of the Capacity Provider, as we have recently experienced in relation to the COVID 19 crisis. Therefore **a Force Majeure clause, as a result of which the obligations of the parties could be suspended in case of events outside the control of the parties and which could not have been reasonably foreseen, should in any case be integrated in the Contract.** Moreover, the unavailability of a unit under the Capacity Remuneration Mechanism can also be due to third parties, such as e.g. the unavailability of the gas or electricity transmission grid. It is not clear how such situations will be managed and should thus be clarified.

In any case, during the delivery period, **unavailability of a CMU due to temporary grid issues should not impact the Capacity Provider.** (e.g. certain conditions in the grid the Delivery Point is connected to do not allow Capacity Provider to deliver full service).

In this respect, also the topic of change in law also merits a discussion: the costs related to regulatory changes after the auction should be incurred by ELIA, as this is outside the control of the Capacity Provider.

Under the capacity contract, ELIA is on the one side the contracting party of the capacity provider, but also the 'judge' on important matters in relation to the Contract, such as the correct provision of data in the prequalification file (e.g. derating factor, application form) or the determination of the missing capacity in the pre-delivery monitoring (§294). In relation to the technical aspects, in case of contestation, Febeg suggests to insert a procedure involving an expert, who can be considered as a neutral party and could settle issues of divergence between ELIA and the Capacity Provider. We also refer to our comments in the section on Disputes

Generally speaking, an important number of roles are granted to the Transmission System Operator Elia, as a result of the installation of the CRM. Indeed, next to the operation of the transmission system grid, Elia will also be the operator of the CRM and most likely the contractual counterpart of the Capacity Providers and possibly a service provider for connection works. These different roles can be conflicting.

Similarly to the situation in Great-Britain with National Grid, **a strict separation of activities (grid operation, system operation, CRM operator, etc.) within ELIA Group should allow for a better management of conflicts of interest** (cfr need for independence, neutrality, confidentiality, etc.).

There seems to be an assumption in the working rules (§449 and 576) that the capacity provider is still bound by the contract, even after the contract has been (indirectly) terminated by ELIA. In the event where the capacity remuneration is equal to 0 and there is no possibility to reinstate the capacity remuneration by demonstrating that the contracted capacity is available on the market, the contract should be terminated, together with the associated rights and obligations. One cannot expect that a service is continued to be offered without having a contractual basis, nor without any kind of remuneration to cover the incurred costs. Therefore, **it should be clear in the functioning rules that the termination of contract - or a situation leading to the same effects - leads to the end of both the rights and responsibilities of the Capacity Provider.**

III.Definitions

Detailed comments

"**Measured Power**" : Net offtake is considered as a positive value, net injection as a negative value. It seems however to be the opposite in Annex A.17 (NRP determination) and in Availability Monitoring and Testing Process (§ 410).
"**Remaining Eligible Volume**" : it is not the maximum Contracted Capacity (…) but the maximum capacity of a Transaction on the Primary Market that the Capacity Provider can contract (as set out in Annex 17.1.18.1)
"**Secondary Market Eligible Volume**" and "**Secondary Market Remaining Eligible Volume**": the definitions are identical. These are maximum capacities that can be contracted.
"**Secondary Market Remaining Eligible Volume**": it is not the maximum Contracted Capacity (…) but the maximum capacity of a Transaction on the Secondary Market that the Capacity Provider can contract.
"**Opt-out Volume**": we suggest to add "Declared" in brackets in the definition => "The (part of) the (Declared) Nominal Reference Power of a CMU …"

"**Stop-loss**"/"**Stop-loss Amount**": shouldn't there be a clear link with the pay-back obligation in the definition (cf. definition in chapter 11.3.6)

IV. Service Time Schedule (STS)

Detailed comments

4.2.1. Key Milestones CRM Process

- Pg. 29 - Table STS auction: the timing is not consistent with paragraph 200 (chapter 6. Auction).

4.3.1 Prequalification Processes

- Pg.32 Table. The case of a CMU with Existing and Additional DP should also be mentioned. The title "if only existing delivery points" is confusing.
- Pg.33 Results of the Prequalification File compliance check #2. In the column "Details", "10 WD" should be replaced by "5 WD" (cfr point 73).

4.3.1.1 Opt-Out Notifications

- Determination/Communication of the final Nominal reference power: we suggest to add "declared" into brackets, as the Declared Nominal Reference Power is separately defined.
- Second Modification of the Opt-Out Notification : this can be done between the prequalification results notification and 5 WD after September 15th (cfr. 5.6.2.1.1)
- Adaptation of the Financial Security : "Each time ELIA reduces the Eligible Volume…" : it should be " each time ELIA modifies …".

4.3.4 Availability Monitoring

- For Announcement of Unavailable Capacity, Availability Test Announcement and AMT Moment Announcement : it should be in "D-xx calendar day" instead of "D - xx WD".

V. Prequalification Process

General comments

Relation between the prequalification process by Elia and the evaluation of the contract duration by the CREG

The prequalification process allows the CRM candidates to introduce a prequalification file at any moment (except for the first auction year). Elia moreover foresees an iterative process where the CRM candidate can complement its prequalification file should some elements be missing.
The process for the CREG to assess the investment files of parties aiming for a longer contract duration for their investment foresees that the decision will be provided by the 15/09 and does not foresee such iterative process.
Considering that Elia communicates the prequalification results by the 01/09 and the strict timings in the Electricity Lawn, there is unfortunately no room to allow for the introduction of an appeal procedure to question the decision of the CREG on the capacity category while still allowing the concerned party to participate in the upcoming auction.
As a result, we consider that **sufficient time for exchanges - in an iterative process - with CREG to allow the CREG to take a well-considered and adversarial decision should be foreseen.**

Obligation to prequalify

The CRM Law foresees an obligation from any capacity holder with production excessing the minimal threshold to submit a prequalification file. It is much appreciated that Elia tries to facilitate this obligation with a fast track prequalification.

The respect of this legal obligation is very important, not only to create a level playing field between market participants – as complying with this obligation will generate costs and administrative burden – but also to ensure that all capacities are duly identified to take into account in the volume calculation. It is therefore expected that it is further clarified how all concerned parties will be informed of this obligation and how the respect of the obligation will be effectively monitored and what the consequences of a non-respect are (e.g. penalties).

According to our understanding, a production facility not fulfilling the prequalification criteria (e.g. no separate metering device) do not have an obligation to prequalify. This may, for instance, concern the back-up engines located on the power plants' site.

Timings in prequalification procedure

FEBEG is very concerned about the prequalification process, especially for the first upcoming auction, due to a combination of factors:

- the timings in the prequalification process are very tight;
- the prequalification procedure doesn't foresee fallback or appeal procedures before the start of the auction;
- details on the prequalification requirements are still missing (in particular the CO2 attest);
- market parties as well as Elia have no experiences with regard to the prequalification process.

There is the risk that a file is not considered as complete. FEBEG requests Elia to be as open and interactive as possible during the assessment of the completeness of the prequalification file. Also FEBEG understands that no change is allowed after the compliance-check period of Elia. Could Elia confirm that this?

For the abovementioned reasons, the prequalification process is considered as a huge risk, especially for additional capacities for which the investment decision will most likely only be made when selected in the first capacity auction.

The procedure and timings as foreseen do not allow the protection of the rights of defence in case of a decision taken by Elia, contrary to the interests of the CRM candidate. Appropriate and specific mechanisms are thus to be foreseen such as an appeal procedure that do not jeopardize his potential participation to the next capacity auction.

Finally, for the first auction, **access to the prequalification module of the CRM IT Interface should be granted as soon as possible and at the latest right after the publication of the Functioning Rules (15/05 at the latest).**

Possibility to partially opt-out

FEBEG understands from the functioning rules (e.g. paragraphs 117 and 145) that a CRM candidate having introduced an investment file for the obtention of a multi-year contract is also allowed to do a partial opt-out until 5 WD after the 15th of September. **Additional CMUs, in the process of an investment file, should certainly have the same opportunity to adjust their eligible volume for risk management purposes,** and therefore their bid, before the auction (provided they respect the criteria for the attribution of the long-term contract).

