POSITION

Subject:	FEBEG comments on ELIA's public consultation on the CRM Functioning Rules
Date:	4 January 2022
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FEBEG thanks ELIA for having the opportunity to react to ELIA's public consultation on the CRM Functioning Rules[1] and for all the efforts & processes put in place for the development and improvement of the CRM.

FEBEG particularly appreciates the opportunity given to the different stakeholders to ask for clarifications and provide feedback in a transparent and constructive way throughout the entire process.

While FEBEG does not fully support all rules proposed by Elia in the proposed 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 further fine-tune and improve the CRM

The inputs and suggestions of FEBEG are not confidential.

Overall comments

General: we observe that the version used for the consultation is the EN version which is not fully in line with the latest approved FR and NL rules. We identified at the minimum an inconsistency in the paragraph 361. Given the length of the document, we suggest that Elia clarifies and communicates to market parties if other inconsistencies have been found at a later stage.

[1] https://www.elia.be/en/public-consultation/20211126_public-consultation-on-the-crm-functioning-rules

General comment on the pay-back obligation and other market based CRM parameters

FEBEG wants to point out that the pay-back obligation – based on a too low strike price – entails a significant risk for capacity providers when exceptional circumstances would occur, e.g. Texas events. A limited period with prices at the level of the day-ahead price cap of 3.000 EUR/MWh would be sufficient to loose the complete capacity remuneration over a complete year.

The current context of unprecedented gas/power prices levels observed in '21 demonstrate that such a risk is not theoretical at all. Therefore, FEBEG needs to insist on the fact that measures need to be foreseen to cope with the risks linked to future possible market evolutions as FEBEG fears that CRM key parameters, such as Strike price and AMT price but potentially others, are not designed to timely encompass sudden market moves.

For these reasons, FEBEG urges to introduce one of the following or a combination of the following measures to limit the significant risks linked to exceptional and unforeseen market circumstances:

- the introduction of a weekly or monthly stop loss;
- a 'force majeure-clause' exempting capacity providers from the pay-back obligation in exceptional and unforeseeable market circumstances;
- a redesign of the strike price, AMT price and potentially other market based CRM parameters allowing them to timely encompass sudden market moves.

Limiting the excessive character of the risks linked to the participation of the CRM will encourage future participation to the CRM, and hence liquidity and competition in the upcoming auctions, and lower the risk premia that will be taken into account in the bids: both will lead to ensuring security of supply at a lower cost for the end consumer.

Specific comments on each chapter

Chapter 1 – Introduction

3. The future Ministerial Decree setting out instructions for the system operator to organize auctions […] is – according to the Electricity Law – expected before 31 March 2022, not 30 April 2022.

Chapter 2 – General provisions

§9.

"*The amended Functioning Rules and/or Royal Decree approving the amended Functioning Rules shall govern the impact, if any, of said amendments on the existing contracts*". The Functioning Rules do not yet elaborate on the possible impact and its governance. In case the CREG would identify possible impacts: these and their governance should also be consulted with market parties (see also 'General comment on the introduction of changes to the functioning rules').

§15.

FEBEG suggests to improve the process to request interpretation of the Functioning Rules. During the last prequalification process, some FEBEG members have asked questions which were not entirely answered by Elia (e.g. on the liabilities or application of the penalties). We would therefore welcome in provision of a structural process to obtain clear answers on all questions.

§28.

Sharing the IT specifications 2 months prior the expected go live of the related requirement is too short. In function of the scope of the development needed, 6 months may be requested.

Chapter 3 – Definitions

New Build CMU:

For a (existing) CMU whose capacity will be increased before the Delivery Period and which requires additional connection capacity, a waiver declaration with respect to the connection capacity reservation and allocation is necessary (§92). Such existing CMU will be considered as an Additional – New Build CMU. This is not appropriate and does not reflect the situation of this existing CMU. We suggest to apply the category "Additional Other" for these situations. In addition, in case of a full opt-out, the opt-out volume will be considered as OUT, although the existing capacity will much probably still be contributing to adequacy (cf. §170).

