

Febeleriec answer to the Elia consultation on the Functioning Rules (v2) for the Capacity Remuneration Mechanism

Febeleriec would like to thank Elia for this consultation on the second version of the functioning rules for the Capacity Remuneration Mechanism. Please note that Febeleriec's feedback is based on the review of the English version only and that we assume that Elia makes sure that all three language versions (English, Dutch, French) are fully aligned.

Febeleriec still considers the design of the CRM flawed on many aspects and as such has a fundamental issue with a consultation on functioning rules where it is not allowed to question the underlying design. Moreover, Febeleriec is also concerned that the legal and regulatory framework has not yet been finalised, as also referred to by Elia in its introduction of the functioning rules, making it very difficult if not impossible to give a reasoned view on the functioning rules of a non-finalised legal and regulatory framework. Febeleriec is very surprised by the approach by Elia to compose a set of functioning rules under such shaky basis, and would also like to know on which draft versions of the proposals of a.o. Royal Decrees (e.g. control, financing, appointing contractual counterparty, foreign capacity participation, ...) Elia has based this version of the functioning rules, if any.

In the framework of this consultation, Febeleriec explicitly wants to refer to all its input on the previous consultations as well as all the task force meetings and workshops, as Febeleriec not only continues to have serious doubts about the design of the CRM as proposed by Elia but also is of the impression that not all concerns that have been voiced by Febeleriec and other parties during those consultations and meetings have duly been addressed in order to create a CRM design and implementation that is compliant with the law. Febeleriec is mostly concerned about a.o. but not limited to the legal provisions related to the avoidance of any market abuse and the lowest cost criterion for the CRM, which for Febeleriec are not sufficiently guaranteed under the current design proposed by Elia, which cannot be commented upon in this consultation, and the functioning rules that result from Elia's design, which is the subject of this consultation.

On the consultation itself and as Febeleriec already has referred to all its other input on the CRM design and functioning rules (first version), which have not all been taken into account, Febeleriec will only provide a fairly limited set of additional remarks and questions. This can however not be seen as any formal acceptance by Febeleriec of the design of the CRM proposed by Elia.

- On the **definitions**, Febeleriec is concerned on the quality of these definitions as well as the translations from English. Febeleriec has following questions and remarks (non-exhaustive):
 - Definition of CDS: this only refers to the CDSs connected to the Elia grid, although presumably also certain elements will be required to be treated by CDSs connect to public distribution grids or other CDSs. Febeleriec thus asks Elia to perform a very thorough check whether all these aspects have been taken into account, as those CDSs as relevant system operators for the underlying connected grid users will also be impacted by the participation of any such grid user to the CRM (e.g. capacity reservation, financial guarantees, ...). Febeleriec also strongly insists that public distribution grids provide their view on how CDSs connected to their grids will be impacted by the CRM, an aspect that has up until now not been covered at all.
 - For the definition on infrastructure works, Febeleriec presumes, based on the rest of the functioning rules, that these only refer to works realized by public distribution system operators, although it is clear that also CDSs might have to perform infrastructure works in order to allow an underlying grid user to participate to the CRM.