CO_2-emission

The Electricity Market Regulation provides specific requirements in Article 22 (4) for participation of generation capacities to a capacity mechanism regarding CO_2 emission limits. However, some elements should be clarified: What will be the process for the “CO2 emission attestation”? Are the methods to be used for computing the CO2 emissions (specific or annual) in line with ACER Opinion No 22/2019? Who are the competent bodies to request, issue or validate (cfr ACER Opinion) the attestation? **A late communication on this prequalification requirement may reduce the access to the auction for some capacity holders.**

Production permit

The Functioning Rules refer to the Royal Decree on the granting of individual authorizations for the requirement in terms of production permit. First of all, FEBEG would like to remind that some older capacities do not hold a production permit as they were built before the entry into force of this Royal Decree. In addition, FEBEG would like to highlight that, in the case the CRM candidate is appointed by the grid user, he may not be the holder of the production permit. We suggest Elia to verify if either the grid user or any legal entity having a contractual link with the grid user holds a production permit for the concerned production facility.

Generally speaking, **FEBEG suggests Elia to properly verify with the Federal Public Services how the requirement on Production Permit is best translated in the CRM Functioning Rules to cover all possible cases.**

Detailed comments

- §43: Combinability rules (cf Annex 17.1.3 (Annex A.3), Case 3): Service Delivery on the Headmeter and a Submeter behind or with 2 Submeters with hierarchy should be allowed by using an equation to substract the influence of the DP downstream on the DP upstream.

  When a “small” asset (eg. a few MW) is connected downstream of a “main” asset (eg. 150 MW), it should be possible to consider these 2 assets as only one Delivery Point.
- §59 : Table
  - Net offtake / net injection : is it based on yearly volumes ?
    For storage, where can the CRM candidate indicate the regime (injection, reduction of offtake, or both) for which the Delivery Point is to be prequalified ?
  - EAN for additional capacities: the EAN code will not be known yet at the moment of the prequalification for the T-4 auction.
- §65: Submission date : the CRM Candidate should receive immediately the notification confirming the good reception of the Application file or Prequalification file by Elia. Otherwise he should be able to start a fallback procedure (see comments in the Fallback procedures).

- §78: An erroneous information identified by Elia via the tests/audits may trigger a termination of the Capacity Contract. We request Elia to provide in the functioning rules an exhaustive list of items from the prequalification file that would lead to a termination of the capacity contract. Furthermore, a remediation procedure, if possible, should also be foreseen in the capacity contract.
- §88: method 1 ends with the "submission date of the prequalification file (change)". Does this mean that the 15-minutes measurements after the update of the prequalification file as per Annex 17.1.19 will not be taken into consideration when an Additional CMU becomes existing? In practice, this means that a very limited amount of measurements will be available to apply method 1.
- §89 & 97: For injection, is it the difference between the highest and the *lowest* 15-minutes measurement, or as set out in Annex 17.1.17.1.6 the difference between the highest 15-minutes measurement and *zero* (which is more logical) ?
- §89 & 97: For a Delivery Point with both injection and consumption, NRP is equal to sum of the *absolute value* of the NRP from the offtake and the NRP from the injection. To our understanding, a NRP should never be negative.
- §94: In the case of linked CMUs, it is understood that the tests – in the case method 3 is chosen, by the CRM candidate, can be organized at the same moment.
- §96: for the process of "becoming existing", we understand that the measurement should be done within forty WD after the change of the prequalification file.
- §103. We suggest to adapt the following sentence : "The updated Nominal Reference Power resulting from the (second) test – if higher than the initial ~~one~~ *NRP calculated* – is considered as the final Nominal Reference Power […]").
- §121: FEBEG does not see a reason why 'fast-track' CMUs would not be authorized to choose an opt-out 'out' (under the category 'other') in T-4 if they have a relevant technical constraint. In any case, the 'fast-track' CMU should be able to adapt its status from 'IN' to 'OUT' in the case the associated capacity will not contribute to the security of supply and it is justified through the 'Opt-out' notification.
- §127: in both tables (Y-4 & Y-1), why can't the (partial) opt-out OUT not be traded on the secondary market for Additional Capacities? According to our understanding, the additional capacities should be able to access the secondary market for their Remaining Eligible Secondary Market volume after they become existing (even in a case of opt-out 'out'). Partial Opt-Out tradable on the Secondary Market for Additional CMUs is particularly important to be able to exchange capacity ex-post on the Secondary Market between the GT and the ST in case of Availability Test as per §423.
- §129: Elia writes that CMUs going through fast track prequalification do not declare an opt-out volume. This is not fully consistent with section 5.6.2.13 as they have to submit an opt-out notification even though the fast-track volume is considered as full 'opt-out'. We recommend Elia to clarify the text to ensure consistency.
- §141. As indicated in the footnote 4 on p. 29, in the event that the CRM Candidate submitted an investment file to the CREG, the prequalification results are notified to the CRM Candidate on September 1st. Can Elia confirm this, in case of submission of the Prequalification File by 15 June, even in the 'worst' case (with determination of the NRP of an Existing, TSO-connected Delivery Point, contestation of the provisional NRP, prequalification test,…)?
- §145: We understand that a CRM candidate with an additional capacity having an investment file approved by CREG can also do an opt-out 5 working days after September 15th.
- §150: there is a wording mistake in the last part of the recital. It should be "the ones described in section 11.3.2 for the NEMO and […]".

- §151: What happens if a CMU that submitted a fast-track prequalification file does not react to the request of Elia to renew its prequalification file. We suggest to Elia to use the last data available as it is unlikely the capacity or derating factor would change in the short-term.
- §151: 5 working days for the confirmation of the renewal of the prequalification is too short. We suggest to extend this period to June 15th, which is the deadline for the participation to the prequalification process for the next auction.
- §156: We request a period of 10 WD to confirm the agreement of a change notified by Elia. This is necessary for market parties to fully assess the impacts of such a change.
- §166: We assume that a capacity category update only happens when CREG realizes in an ex-post audit that the contract duration should have been different (ex: lower CAPEX than declared). It should not concern other cases that are not listed in the Royal Decree on Investment thresholds & Eligible Investment Costs.
- §167 : During the period of the review process of the Prequalification File (between submission of the change and results notification), the access to the Secondary Market should still be granted to the CMU for transactions which are not impacted by the changes submitted by the CRM Actor (e.g. in case of renewal of a Grid User Declaration, changes entering into force after the Transaction Period,…).
- §168: see also remark on Annex A.20: Change from virtual to existing CMU.
- §194: “Indeed, if the information, on which the classification decision was based, changes, the Capacity Provider is penalized ex post”. A capacity provider should only be penalized ex-post according to the conditions applicable in the Royal Decree on Investment Thresholds and Eligible Investment Costs.

ANNEXES related to the Prequalification Process

- 17.1.6. Annex A.6 Grid User Declaration: A GU should be allowed to participate with several CRM Candidates at the same time as long as each DP is submitted for only one party at the same time.
- 17.1.7.2. After the Compliance Check #1, in case of missing / wrong data, the Elia’s notification should not be that the file is “Rejected” but a request to complete or correct the file. Rejection of the file can occur only after Compliance Check #2.
- 17.1.8 CDSO Declaration: Second § of the CDSO Declaration : the power injected at the Delivery Point(s) can also be increased.
- 17.1.14: ANNEX A.14: PROJECT EXECUTION PLAN FOR ADDITIONAL AND VIRTUAL CMUs
    - We propose to add the following: List of potential key issues […] and the identification of *non-exhaustive* mitigation measures that *could be* taken by the CRM Candidate […]
    - We understand that the key milestones are purely indicative and will be chosen “freely” by the CRM participant, however we would like to emphasize the following comments for an OCGT/CCGT:
        - “Workforce and capacity planning”: not relevant as a large part of the works will be executed by an EPC. It could be replaced by “signature of EPC contract”.
        - “Commencement of construction works”: for the start of activities on-site, we suggest to consider the milestone of “start of the piling activities”, which is assumed not to be “minor civil works”.
        - “Mechanical completion”: installation of the GT/ST on site does not correspond to "mechanical completion" of the plant (a lot of auxiliaries to be connected). It can be ambiguous. We suggest to replace the milestone by “first firing of the GT”.
    - Key Milestone Permitting: According to Febeg, a permit is considered as obtained in first instance. This should be further specified in the functioning rules.