Joint Bid:

The term 'Remaining Volume' is not defined, and it should be more clear that the words "for the purpose of obtaining a Capacity Contract for more than one Delivery Period" refer to the bid for the Eligible Volume.

Hence we propose the following wording: " The Bid for (part of) the (Remaining) Associated Eligible Volume of an Aggregated CMU that disposes of Associated Delivery Points attached to the Bid of such CMU for (part of) its (Remaining) Eligible Volume, with the latter being introduced for the purpose of obtaining a Capacity Contract for more than one Delivery Period."

Chapter 4 – Time schedules

Opt-out Notifications: FEBEG does not agree with the proposed deadline to make an opt-out notification as it is in breach with the Electricity Law that provides that an opt-out can be made until the 30th of September.

Availability Monitoring: Shouldn't the Due date for the approval or rejection of the notification be at D+4 considering that D is "The start and end time of an Availability Test", that "Elia has up to 5 WD to approve or reject it and notify the Capacity Provider" and that the a Capacity Provider notifies his unavailability at the latest at 11 : 00 od D-1?

Chapter 5 – Prequalification

§76.

During the compliance check the CRM Candidate needs to declare to comply with, if applicable, the eligibility criteria regarding the investment costs. FEBEG is, as such, not questioning the need for such declaration but considers it double with the declaration that needs to accompany the investment file to be submitted to CREG. Does this means that this declaration leads to double accountability, i.e. in the context of the Royal Decree on the functioning rules as well as in the context of the Royal Decree on the eligibility criteria and investment thresholds?

§81.

This paragraph is not clear.

- 'combination between services' : the term 'services' should be defined : CRM service, balancing services ? others ?
  The 3d bullet sets out that FCR has to be one of two services, so no combination between CRM services seems to be possible – this is in contradiction with the 2nd bullet and Annex A (18.1.1.2.1).
  An equation based on Headmeter and/or Submeter(s) should be allowed at least as it would be in the context of balancing services – without restriction to the combination with FCR –, even if no balancing services are effectively provided.

- What is the difference between delivered on " a Submeter and another Submeter behind" and delivered "on two Submeters with hierarchy (one Delivery Point above another one)" ?

§82. Table 1. Requirements per Existing Delivery Point and per Additional Delivery Point

- Single line diagram : for Additional CMUs (or at least New Build CMUs), a provisional and simplified SLD should be sufficient.
- EAN code of the Access Point : for CIPU units for which the DP is defined on the level of the Headmeter, Elia recommended during the prequalification process that the EAN code of the Delivery Point should be the EAN code of the production unit (2nd part of the TOPAZ code), and not the EAN code of the Access Point. Can Elia clarify which EAN to use ?

- CO2 emission : “Other capacities can provide CO2 emission whenever relevant”: Can Elia confirm that this is not mandatory, even if relevant ?
- CO2 emisison: “kg/We/Year” : should it not be : “kg/kWe/year” ?
- “Prequalification test profile for the 2nd method” : the word “profile” should be replaced by “date”.
- Unsheddable Margin. This requirement should not apply for injection Delivery Points as it makes no sense and it is of no use in the determination of the NRP or of the available capacity. In case Elia however maintains this requirement, it should be adapted as follows: “It cannot be lower than the minimum between the negative of the Nameplate capacity of generation and the negative of the maximal injection”
- Full technical offtake Capacity: This requirement should not apply for injection Delivery Points. It creates confusion whether or not offtake will be taken into account in the Service.

§91. Table 2 : Requirements per Existing CMU, per Additional CMU and per Virtual CMU

- Renouncing the operating aid: this should be mandatory only if it is relevant
- CMU Name: we thank Elia for the addition of this feature which will ease the communication between Elia and the CRM actor. However, this CMU name should only be visible for the CRM Actor and Elia and not made public.
- Derating Factor including the Associated Delivery Point(s): why it is mentioned “if the CMU selects a SLA, his CMU is considered as an energy constrained CMU”. We would think that also non-energy constrained can request for instance a 24-hour SLA.