- On the definitions of partial declared prices (day-ahead, intraday and balancing), Febeliec does not understand the need for such concept, which was to its knowledge also not discussed during the design discussions. Moreover, the name of the concept is already confusing, as it is not a partial price, nor a partially declared price, it is a declared market price (in the different segments) for part of the volume of a CMU. Febeliec would suggest to either remove the definition altogether and work with the definition of declared market price or rename the concept to avoid any confusion.
- For the definition of DSO (English version), Febeliec wonders to what the “ * “ refers in the definition name.
- For the definition of Nominal Reference Power, Febeliec believes it to be incorrect as it is the Eligible Volume that is the maximum capacity that can be offered in the Capacity Remuneration Market. The Nominal Reference Power after all does not take into account the Derating Factor.
- On the timing of the processes, Febeliec would like to point out that certain elements, such as payment of financial securities and capacity reservation, are currently still under discussion within the Working Groups of the Elia Users’ Group and wonders what the purpose is of those discussions if Elia already seems to have decided on the outcome of those discussions. As already mentioned above, Febeliec is gravely concerned that Elia is either basing these functioning rules on several elements of the framework that have not been finalised or circumventing the correct procedures to decide on such elements. Either option is unacceptable for Febeliec.
- On the DSO-CRM Candidate agreement, Febeliec wonders how and when DSO-connected CDSs (or CDS-connected CDSs) will be implicated in these discussions when an underlying grid user of such CDS would want to participate to the CRM auction.
- On the additional conditions for CDS connected delivery points, also those connected to the public distribution grid, Febeliec would like to insist that all CDSs are always informed about any activities involving grid users in their grids that could impact their grid or other grid users in their grids, in particular related to a.o. testing. Febeliec is pleased to see that Elia has included a CDS-Operator agreement but insists that this does also cover any elements impact the CDSs in their role of relevant system operators for their underlying grid users. Furthermore it is not clear from the Functioning Rules which agreements between the CDSO, the CDS User (whether or not capacity holder/CRM-candidate itself) and Elia are needed (CDSO Declaration vs. CDS Operator agreement) nor the timings that need to be respected .
- On the prequalification procedure (including fast track procedure), Febeliec urges Elia to provide additional clarification on the exact role of the CDSO in this respect (what should the CDSO do by when?), since without support of a CDSO a CRM-candidate connected to a CDS will not be able to provide all information requested by Elia as part of the prequalification file (whereby Febeliec also wonders how certain requested information like EAN-code of the access and delivery point, existing connection capacity, etc needs to be interpreted in a CDS-context).
- On the specific conditions for Virtual CMUs, and notwithstanding Febeliec’s other previous comments on this topic, Febeliec is wondering in particular about the limitation of this category to an arbitrary volume of 400MW although it is clear that for generation (much) larger single unit volumes will be allowed. Especially in light of the very rapid introduction of new technologies in the near future (e.g. smart meter roll out, incentive schemes for several technologies, ...), Febeliec wonders whether this artificial limitation will not create an undue barrier, which could result in artificially and unduly increasing the overall cost of the CRM, which would not be in line with the legal least cost criterion, while Virtual CMUs as compared to single unit CMUs have the advantage, also taking into account the intermediate steps during the pre-delivery monitoring phase, to ensure that not all capacity would be unavailable at delivery time (as opposed to a single unit CMU of even more than 400MW which could be entirely not yet available to the system at that point). Moreover, it is also still unclear why Elia continues to arbitrarily limit virtual CMUs to a one-year capacity contract duration, which could be perceived as in breach with technology neutrality. Febeliec thus opposes this arbitrary threshold.