- 17.1.16: ANNEX A.16: PREQUALIFICATION FILE COMPLIANCE CHECK
  - Information related to the production permit: we refer to our general comment on permitting.
- 17.1.18: ANNEX A.18: REMAINING ELIGIBLE VOLUME
  - 17.1.18.1: Error in example 4 (table): selected volume: 130 MW/2-year and not 130 MW/1-year
  - 17.1.18.2: There is an error in example 1. The max (0;90-80) = 10 MW and not 0 MW.

VI.Auction

General comments

Bid characteristics

Paragraph 206 mentions that 'A bid within a set of Linked Bids can only be selected when all other Bids within this of Linked Bids are selected as well'. FEBEG would like a clarification how to interpret this sentence.

Our understanding is that a linked bid will not be considered as 'one block' for the selection in the auction algorithm, taking into account the optimization rules and tie-breaking rules. Instead, all individual bids will be separately assessed for the selection and as soon as one of the bids - part of a linked bid - is not selected the complete linked bid is not selected. In practice, this would mean that a CCGT that would be offered as one bid will be treated differently than a CCGT that consists of two CMU's that would be offered through a linked bid. If this interpretation would be correct, FEBEG would urge Elia to remove this discrimination and to ensure that a linked bid is considered as 'one block' for the selection in the auction algorithm.

Detailed comments

6.3 Bidding in the Auction

- §219: The "nuance" between §218 ("is limited to") and §219 ("is equal to") should be more explicit. It is specified, on one hand, that "the volume of a bid is limited to the Remaining Eligible Volume" [...] and, on the other hand, the volume of a bid related to CMU with multi-year contract is equal to the Remaining Eligible Volume [...]", defined as the maximum contracted capacity (see comment on definitions).

6.4 Auction Clearing

- §257: a reference is made to paragraph 243 with regards to the auction parameters. It should be paragraph 241.
- §272: Auction results will be published according to section 15.4.2.2 and not paragraph 823.

Comments on design principles

1 Auction Process

Auction format

The Auction format proposed by Elia is a single-round sealed bid, as opposed to its main alternative in a CRM context, i.e. the multi-round descending clock auction format. The drivers for this choice are:

- Limiting the potential for market power abuse
- Ensuring a level playing field
- Advantages in terms of complexity and flexibility.

FEBEG can relate to the underlying concerns of Elia, but is of the opinion that these concerns can equally be addressed with a multi-round descending clock format.

We believe effective competition and a level playing field will benefit most from a simple and low-barrier design. Irrespective of the Auction format; if the rules are too complex, effective participation of smaller players will be reduced. A competitive bidding process, by price discovery and transparency, will encourage competitive participation.

Several design features are available that could be introduced in the multi-round descending clock in order to further mitigate the risk of market power abuse: sloped demand curve or the price-taker/price maker distinction, participation of all pre-qualified capacity providers, ex-post investigation,…

Aside from the fact that FEBEG sees different, better solutions to address market power abuse and level playing field concerns, there are other benefits to a multi-round descending clock, such as:

- The fact that a number of European capacity markets already use a descending clock auction format, which could allow capacity holders, regulator and TSO to benefit from the experiences of such markets in Europe, which are faced with the same electricity target models. FEBEG observes that most market-wide capacity markets approved so far by DG Competition are based on the multi-round descending clock auction format (UK, Poland, Italy). The only capacity market that relies on the single-round sealed bid is the all-island Irish Capacity Market, but only for the interim solution. This specific auction design aims at taking into account the so-called "locational issue".
- Additionally, if at some point a more regional capacity market would be considered, an accordance at this point with neighbouring countries is preferable.
- The fact that a multi-round descending clock auction format better allows a decreasing clearing price up to 0 EUR/kW in case there is no missing money.

Pay-as-bid vs. Pay-as-cleared

As explained by FEBEG previously[2], implementing a pay-as-bid pricing rule will not lead to a lower cost. Indeed, a pay-as-bid pricing rule creates no incentive to reflect the real costs and drives the overall system costs upwards. This point is well documented in the literature and was for instance recognized in the EU capacity mechanism working group (2015):

> *"With a pay as bid pricing rule, there may be greater potential for bidders to try and guess the clearing price rather than bidding their true costs, which could lead to perverse outcomes and/or higher costs".*

Nevertheless, a pay-as-bid pricing rule is proposed initially. This proposal is motivated by the fact that initially, a large number of new CMUs are expected that will have to compete with existing assets that require significantly less capex investments. Therefore, additional measures in the form of the pay-as-bid pricing rule are considered necessary.

However, FEBEG is not convinced of this rationale:

- The distinction between assets in terms of capex investments is exactly dealt with by the contract duration categories, to ensure that all capacities can be competitive in the same auction;
- This approach makes the system less transparent and understandable, especially for smaller parties;
- FEBEG is not aware of any European experience of a CRM using a pay-as-bid clearing rule while at the same time it is acknowledged that the pay-as-clear pricing rule is the more appropriate option;

As a result, FEBEG strongly pleads for the implementation of the pay-as-cleared pricing rule from the start of the CRM for the reasons set forward consistently by FEBEG during the various task forces.

2 Bidding in the Auction

Intermediate Price cap

From a principle point of view FEBEG considers that price caps do not seem suitable and should not be applied[3]. **However, in case of an intermediate price cap, it is important that the intermediate price cap is carefully determined and allows sufficient return to cover historical and new investments on existing units**

Elia's assertion, in its "*CRM Design Note: Intermediate Price Cap*" (September 2019) that there is no necessary correlation between the level of investment and the level of anticipated missing money neglects the fact that the non-eligible costs (leading to investments not eligible for a multi-year contract) should be taken into account when fixing the intermediate price cap for the one year contracts. The intermediate price cap may not be a barrier for a CMU facing investments – considered non-eligible – that are necessary to continue the operation of the CMU.

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[2] We refer to "*FEBEG reactions to the TF CRM#1*" of 23/05/2019 and "*FEBEG position on the public consultation on CRM Design Note: Auction process*" of 30/11/2019.

[3] We refer to "*FEBEG's reaction on Elia's public consultation on the CRM design notes (Part I) Intermediate price cap*" of 11/11/2019.

Additionally, the intermediate price cap should not be too low as this could not only confront some CMUs with a potentially unnecessary market exit signal, but it could also be an entry barrier for new capacity below the first investment threshold (3 years contract). Furthermore, this intermediate price cap should be discussed with a close link to a yet unknown parameter (the 'to be decided' investment thresholds by CREG).

The intermediate price cap should be coherent with the investment threshold defined for a three years CRM contract and should take into account the non-levelized or at least skewed levelized costs that are not eligible to meet the three year investment threshold as there's no guarantee that the CMU will be selected in one of the following capacity auctions.

Additionally, the criteria for eligible costs, as proposed in the proposed draft Royal Decree[4], imply that only future costs can be considered in the investment files. This makes per definition that recent capacities, today in the market and even those currently being installed, are unable to bid in their full missing money in the auction.

VII.Pre-Delivery Control

General comments

Impact of late or no connection by Elia and/or third party

During the prequalification, Elia will check the ability to timely connect the capacity. Elia makes a difference between:

- Connection to Elia-grid: Elia requires a technical agreement (or a conditional technical agreement) between the grid user and Elia that is valid until the date of the communication of the auction results;
- Connection to Fluxys or DSO-grid: Elia requires a firm written confirmation – modalities still to be determined – of that third party that it is possible to timely connect the capacity.

Elia should also clarify the consequences in case a CMU would be selected in the auction but is not able to deliver its Nominal Reference Power due to – notwithstanding the written confirmation[5] – a delay in the connection or the impossibility to connect by that third party. **In no circumstances the Capacity Provider can be exposed to penalties if, due to the fact that Elia or the third party did not (timely) connect the capacity, he would not be able to timely deliver the CRM Service or if he would not be able to deliver the CRM service at all.** On top of that, Elia should also completely restitute the financial security. Elia and the third parties should also demonstrate that they – as good housefather – did their best efforts to obtain the required permits. An alternative proposal is to allow the CRM Candidate to participate to the capacity auction with a conditional bid, i.e. capacity contract holds condition that a CRM Candidate is only obliged to deliver the service when Elia and/or third party timely deliver the connection.

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[4] Proposition d'arrêté royal fixant les seuils d'investissements et les critères d'éligibilité des coûts d'investissement en vue du classement des capacités dans les catégories de capacités (https://www.creg.be/fr/publications/proposition-c1907)

[5] The nature of this firm written confirmation should be thoroughly investigated as Elia and third parties often express, in their documents, constraints limiting their liability in case of permitting issues.