§92.

(see also the comment on the definition of New Build CMU)

- We suggest to implement the dedicated boxes in the IT CRM Interface for the next prequalification process (which was not yet implemented in the last prequalification process).
- In case of additional capacity on an existing plant for which extra connection capacity is required and when the CRM actor can demonstrate that the project is committed before the auctions results, no waiver should be requested by Elia for this capacity.3d bullet of the first case : “in the event that” should be replaced by “in the event that and in so far” (the same wording should be used as for the other cases).
- Last case (if the connection applicant does not have allocated connection capacity or reserved connection capacity). To be complete, should the situation of a possible contract signature before the auctions’ results also not be addressed?

§93.

“Those parties that wish to request prequalification for new fossil fuel-fired facilities (with a view to a 15-year Capacity Contract) are aware and acknowledge that the obtainment of a Capacity Contract does not exempt them from the legislation or current and future objectives established by the European Union and/or Belgium aiming to reduce greenhouse

gas emissions'. What happens if such new legislation makes the respect of the CRM contract impossible/substantially more expensive? What is exactly meant with 'with a view to a 15-year capacity contract'? It is referring to the CREG ruling on the maximum number of delivery periods, or is a14-year contract exempted?

§100. Table 3: Requirements for Fast Track Prequalification Process

- EAN code of the Delivery Point : a EAN / submeter is not always available for a DP in Fast Track. Can Elia clarify the way to proceed in such case (cfr answer 2 in the FAQ on the Prequalification Process) ?
- Corresponding DSO : the asterisk should be in the Comments-column instead of in the last 2 columns.
- Unsheddable Margin : this should not be applicable for injection Delivery Points.

§103.

Information of prequalification is stored for at least 12 years even if the file was rejected or if the bid was not selected.

§113.

In absence of a decision from the FPS Economy in due time, the CMU's eligibility regarding the CO2 emission criteria should be deemed approved. A CRM Actor can not be penalized for faults or delays for which he is not responsible.

§114.

When a Prequalification File is considered as "approved", this should be immediately notified to the CRM Actor without waiting for the Prequalification results.

§120.

FEBEG does not agree with the proposed disproportionate measure that Elia can take in case of identification of erroneous information by Elia

- In case the error was identified before the bid submission deadline: only a fraudulent and manifest error by the CRM Candidate can trigger a rejection of the application file
- In case the errors was identified after the bid submission deadline: only a fraudulent and manifest error by the CRM Candidate can trigger a deletion of the bids or suspension/termination of the capacity contract.

In addition, we suggest to give a term of 30 WD to provide additional information to Elia instead of 20. This can be necessary in case information needs to be requested from third parties.

§129.

The use of the first method (historical data) to determine the NRP can generate exceptionally high NRP which is not representative of the power this CMU can deliver under normal circumstances and thus represents a too optimistic view of the capacity in the

market. This situation can occur due to the methodology applied by Elia to compute the NRP based on historical data of the maximal delta in power output during 36h : with such methodology, a unit that has frequent starts and stops will most likely reach an extreme NRP due to the increased likelihood of a start and stop (giving a maximal power delta) in a period with extremely optimal ambient conditions, compared to a baseload unit. . The different output this methodology can bring between these situations seems unfounded in the framework of a capacity mechanism.

Given that these additional MW cannot be guaranteed and thus counted for the security of supply, we propose to allow the unit to make a partial opt-out which would then be considered as not contributing to the security of supply (-> opt-out OUT). See comment below.

§131.

The maximum Nominal Reference Power included in the Grid User Declaration should be considered as a cap. Hence the *minimum* between the calculated NRP and the maximum NRP included in the GUD should be considered.

§138.

As mentioned above, in case of NRP contestation, as a prequalification test can only increase the NRP, the CRM Actor should have the possibility to declare an opt-out volume to be considered as OUT if he considers that part of this volume is not contributing to the security of supply.

§144.