- On section 59, in the table, “Type of Delivery Point”, the text needs to be adapted for the case of a Delivery Point in a CDS as it is not the Delivery Point that is connected to the TSO or DSO grid but the CDS to which the Delivery Point is connected. The same comment applies also for all other similar tables in the functioning rules (e.g. section 62). A similar comment can be made to section 108, where Febeliec wants to point out that CDS connected Delivery Points are neither part of the TSO nor the DSO grid, but could be considered equivalent to such point with regards to the methodology described in the Elia Functioning rules for such points, always with involvement of the CDSO for any element that might influence the CDS grid or any underlying grid user.
- On the aspect of operating aid, Febeliec regrets that no formal consultation has been conducted during the design phase. Febeliec takes note of the element of renouncing of operation aid to be able to participate to the CRM and regrets that this element has never been discussed during the design phase. Moreover, Febeliec wonders who will check this element and whether renouncing to operation aid is as straightforward as presented in the functioning rules. Moreover, it is still unclear which aid would be considered operating aid, while moreover this definition could also change over time.
- Section 117, second sentence seems to be incorrect.
- For Febeliec it is not clear how Elia will handle a.o. generators (or storage or demand side response) that are currently considered as local production by Elia (a.o. process driven generators) but which will have to prequalify for the CRM. To avoid double counting or zero counting in the volume determination, there has to be a clear distinction between netted consumption volumes of Grid Users as determined on Access Point level (including the local production from a.o. process driven generators) and consumption values in which the generators (or other flexibility) which need to prequalify have been excluded.
- With respect to the evolution of derating factors (section 158), Febeliec wonders how this will be treated in practice, as this was not extensively discussed during the design phase and there is a potentially very important implication for all CMUs as well as the overall volume determination if derating factors for certain categories of technologies are revised over time. Imagine that for a certain category, the derating factor is increased over time (resulting in less eligible volume). This could mean for existing and selected CMUs in the CRM that they could not longer fulfil their obligations under their contracts as their eligible volume would decrease, and thus they could even be eligible to penalties (which would then also be taken into account by them in their bids, which could substantially increase the overall cost of the CRM). Alternatively, if the derating for contracted units would not be adapted and thus their contracted capacity would remain the same (as per 5.8.1), this would lead to discrimination with regards to other not yet contracted capacity of the same technology category, as these would be derated at the general derating factor for that category, which under the above assumption of an increase in derating over time would be higher than the initial derating factor under which the already contracted CMUs were considered, meaning that they would have to spread their costs over a smaller volume. Moreover, on the overall volume determination the impact would even be more pronounced as Elia would either have to consider subcategories for each technology category based on the different derating factors over time or would have to compose artificial derating factors to correct for the changes over time, in order to avoid ending up with an artificially increased needed volume because of an increased derating factor over time applied to all capacity in each category. Febeliec finds all the above options unacceptable and would like Elia to provide a very clear and concise view on how to apply the evolution of derating factors over time and the implications on all the involved steps of the CRM, including the volume determination and cost impact. Febeliec can extend the scope of this request to any changes of parameters over time (strike price, reference price, capacity category update, ...), as these could lead to similar effects, which would also be unacceptable to Febeliec if this were to lead to discrimination or cost increases, especially beyond the legal lowest cost criterion. Febeliec also has questions regarding 5.8.5.3 and the evolutions due to legal updates, and how these could negatively impact the overall cost of the CRM or lead to discrimination or other impacts as described above. In this context, Febeliec also refers to section 392 where it is unclear how the impact of updates of the

derating factors will be considered. The same applies for updates of the calibrated strike price (e.g. section 571).

- On the auction process, Febeliec refers to all its previous comments on this topic during previous consultations as well as the discussions during the related meetings of the CRM Task Force, in particular, but not limited to, with respect to the auction pricing rule that is proposed by Elia, with a switch to a pay-as-cleared approach, which is not acceptable for Febeliec as this would lead to additional inframarginal rents for most selected CMUs, which are not required to remunerate capacity costs as these are exactly already covered by the CRM itself and thus would lead to windfall profits for these CMUs and in any case be in breach with the legal lowest cost criterion according to Febeliec.
- On section 338, Febeliec wonders where the maximum of sixty calendar days cumulatively over a single delivery period comes from, as insofar Febeliec knows this point has not been discussed during the design phase. If the latter is the case, Febeliec regrets very strongly that Elia unilaterally decides to add non-discussed provisions in the functioning rules, especially taking into account that sufficient task force meetings were organised to have discussed at least in principal all design elements.
- The same as for section 338 applies to section 351, where Febeliec also is of the impression that these stipulations have not been discussed during the design phase, while Febeliec is also worried that Elia is using for the determination of the AMT price, which is a very essential element of the CRM design, simulated years, as this could lead to very arbitrary outcomes based on the quality of Elia's forecast models, yet with very real (and possibly costly) implications not only to participating CMUs but also to all consumers via the overall cost of the CRM. In any case, Febeliec is adamant that all essential design elements should have been extensively discussed during the design phase and can under no circumstance accept that such elements would unilaterally be smuggled into the functioning rules of the CRM.
- Concerning availability tests, Febeliec is surprised that regarding section 417 Elia does not even want to discuss the methodology to select CMU's on which availability tests are performed. While Febeliec understands that it is important for such tests that an element of unpredictability exists, Febeliec would have found it reasonable to discuss the basis of the internal procedure mentioned by Elia, even if submitted to and approved by the CREG. Febeliec asks this from a transparency and non-discrimination perspective, as it is not convinced that the internal procedure would not discriminate between technologies.
- On the unavailability penalty, Febeliec is surprised to see that even during the summer period, where Elia has always maintained that there are no adequacy concerns, CMUs with announced missing capacity will still have to pay a penalty, as only the penalty factor X will be zero, not the entire penalty. While Febeliec understands that during winter period, announced missing capacity could jeopardize security of supply and that this should be discouraged by a penalty scheme (although one could argue about the severity of the penalty), such element seems disproportionate during the summer and will only increase the overall cost of the CRM, without bringing any additional added value. Even though part of the design, Febeliec strongly opposes such approach and wonders whether it is compliant with the legal least cost criterion.
- In section 439 Elia mentions an amicable agreement between the capacity provider and the contractual counterparty. Febeliec wonders whether such agreement would need to be validated by an external party, such as the regulator, as otherwise this could lead to an arbitrary outcome which is not necessarily in the advantage of those paying for the CRM.
- On section 449, Febeliec refers to its comments during previous consultations and during the discussions at the CRM Task Force on the potential impact for society of increasing the Y-1 Auction volume because a capacity provider is unable to fulfil his obligations. Such capacity in a Y-1 auction could lead to a much higher cost, especially in case of a large non-provided volume in combination with a pay-as-cleared mechanism, for society than the initial auction, a cost that would have to be borne by consumers, which is unacceptable for Febeliec and could even be in breach with the legal least cost criterion.