Handling of project and external delays

The financial penalties and permits should be split in two:

- In cases where a contractual party is themselves to blame for the process being delayed or denied (poor planning, faulty application etc.) a penalty is in its place.
- In cases where external contacts are delaying the process, it is largely unfair to put a financial penalty on the contractual party who has performed as agreed. This point become increasingly important as local government (minister Demir) has stated that the permits may not be granted due to own political agendas. It would be rather extreme to hold a contractual party responsible for local governments failing to follow the legal process. In addition, a permit is also dependent on potential objections which could also delay/cancel a project.

Additionally, a delay in the permitting process 'out of hands' of the project developer is not treated in the same way between a project delay and infrastructure delay. The fallback procedure in chapter 14.9 should as well be applicable for cases where the CMU can demonstrate that the delay was not caused by gross negligence such as this is the case in Infrastructure delay. This would otherwise create a discriminatory treatment. **We also suggest to align the trigger for the determination of a project (§311) or infrastructure delay to a period of 2 months (§807) after the start of delivery period as the consequence for the system would be identical.**

Change from Additional to Existing CMU

For clarity purposes, and given the importance of this step, **FEBEG recommends Elia to describe the complete process of becoming existing (cf. Annexe 17.1.19 & Annexe 17.1.20) in the body of the functioning rules through a specific chapter** which could be called "update of the prequalification file for additional CMUs becoming existing".

In that respect, FEBEG understands that Additional units have to go through the full prequalification process of existing units again. This has important consequences on the time schedule as this process implies that capacity providers have to launch the process of becoming existing 75WD (= 15 weeks) before the start of the delivery period. At that moment, some input data (like CO2 certificate - procedure still to be clarified) may be available very late in the commissioning which prevents the anticipation of the "re-prequalification" process. **We request Elia to put in place a simplified and quicker specific "re-prequalification" process for the change of Additional to Existing CMUs.** According to FEBEG, it is not justified, for a security of supply point of view, nor desirable in the project execution phase, that additional capacities should start this process 75 WD before the delivery period.

The NRP of Additional CMUs is based on the declaration of the CRM candidate during the prequalification process (§84). When becoming existing, the NRP of additional CMUs is measured as per §5.6.1.1.1. For the sake of clarity, as per §168, we understand that this process does not lead to an adaptation of the Contracted Capacity in case the measured NRP is lower than the declared NRP. **In the case where a lower NRP is measured (due for instance to the impact of ambient conditions), FEBEG requests the possibility to update this NRP as soon as possible** when the circumstances allow it and with quasi-immediate effect so that the 'Remaining Eligible Volume' of this Capacity Provider is not affected during the delivery period.

Also, FEBEG would like to clarify the case where the Capacity is available at the start of the Delivery Period (and therefore can contribute to the SoS) but has not completed the process of "becoming existing" given the long 75WD process. **According to FEBEG, it is not fair nor desirable from a societal point of view to penalize the CMU, purely for "administrative cross-check" reasons, if he can effectively contribute to the security of supply at the delivery period start date.** We suggest to penalize only if the process of “becoming existing” shows incomplete file (rejection) or failed pre-delivery testing on obligated capacity (Capacity Contract is not affected by the process “becoming existing”).

Detailed comments

7.3 Pre-delivery Control

- §292: We suggest the following adaptation. “For Delivery Points for which historical data of the 15-minutes measurements are available for a period of at **least ten ~~consecutive~~ calendar** days *with injection to the grid* during the year preceding the time *tcontrol*, ELIA uses the method 1”. **In commissioning phase for additional production units, there could be cases where the units would not inject to the grid during several consecutive days** (e.g. unit not in the money).
- §292: we suggest to include a condition that $t_{control}$ should occur “not earlier than xxx WD before the start of the Delivery Period” in case of additional capacity. The purpose is to maximize the available measurements. The period should allow the contestation procedure and organization of a new test. Proposal: not earlier than 30 WD before the start of the DP.
- §292: in case method 2 (organization of a pre-delivery test) is applied (or in case of contestation of the results given by application of method 1); it is understood that the tests for two linked CMUs can be organized at the same moment.
- §297: We suggest to increase the term to make a contestation to 30 WD and not 10 WD.
- §298: in case of contestation, in the case of the organization of a (new) pre-delivery test, it is understood that Elia considers the highest value of all controls performed as final result.
- §302/317 : should the alternative solutions proposed as mitigation measures always be pre-qualified? We understand that the mitigation measures proposed by the CRM Provider do not have to fulfil the CRM prequalification criteria.
- §307/327: we understand that the first 75% of the contracted capacity is subject to the pre-delivery monitoring for existing capacities after the phase 1 of the pre-delivery monitoring.
- §310: there is a wording issue with the sentence. Also, we propose to adapt the text as follow: “A delay is defined by a non-compliance with the key milestones defined during the Prequalification Process in the project execution plan (see annex 17.1.14) which fulfils all conditions listed in §311
- §311: We suggest to align the trigger for the determination of a project or infrastructure delay (§807) to a period of 2 months after the start of delivery period as the consequence for the system would be identical.
- §313: we propose to extend the period to forty working days. Some information, requested by Elia, may be provided by various third parties, which increases the term to receive, analyze and process them by the capacity provider.
- §317: we understand that a residual delay covers a delay > 1 month as from the start of the delivery period. Also, as mentioned above, we suggest to align the trigger for the determination of a project or infrastructure delay to 2 months. In this case, we propose the following correction: “Therefore, because of a residual delay, all the Contracted Capacities do not become Existing Capacities as from *two month* after the start of the Delivery Period DP”.
- §326: financial penalty $t_{control}$ 1: FEBEG supports the change in the penalty formula and the reasoning behind “incentive for Capacity Provider to declare honestly a residual delay before tcontrol1” (so it can be replaced by ELIA by an additional volume to procure in the forthcoming Y-1 Auction). However, the incentive to declare “honestly” the delay is significantly mitigated by the disproportionate impact on the Capacity Contract in case of delay in period 1 (decrease of Capacity Contract as per §328).

- §326: amount β => in the case the key milestone "3" (permitting) is not relevant for a technology, it would be logic to adapt it and find another relevant key milestone triggering the release of the financial security; otherwise, we understand this indirectly reduces the penalty from 20.000 EUR/MW to 15.000 EUR/MW while another major milestone may be relevant for that project.
- §328: In the case a missing capacity is announced with a delay of 1 month in the phase 1 of the Pre-Delivery Monitoring, FEBEG understands that, next to the financial penalties, the contracted capacity (and related remuneration) will be adapted downwards, proportionally to the missing capacity, for the entire contract duration. FEBEG is surprised to observe this change in the consultation document compared to the previous version of the functioning rules discussed in the task force CRM. In practice, this proposition implies that a capacity provider may lose its entire capacity remuneration if the delay is announced in pre-delivery monitoring phase 1 while this will not be the case in phase 2. This rule significantly increases the risk profile of the projects. It will therefore negatively impact the competition in the auction by reducing the number of bids / offered projects and the cost of the mechanism (perceived risk is higher). According to FEBEG, the initial proposal (made in May 2020), which implied a suspension of the capacity contract for one year, provided a better balance between the incentive to make the capacity available on time and the risks born by Capacity Providers.

Annexes to the Pre-delivery monitoring

- 17.2.5. ANNEX B.5: IMPACTS ON THE CAPACITY CONTRACT FOR AN ADDITIONAL CMU
    - 17.2.5.3: there seems to be a mistake in the financial penalty computation => since the control is done in Tcontrol 1, the penalty should be divided by two (1/2 missing in the formula)
- 17.4.3. : ANNEX D.3: ILLUSTRATION OF EVOLUTION IN TIME
    - There is an error in the first graph on pg. 309; it should be the Y-1 auction in 2024 and not the Y-4 auction
    - There is an error in the text under 'transaction 3' on pg. 311; it should be the Y-4 in 2024 and not in 2022.

VIII.Availability Monitoring and Testing

General comments

Concept of Unavailability Penalty

Multiple and severe penalties are foreseen under the functioning rules. E.g. reference is made to section 7.3.2.2. (Pre-delivery control penalties), 8.6.4 (Penalty escalation procedure) and 8.6.2 (Unavailability Penalty application and calculation).

While penalties are needed to ensure that market participants with capacity contracts have an incentive to fulfil their availability obligations according to their commitments, these must be fair, reasonable and non-discriminatory. **It should be avoided that the same event can lead to multiples penalties (pancaking). In particular, three consecutive failed tests or AMT monitoring due to one same outage cannot lead to the escalation procedure. This should be clarified in the functioning rules.** A reasonable remedy period should indeed be granted to the capacity supplier to remedy errors.

Excessive penalties imposed on capacity holders would risk reducing the participation/competition in the auction and increasing the cost for the consumers while bringing them little additional benefits in terms of SoS. Penalties should bring correct and appropriate incentives, considering that capacity holders also implicitly incur penalties in the market. In practice, FEBEG proposes to change the Up factor in the penalty formula from 15 to 30.

Availability Tests

Although we welcome the extension of the test-window to 24h allowing a better planning and reducing the operational impact of such test, **FEBEG still deplores that Elia gives a non-exhaustive list of criteria triggering the launch of an availability test**. FEBEG wonders which other criteria, other than the ones listed, could lead to an availability test and if the exhaustive list (if any) will at the minimum be approved by the CREG. For transparency purposes, FEBEG proposes to Elia to list all possible criteria in the functioning rules and provide the motivation to the CRM provider at the testing notification via the IT interface.

FEBEG understands that the availability testing particularly aims at verifying the availability of capacities that have limited 'Proven' Availability or have not correctly fulfilled their availability obligations in the past. The first motivation was also confirmed by Elia in the explanatory note of the public consultation on the scenarios, sensitivities and data for the CRM parameter calculation for the Y-4 Auction for Delivery Period 2025-2026: "*In accordance with the proposed Royal Decree (art. 18, §2, 6°), the activation cost for an availability test is to be considered only for technologies with a high short-run marginal cost. Indeed because of the high short-run marginal cost these technologies are unlikely to be activated. As this makes it harder to monitor their availability in the market those technologies are more likely candidates for availability tests".*

According to FEBEG, the reasons proposed by Elia in the functioning rules are very relevant. However, FEBEG would also like to remind of the many indicators of presence in the market that Elia could also use in order to verify the possibility for certain types of CMU to reach their reference power (e.g. scheduling information, provision of services to Elia). For this reason, but also for transparency purposes, **FEBEG proposes to substantiate and quantify the criteria, possibly with following approach**:

- ~~The amount of Proven Availability of the CMUs relative to all other CMUs subject to a Capacity Contract for the current Delivery Period;~~
- [*Proven Availability of a CMU < 70% of the reference power during all AMT moments on average during the last 12 months*];
- Previously failed Availability Tests by the CMU *[in the last 12 months];*
- *[> 30% of]* Missing Capacity during Availability Monitoring *[in the last 12 months];*

Regarding the concept of Announced Unavailability

Capacity providers have the possibility to announce Unavailability to Elia up to 60 calendar days. While FEBEG acknowledges that the Announced Unavailability should be limited in time, it is in the opinion that planned outages should be excluded from that counter. The current proposition will negatively impact the penalty factor in the case of planned outages once the limit set by Elia is reached.

On one hand, some large outages occurring every few years will last several weeks, consuming a large part of the tolerated Announced Unavailability. On the other hand, other technical limitations both limited in time (few hours) and quantity (< 15%) -and which can be duly justified-, may occur on a regular basis outside scarcity moments (ex: very hot ambient conditions), will also consume the tolerated Announced Unavailability.

In general, FEBEG is of the opinion that the effect of the ambient conditions on the output of a thermal unit is something that is not sufficiently and thoroughly covered in the functioning rules

FEBEG has clear preference to remove the planned outages from the counter of 60 calendar days. Should this proposal not be retained, the counter should be at least increased to 90 days.
FEBEG would like to remind that market players always have an interest – even outside their CRM contract – to plan these necessary outages during periods where the security of supply is the least at risk.

In addition, the **deadline for notifying such unavailability should be moved from 9:00 CET to 12:00 CET** (cfr comments on §335).

Detailed comments

- §335 : "If notified after 9:00 CET the day before the start date of the unavailability, does not state a higher Remaining Maximum Capacity than the last notified Remaining Maximum Capacity." AMT moment will only be known in DA as of 12.42 (i.e.: publication of clearing prices and volumes by NEMO). In the case of forced outages, most of the time, unavailabilities are derived from a problematic start-up sequence. Final advise on those failed start-up is normally not available before 10:00 or even later, depending on the analysis process of the root cause. We therefore recommend Elia to change the notification deadline to 12:00 CET, as it is clear that, before clearing of auction, no additional information about possible AMT moment will be available.
- §349: 'AMT Hours cannot be considered as two different AMT Moments unless they are not occurring the same calendar day'. This is an artificial split of the AMT moment, solely because it occurs during two calendar days. It multiplies penalties although there's only one AMT Moment.
- §355. Elia should also communicate the identified AMT Hours and AMT Moments to the Capacity Providers via Scada or an XML, and via e-mail.
- §358 : In case there are several AMT Moments in one day, Elia should not select more than one AMT Moment for the verification of the Available Capacity, in order to avoid that a same unavailability event (due to the same technical issue for instance) would be penalized several times. Also if all the hours of that day would be AMT Hours (ie. a worser situation for adequacy), there would be only one AMT Moment and only one penalty.
- §410: The maximum volume the Delivery Point is allowed to deliver in these Ancillary Services as established in the related Ancillary Service contractual framework; what if unit is overreacting (therefore helping more than it should the system?
- §422. Elia should also inform the Capacity Provider of an Availability Test via Scada or an XML, and via e-mail. Febeg supports that the start- and end time covers a period of at least twenty-four hours.
- §423. Transfer of capacity between the technically dependent CMUs for an Availability Test is only possible if the capacity exceeding the Reference Power can be traded on the Secondary Market. However it seems that the opt-out for Additional CMUs, if made possible – see remark above, cannot be traded on the Secondary Market (Table 5). We recommend to consider the technically linked CMUs (like a GT and ST) as a whole for the monitoring obligation and exported power.

- §424. Derating(CMU,t) : there should referred to the formula in 7.3.1.1.1 (§ 290).
- §425. There should be a correction for participation in reserved frequency-related Ancillary Services and in Redispatching Services
- §432: It is considered as a big risk that the number of AMT Moments during which availability is verified by Elia, can be higher than the UP.
- §437. It is not clear how Missing Capacity is linked to different Transactions. It should be pro rata to the relative Contracted Capacity of each Transaction.
  The cap should be clearly linked to the awarded Capacity Remuneration of the concerned Transactions.
  After a cap is reached, it seems that the Missing Capacity, after application of the limitation, can be fully allocated to the remaining Transactions (those with no cap), without pro rata to the relative Contracted Capacity of those Transactions. So when the cap is reached, the future small missing capacities (inferior to " NRP-Contracted Capacity ") will be each time fully allocated to the non-capped Transactions and fully penalized. It seems even possible that the Missing Capacity applied for the calculation of the penalty can be higher than the Contracted Capacity of the non-capped Transactions.
  We request therefore that for the calculation of the Unavailability Penalty value, the Missing Capacity is always applied pro-rata the Contracted Capacity of the concerned Transactions.
- §438: FEBEG would welcome Elia to extend the report and to also include the announced and unannounced unavailability in the report.
- §449: **the contracted capacities affected by the termination clause should be clearer**. We request that "active" Capacity Contracts (already applying to the current delivery period) are not affected. We propose to reformulate the paragraph in the following way: "all Capacity Contracts starting from the delivery period covered by the first upcoming Y-1 Auction after applying this clause are terminated."
- Availability Monitoring – Use Case 4 – Availability test: Obligated Capacity on slides 52 to 57 is not coherent with slide 51. It is the Total Contracted Capacity that is shown. Hence there is Missing Capacity.

IX.Secondary Market

General comments

FEBEG supports the suggested objectives and considerations of a secondary market in the Belgian CRM framework, amongst others i) technology openness, ii) limitation of the overall CRM cost via liquidity, and iii) overall complexity avoidance and feasibility.
FEBEG has nevertheless concerns regarding the liquidity of the secondary market and invites Elia to evaluate the liquidity of the secondary market and to take specific measures in order facilitate its access and transactions.
FEBEG also considers that penalty factor should be reduced when a capacity holder can prove that it was not able to find capacities in the secondary market.