- On the financial security obligation, Febeliec still questions the obligation to provide a financial security during prequalification, as such element will create a.o. an additional financial barrier, while at this stage it is unclear whether a candidate will be selected in the auction. Febeliec wonders whether such element could not be postponed to after the auction, possible also by incorporating a mechanism that in case a candidate would after selection not be able to provide the necessary financial security in a specific time period, the next in line CMU would be selected. This would avoid that all participants to the auction, also those not selected, would have to incur such costs, as this could especially for certain types of actors be an element resulting in their non-participation to the auction, which would reduce competition and could thus increase prices.
- On section 707, Febeliec does not understand how a derating factor could be applied which does not correctly apply the methodology, which could result in suspending the capacity contract, as Febeliec understands that Elia will be calculating the derating factors that should be applied.
- On the section on foreign capacity participation, whether direct or indirect, Febeliec regrets strongly that Elia has not provided a clear set of functioning rules for such capacities, including for example also penalties, availability checks, payback obligations, ... as all these elements will have an impact on the total cost of the CRM. By lack of any concrete content, Febeliec cannot analyse whether a.o. non-discrimination or the legal least cost criterion are respected.
- On penalties, Febeliec is adamant that a correct approach is taken in order to ensure that the CRM complies with the least cost criterion, implying that all aspects that fall under the control of the capacity providers should not be socialized in the cost of the CRM, including a.o. the non-obtention of permits, in order to provide a correct incentive towards project developers to ensure that they only bid viable projects, as otherwise, as already described above, the cost of their non-respect of obligations would be borne by the consumers and increase the overall cost of the CRM.
- On the annexes and in particular for example the proposed submeter solutions, Febeliec is surprised to see that only 3 options are listed, while Elia applies at least a fourth option for its other products. In general, Febeliec is surprised to observe that Elia did not seem to base such sections on the extensive work that has been done by Elia and all other involved stakeholders in the framework of the strategic reserve products and balancing products. Febeliec strongly insists that Elia cross-checks its proposal for the CRM functioning rules with the already existing rules for its other products and copies entirely those provisions unless a reasoned argumentation is provided to diverge from them.
- On the baseline methodology, Febeliec wonders how this relates to the work Elia will be conducting on alternative baseline methodologies and refers to its comments on the changing framework over time and how these could impact the CRM, its cost and the direct application towards contracted and non-contracted CMUs (as the latter might have been able to provide better bids and could have been selected under different baseline methodologies).
- On transparency, Febeliec is adamant that, taking into account confidentiality rules about sensitive information, all information and data related to the CRM should transparently be shared with all market parties, not only to allow to check compliance of CMUs with the legal and regulatory framework, but also to allow market parties to have a clear view on opportunities for investment in the Belgian market (via the CRM or outside the CRM, in primary market capacity or secondary market capacity) in order to ensure that at some point in time, and as legally stipulated, the CRM market distortion could be phased out and normal market functioning restored.