Detailed comments

- § 485: Ex-post secondary market transactions authorized up to ten working days after the start of the transaction period. For a simple transaction implying only one or two counterparts, ten working days should be enough for the process of transfer on Secondary Market. Nevertheless, in the absence of explicit exchange organized by CRM operator (Elia), in case of multi-transactions and multiple counterparts, time to cover the transaction process will be quite extensive. Similar reasoning is applicable during period of low attendance (e.g.: End of year period) where contacts and transaction closure will be more challenging and time-consuming. We therefore recommend Elia to extend the term to twenty working days to ensure a robust and feasible secondary market transaction process.
- §554: We recommend to define reasonable doubts for escalation to CREG in case of dubious notification.
- §557: We do not understand why there is a difference in the content of the two secondary exchange approval mails: one containing the derating factor, and the other not.
- §576: is the termination clause applicable to all Transactions or only to the Secondary Market Transaction? A non-compliance on the Secondary Market should not jeopardize the Capacity Contract on the Primary Market.

X. Financial Securities

General comments

The validity of the Financial Security for an Additional Capacity is until the end of the Transaction Period (§590). This could be approx. 20 years for a 15 years contract. As the cost of such Financial Security is calculated on the total validity period (even if the Security is waived earlier), FEBEG suggests to work with Financial Securities with a shorter validity period, in order to avoid an increase of the overall CRM cost. A new Financial Security could be issued by the Capacity Provider 20 WD before the validity end date if applicable. If no new Financial Security is issued, the Contractual Counterparty should be allowed to “invoke” the amount of the Financial Security. FEBEG suggests allowing Financial Securities with a duration of 5 years.

FEBEG is also of the opinion that – in case of mutual exclusive bids – the financial security should be limited to highest of the two bids.

Detailed comments

- §604: ELIA requires an opinion confirming that the PCG is legally valid, binding and enforceable whereas Elia drafted the PCG text. ELIA is therefore in a better position to assess whether the PCG text is legally valid, binding and enforceable. Elia should be aware that the enforceability legal opinion comes with a cost for the CRM candidate, that is in our opinion not necessary.
- §611: Considering the appeal procedures, it should be clarified at what moment it is considered that a permit has been obtained.

- §618: we recommend Elia to allow CRM Candidate or the Capacity Provider to provide additional Financial Security within 20 working days and not 10 working days. 10 working days is too short for the CRM Actor, especially in case a Bank Guarantee would be provided.
- §627: it is important to dispose of enough time to provide such guarantee. From the reading of the functioning rules, it seems that the financial security must be immediately available. There is a need to have 20 working days (at least) to provide such guarantee.

XI.Payback Obligation

Detailed comments

- §673: In the first paragraph, Elia refers to the concept of 'Remaining Maximum Capacity' according to paragraph 338. In our understanding, this concept is further detailed in paragraph 337. Paragraph 338 refers to the term (60 days) after which Announced Unavailable Capacity is considered by Elia as 'Unannounced Unavailable Capacity'.

  We understand, as per §337, that the "Remaining Maximum Capacity DA" is not subject to the 60 Calendar Days cap applicable to the "Announced Unavailability". Hence, the 60 Calendar Days limitation do not apply to the Payback Obligation. FEBEG supports this change as Capacity Providers should not pay back money they have never earned but ask to exclude the planned maintenances from the counter (we also refer to the comment made on §337 above).

  In addition, FEBEG does not agree with the rule that capacity providers having an unannounced capacity (e.g. unplanned outage) should be subject to the payback obligation because this capacity would have perceived the revenues on the day-ahead market. In the task force held on 19.08.20, Elia explained the following "Therefore, it is considered that the decrease of availability that has not been duly communicated to ELIA has been bid in the Day-Ahead Market and perceived as a CMU revenue to be considered in the Payback Obligation". FEBEG does not agree with this statement. First of all, FEBEG would like to remind that, in stress periods, all capacities have an interest to be present on the market. Secondly, in line with the general concern on the payback obligation which is not considering the revenues earned on the forward market, it is possible that the capacity had been sold on the forward market and not on the day-ahead market, therefore not perceiving the day-ahead market revenues. Finally, it is important to mention that, even if the capacity provider had fully sold its capacity on the day-ahead market, he will still incur important costs: (i) buy-back of the electricity sold and most likely at a higher price given the stressed system and/or (ii) imbalance tariff in case the unplanned outage imply an imbalance of the its BRP portfolio.

- § 680. A Stop loss and a penalty cap on secondary transactions is only applicable in the case of transactions made before the delivery period covering full delivery period. We recommend to add a monthly granularity to this payback obligation in order to increase the liquidity on the secondary market.

Comments on design principles

Regarding the concept of payback

Payback Obligation has as a fundamental principle that revenues not earned by capacity should not be subject to a payback obligation. Hedging practices are an industry standard benefiting the society as a whole and is well documented. The solution to address these practices should be straightforward – there is no need to over-complexify the solution. FEBEG therefore repeats its proposal of a single exemption ratio applicable to all capacities. The overall share of capacity in the market earning (and not earning) the reference revenue can be approximated and thus a correct reimbursement of any ‘excess revenue’ towards the capacity market is ensured.
In addition to hedged volumes, the capacity reserved for providing Ancillary Services should be exempted as this capacity will not be participating in the EOMand can therefore not earn the revenue to be paid back under the pay-back obligation. Furthermore, the capacity remuneration for AS never captures scarcity pricing (AS bidding takes place before EoM clearing).

Regarding the concept of Declared Market Price

Elia proposes that Capacity Market Units (CMUs) that do not submit to full schedules will be subject to a strike price that is the maximum of (i) the Strike Price resulting from the methodology as proposed in the formal consultation; and (ii) the Declared Market Price as submitted and/or updated by the Capacity Provider. If for example the market-wide Strike Price is 500 €/MWh and the DMP of a non-full-schedule CMU is set at 800€/MWh, this CMU must only reimburse the difference between 800€/MWh and the DAM price under the Payback Obligation.

The main objective of this proposal is to avoid that a CMU without full schedule would be obliged to pay back revenues it did not earn on the market.

FEBEG fully supports the principle that revenues not earned by CMU’s should not be subject to a pay-back obligation.

Nevertheless – due to a lack of exemption from the pay-back obligation for capacity that has already sold on forward markets – CMU’s with a full schedule are exposed to a pay-back of revenues they did not earn. FEBEG considers this as a clear discrimination between CMU’s favouring CMU’s without a full schedule above CMU’s with a full schedule.

FEBEG would like to highlight some issues it sees:

1. The proposal abandons the idea of a single Strike Price, <u>the benefits of which Elia pointed out quite extensively in the design proposal</u>. Instead, a theoretically infinite number of strike prices can be set, limited only by the number of DMPs that are set in the market.

2. The proposal fundamentally affects the current functioning of the Energy Markets, as the DAM becomes a de-facto Pay-as-Bid market for non-full-schedule CMUs. As such assets would be subject to a Payback Obligation to any amount above their DMP, each asset has de-facto its own price on the DAM and is no longer able to capture further inframarginal rent in the energy market. This will impact the bidding behaviour, as any inframarginal rent will have to come either from increasing its bid on the Energy Market or on the Capacity Market, or the estimation of Declared Market Price by concerned units.

3. The proposal creates a fundamental discrimination between CMUs. For full-schedule CMUs the Strike Price would represent a ceiling on the price such units can actually capture on the energy market (cfr pay-back obligation above strike price). For non-full-schedule CMUs on the other hand, the proposal rather introduces the Strike Price as a floor, as these CMUs can still capture prices above this market-wide Strike Price through their self-declared market price but will never be exposed to as Strike Price below the market-wide one. These CMUs have therefore clear and specific advantages compared to full-schedule CMUs, especially given the other features contemplated for the capacity market design (e.g. auction design). As a side comment, one should also observe that full-schedule CMUs have no such ability, even when underlying costs would lead to the marginal operating cost being above the market-wide Strike Price.

4. Because the DMP is proposed to be dynamic over time and over different time-horizons (i.e. can also be set for Intraday and balancing markets), non-full-schedule can evade the Payback Obligation; a concern on the DMP that FEBEG already raised in the context of the Availability Requirements and Penalties. FEBEG wonders how the strong emphasis on the risk of double earnings that pervades the entire CRM design can be reconciled with the lax approach in this proposal with a self-declared market price by market participants used as a benchmark to assess the Payback Obligation amount for non-full-schedule CMUs.

In conclusion

In light of these strong and important concerns, FEBEG therefore considers that this approach of DMP sould be abandoned.

FEBEG still considers the following principles key to the definition of an equitable and correct Payback Obligation:

- **A single Strike Price applicable to all CMUs, set at a price level above which market participants do no longer count on energy market revenues in their capacity market bid.**
- **An exemption from the Payback Obligation for capacity that has already sold on forward markets in the form of a single percentage representing the average hedging ratio of market participants.**

FEBEG would like to underline once again that the interest of the consumers is to benefit from the electricity up to the reliability standards set by the Belgian authorities at an acceptable total supply cost (including the cost for the electricity, but also the networks charges, taxes and other levies). FEBEG believes that the capacity market design should foster fair and healthy competition between all market players, the possibility for new entrants to participate on equal terms, the long-term visibility needed to lower the investment risks and therefore the cost for consumers, etc.

XII.Communication

Detailed comments

- § 697: A Notification can be by or to the Regulatory Authorities, while in the third Alinea, a Notification is an electronic message exchanged between CRM Actors and Elia through the CRM IT Interface. This seems not to be coherent.
- § 699: The notification from Elia acknowledging the good reception of the submission of the Application Form or Prequalification File should be sent automatically and immediately by Elia. In case this does not happen, the CRM Actor should have the possibility to initiate a fallback procedure and the submission date should be the date of the first e-mail sent by the CRM Actor. (cfr remark on chapter 14.3).

XIII.Disputes

General comments

Regarding the contestation duration & process

Generally speaking, FEBEG observes that the terms given to market parties to contest a decision, change or to respond to a request of Elia are rather short[6]. When there is no operational urgency**, FEBEG recommends to extend the contestation deadline to at least 30 working days after the communication or the request by Elia**. Such term is necessary to identify a contestation, prepare the contestation, get the necessary internal approvals and file the contestation.

Regarding contestation on parameters or calculation leading to an incorrect Stop-Loss Amount, Payback Obligation or Effective Payback Obligation, Section 11.4.6 mentions that if within thirty Working Days no such agreement is found, the Capacity Provider pays the Payback Obligation amounts. It is clearly disproportionate to impose the payment of the full amount in case of contestation.

Regarding Disputes

As Elia will probably be the contractual counterparty, Elia will endorse several roles at the same time. Understandably, the functioning rules have separated Elia and the contractual party. However, if this is the same party, the need arises to have a second party involved where there could be potential conflict of interest or disputes. For example, in case of disputes under §706, first paragraph, “the Capacity Contract can be suspended by the Contractual Counterparty in consultation with Elia”. When Elia are both these parties, there will be a need for a second independent party to consult. It could be the Market court in Brussel, FOD or AD Energy. In relation to the technical aspects, Febeg suggests to call on an external independent expert.

Except for appeal procedure against the validation decisions such as to the Auction results (where it is the market court which is competent), it is referred in all other cases that the enterprise court of Brussel

[6] The functional rules mention very short times (such as in section 7.3.1.1.5.2. where it is 10 Working Days as from the provisional results notification date by ELIA/Contractual Counterparty).

is competent. Febeg considers that for different reasons (important delay in the enterprise court in Brussel, possible issue with the court composition in terms of technical nature of the matter,…)
An arbitration for instance at CEPANI, as first level of appeal, would be much quicker and the arbitrators could be tailor made professional of the matters and has additional advantages (arbitration is also confidential, the arbitrator are bilingual).

XIV.Fallback Procedures

General comments

Whatever the cause of the unavailability of the CRM IT Interface, the CRM Actor should never suffer from any negative consequence.

If the CRM IT Interface is under maintenance for more than 1 day, the fallback procedure should also be possible.

Detailed comments

- §711 & §712: Elia should inform all CRM Actors of all maintenances and unforeseen unavailabilities, even when shorter than 24 hrs, as soon as possible.
- §714:t remains the CRM Actor's responsibility to respect the deadlines set in the relevant sections of the Functioning Rules": how does this combines with §713 when Elia extends the deadlines ?
- §717 the Capacity Holder has to check whether the platform is under maintenance. How should this be done ? (note: we only get a notification for maintenance exceeding 24 hours – cfr comments §711)
- With several fall back procedures (application form §718, compliancy box check §720, prequalification §723, modification of documents §726, pre-delivery test §751, ...) Elia has 5 working days to respond, while no shift in deadline is mentioned in these cases. What happens if the deadline is reached in the meantime?

14.3. Prequalification processes

- Are the deadlines also extended in the fallback procedure (cfr §713)?
- Otherwise, the date of the first e-mail sent by the CRM Actor (§718) should be considered as submission date.
- In case the CRM Actor does not receive the notification from Elia acknowledging the good reception of the submission of the Application Form or Prequalification File immediately, he should have the possibility to initiate a fallback procedure and the submission date should be the date of the first e-mail sent by the CRM Actor.
- §729 What if a deadline is missed in the 5 days Elia has to respond?
- §735 What happens if CREG does not validate auction results ?

14.6.3 Notification of Availability test

- §778. An email is not sufficient, Elia should also call the contact person of the Capacity Provider. The communication to the Capacity Provider (e-mail + phone call) should also take place before 15:00 the day

14.7 Secondary Market

- §789. Deadlines to introduce a Secondary Market Transaction should be extended in the fallback procedure.
- §789. The qualification of ex-ante or ex-post transaction should not be impacted by an unavailability of the CRM IT Interface. The date of the first e-mail of the CRM Actor in the fallback procedure should be taken into account for the Transaction Date.

XV.Transparency

Detailed comments

- § 825: "In case of a pay-as-bid pricing rule the report contains information on the highest selected Bid Price". We suppose that, even in this case, commercially-sensitive information would be protected (e.g. in the event only one multi-year contract would be selected in the auction; all 1-y contract being subject to the intermediary price cap).
- 17.5.2. Annexes on Transparency
  - 15.5.2.1 & 15.5.3.1. There are some incoherences in the table titles & data to be provided : reference to "number" and then "MW" on the third column. Also in the first line, it is referred to bid volume weighted average price. <u>We suppose here Elia wishes to give an overview in terms of number and not MW.</u>

XVI.Direct and Indirect Foreign Capacity Participation

General comments

Article 26 of the Electricity Market Regulation (Regulation (EU) 2019/943) is related to cross-border participation in capacity mechanisms and is therefore of full relevance for the topic covered by the functioning rules on direct and indirect foreign capacity participation. As reminded by Elia, Article 26(1) implies that the proposed capacity market in Belgium should be "*open to direct cross-border participation of capacity providers located in another Member State, subject to the conditions laid down in this Article.*"

In practice, the Electricity Regulation mentions explicitly that (a) cross-border participation should be enabled for all foreign capacity capable of providing equivalent technical performance to domestic capacities (see Art.26 (1)), that (b) Member States shall not prevent capacity which is located in their territory from participating (see Art.26 (3)) and that TSOs where the foreign capacity is located have obligations to provide some necessary inputs (see Art.26 (10)).

FEBEG would like to stress that the functioning rules should be compatible with the provisions contained in Article 26. In particular, neighbouring TSOs have the obligations to perform the pre-qualification of foreign capacities according to the local rules, to carry-out the availability checks and to transfer the information to Elia. Although Elia may want to have bilateral agreements with the foreign TSOs to formalize some operational aspects, this aspect is not a prerequisite to clarify the functioning rules for cross-border participation. It cannot have as consequence to delay cross-border participation for the first delivery year.

The main elements required to organize the auctions for the first delivery year are: the Maximum Entry Capacities (for which an alternative approach could be proposed by Elia in case the elements foreseen in Art.26 (7) are not available on time) and the prequalification of foreign capacities (for which Elia should communicate the requirements to the foreign TSOs). All the other elements (e.g. availability checks) are only needed for the first delivery year.

FEBEG believes that the functioning rules for cross-border participation should be complemented to describe further the selection of foreign capacity eligible to participate in the main auction (e.g. through a pre-auction on the corresponding border) and up to the Maximum Entry Capacity. At this stage, this should be a central part of the functioning rules on cross-border participation.

CRM DESIGN PROVIDES EXIT SIGNAL FOR EXISTING POWER PLANTS

Capacities requiring non-recurrent investment costs below the investment threshold for a 3-year contract are discriminated as they cannot bid in their entire missing money

1 PROBLEM STATEMENT

The proposals for investment thresholds and the proposal for the calibration of the intermediate price cap are not coherent and consistent. **The combination of the current proposals leads in practice to the exclusion of capacities requiring non-recurrent investment costs not meeting the investment threshold for a 3-year contract from participation in the Belgian capacity remuneration mechanism as they cannot bid in their entire missing money.**

The exclusion of such investment costs is problematic in the sense that the Belgian capacity remuneration mechanism risks to:

- be **in breach with the principles of non-discrimination** and technology-neutrality while the mechanism should be market-wide allowing new and existing capacities to compete on level playing field;
- **increase costs for society** as relatively moderate investments in lifetime extension or refurbischment of existing power plants are excluded.

The proposals for investment thresholds and the proposals for the calibration of the intermediate price cap should be made coherent and consistent to ensure that capacities requiring non-recurrent investment costs not meeting the investment threshold for a 3-year contract can bid in their entire missing money whenparticipating to the Belgian capacity remuneration mechanism.

2 ELIGIBLE COSTS

The CREG[7] has proposed – in article 3 of the draft Royal Decree – the basic rules for the determination of the costs that are eligible to meet the proposed investment thresholds. The detailed rules are still to be defined in guidelines that will be developed by CREG meaning that – at this stage – there's **still uncertainty on the cost eligibility while there's already a concrete proposal for investment thresholds.**

According to article 3, §1 of the draft Royal Decree prepared by CREG only initial and non-recurrent investment costs are eligible to meet the thresholds. According to CREG recurrent costs are not eligible and CREG considers a major overhaul as a recurrent cost.

The proposal of CREG is ignoring day-to-day practice. In reality, existing power plants – in function of the remaining operating hours on the counter – will at some moment in time be obliged to make an investment in order to continue the safe operation of the power plant that – without this investment

[7] '*Proposal of Royal Decree for the determination of the investment thresholds and eligibility criteria in order to classify the capacities in capacity categories*', CREG, (C)1907, 12 December, 2019.

decision – will be forced to close down. That investment includes the investment in an overhaul or lifetime extension in combination with, depending on the circumstances and the results of the inspections, investments in upgrades, a conversion, replacement of parts, instalment of a new gas turbine, … Such investment will increase the number of operating hours of the existing power plant, often in combination with an increase of the installed capacity, the efficiency or the flexibility.

It will be a **very difficult exercise to split such investment costs between a cost related to a 'major overhaul', a cost related to a 'lifetime extension' and a cost related to a 'capacity increase' let alone to make the distinction between a 'recurrent' and a 'non-recurrent' investment cost**. In order to avoid too complex and detailed rules as well as ample discussions on interpretation issues, **all 'capitalized investments' should be considered as eligible investment costs**. This is a simple criterion that allows for an easy and objective verification in the accounts.

The detailed rules for the eligibility of investment costs should be clarified as soon as possible, by preference in the Royal Decree in order to provide certainty. Without these detailed rules it is difficult to assess the investment thresholds. All capitalized investments should be considered as eligible costs as this allows an easy and objective verification in the accounts.

3 INVESTMENT THRESHOLD

The Belgian Electricity Law[8] foresees capacity categories with different contract durations to allow larger investments to compete on a level playing field with existing capacities.

The CREG[9] has set – in article 6 of the draft Royal Decree – the threshold for a 3-year contract at 177 EUR/kW. The Federal Public Services and PwC[10] recommend to set the threshold at 124 EUR/kW (option 1) or 94 EUR/kW (option 2).

Taking into account the proposal of CREG on the eligibility of investment costs, all capacities requiring initial and non-recurrent investment costs below the threshold for a 3-year contract would not be able to benefit from a longer contract duration. **As part of the investment cost in a lifetime extension or refurbishment will be considered – as explained above – as a recurrent investment cost and is thus considered as non-eligible, most investments in lifetime extension or refurbishment of existing power plants will not be able to benefit from a 3-year contract.**

All capacities requiring initial and non-recurrent investment costs below the threshold for a 3-year contract cannot benefit from a longer contract duration: in practice, most investments in lifetime extension or refurbishment of existing power plants will not be able to benefit from a 3-year contract.

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8 Article 2, 84°, 'Law regarding the organization of the electricity market', 29 April 1999.

9 '*Proposal of Royal Decree for the determination of the investment thresholds and eligibility criteria in order to classify the capacities in capacity categories*', CREG, (C)1907, 12 December, 2019.

10 '*Observations with regard to the public consultation of CREG',* FPS and PWC, 19 November 2019

4 INTERMEDIATE PRICE CAP

As capacities requiring non-recurrent investment costs below the threshold for a 3-year contract cannot benefit from a longer contract duration, the only way to recover those investment costs is through winning one or several 1-year contracts in the capacity auctions. **The uncertainty of the ability to win consecutive 1-year contracts creates uncertainty on the cost recovery of those investments.**

Theoretically there are three options to deal with the non-recurrent investment costs below the threshold for a 3-year contract:

- the non-recurrent investment costs are not annualized and are as such taken into account in the calculation of the missing money for the bid so that the capacity provider is sure to recover his investment costs when selected in the capacity auction;
- the non-recurrent investment costs are annualized for the calculation of the missing money, but the capacity provider adds a mark-up to manage his risk of not being able to win consecutive 1-year contracts in the capacity auction ;
- the non-recurrent investment costs are annualized for the calculation of the missing money and the capacity provider takes the risk of not being able to recover his costs if he would not win consecutive 1-year contracts in the capacity auction.

In this context, it is important to point out that the Belgian Electricity Law[11] foresees the possibility to implement a price cap. Elia[12] proposes – in article 9 of the draft Royal Decree – to implement an intermediate price cap for 1-year contracts.

The intermediate price cap is foreseen to be equal to the missing money of the technology with the highest missing money (i.e. 'worst performer'). In order to calculate this missing money, Elia takes into account the 'annualized recurrent investments costs, including major overhauls', 'annual fixed operational and maintenance costs' and 'variable operational and maintenance costs'.

The calibration of the intermediate price cap only takes into account 'annualized recurrent investment costs' and not 'initial and non-recurrent investment costs below the threshold for a 3-year contract': annualized initial and non-recurrent investments costs below the threshold for a 3-year contract are not taken into account, let alone non-annualized or annualized with a mark-up investment costs below the threshold. **This means that the intermediate price doesn't leave any room for existing power plants with non-recurrent investments costs below the threshold for a 3-year contract to bid in their missing money**.

Even worse, depending on the exact calibration of the intermediate price cap – estimation of recurrent investment costs (major overhaul), modelling of market revenues, etc.– **some older, less performing, existing power plants even risk not to be able to recover the costs of a major overhaul through their bid for a one year contract forcing them to close down the power plant**.

The intermediate price cap doesn't leave room for existing power plants with non-recurrent investment costs below the threshold for a 3-year contract to bid in their missing money. Depending on the calibration of the intermediate price cap some existing power plants risk not to be able to recover the costs of a major overhaul through their bid for a one year contract forcing them to close down the power plant.

[11] Article 2, 79°, 'Law regarding the organization of the electricity market', 29 April 1999.

[12] '*Proposal of Royal Decree for the determination of the methodology for the capacity calculation and the parameters for the auctions related to the capacity remuneration mechanism'*, Elia, 22 November 2019.

5 CONCLUSION

Existing power plants with non-recurrent investment costs below the threshold for a 3-year contract, i.e. most lifetime extensions and refurbishments, cannot benefit from a longer contract duration.

The intermediate price cap doesn't leave any room for existing power plants with non-recurrent investment costs below the threshold of a 3-year contract to bid in their missing money.

The calibration of the intermediate price cap even risks to endanger the cost recovery of a major overhaul forcing existing power plants to close down.

Existing power plants considering investments in major overhauls, lifetime extensions or refurbishments risk not to be able to fairly and on a level playing field basis compete in the capacity remuneration mechanism: they will be pushed out of the market and replaced by new – more expensive – capacities increasing the overall cost for society. Therefore, the proposals for the investment threshold and the intermediate price cap need to be modified in order to make them consistent and ensure a fair competition for existing power plants.