In absence of a communication from the DSO with respect to the final NRP, the CRM Actor can not be penalized for faults or delays for which he is not responsible. Cf. §120 which should definitely not be applied in this case.

§153.

Before overruling the Fast Track NRP declared by the CRM Actor, Elia should first consult the CRM Actor. Elia should also motivate the modification of the NRP towards the CRM Actor.

§156.

We do not understand the 3d indent stating that *Elia can determine the NRP of a CMU as soon as the NRP of each CMUs in Fast Track has been notified to the CRM Acto*r, as the NRP of a CMU in Fast Track is determined independently of other CMUs.

§164.

We do not agree that the deadline to notify an opt-out is being set at 5 WD before the bid submission deadline. This is not in line with the Electricity Law.

§168

It would be welcome to find in chapter 5.4.2.2 "Classification of opt-out Volumes" a summary table with all possible opt-out configurations considered as in and out according to the technology, the category (Existing / additional / New Built), to partial and full opt-out, … (as it was provided in the early version of the Functioning Rules).

§170 and §174

To address the issue of excessive NRP following the use of the historical data methodology (due to extreme ambient conditions) and in order to reflect the effective contribution of a CMU to the security of supply, we request that a new category is added in the list of situations where an opt-out is considered as OUT for both the Y-1 and Y-4 auctions: "*the volume relates to a CMU for which the NRP determination does not reflect the power under normal circumstances*".
Indeed, by summing up the excessive MW of several thermal units, this can represent significative volume (> 100 MW) and should be properly reflected also in the Y-4 auction.
In case of fast-track prequalification and determination of NRP by Elia, such situation should also be addressed.

FEBEG also strongly supports the following proposal: "*An Opt-out Volume related to a Y-4 Auction is classified as 'OUT' in case the Opt-out Notification submitted by the CRM Actor indicates that […] the volume relates to a CMU that is associated to an SLA category as part of a "partial opt-out" or the volume relates to an Energy Constrained CMU with Daily Schedule as part of a "partial opt-out"* for both the Y-4 and Y-1 auction.
This is necessary to ensure that "empty" MW are not counted for the SoS while there is not commitment behind.

However, the following condition "*the volume relates to a CMU that is associated to an SLA category as part of a "partial opt-out"*" does not cover the case where a CMU with SLA category (such as DSM) would prequalify and at the end not bid at all (full opt-out). Such volume should not be considered as IN but also OUT for both Y-4 and Y-1 auction as there is no guarantee on its availability at the delivery period horizon (especially as there is no obligation to prequalify for some of these assets).

FEBEG believes that it should also be possible to motivate a partial opt-out in the Y-4 auction that is then considered as an opt-out "out" for "*the volume is indicated as not contributing to adequacy during the Delivery Period to which the Opt-out Notification relates, provided that a motivational letter to support this indication is provided by the CRM Actor as part of its Opt-out Notification.*"

FEBEG would also welcome a clarification on the following situation: a CRM Candidate prequalifies a CMU that is associated to an SLA category – portfolio of demand response – but finally decides not to offer it, i.e. complete opt-out. Will the volume associated to this CMU will be considered as 'IN' or 'OUT'? Generation assets need to notify Elia when they

leave the market, but demand response can leave the market without notification or might have never been there.

§174.
1st and 2nd indents : additional *storage* capacity should be also concerned (as in §170)

§179.
How does this reduction of Reference Power occurs ? By an increase of the opt-out volume? Before executing its right to reduce the Reference Power, Elia should first consult the involved CRM Actor. Elia should also motivate the modification of the Reference Power towards the CRM Actor.

§186.
It seems from the reading of the paragraph that, in case the derating factor evolves (positively) for a delivery period, the remaining eligible volume would increase, allowing this unit to contract additional capacity in the CRM for that delivery period (as illustrated in Annex A.8 – 18.1.8.2) . Is this the correct interpretation of this paragraph?

§190 and §194.
For the last prequalification process, the secondary market (remaining) eligible volume have not been communicated. We suggest Elia to implement these functionalities as soon as possible.

§201 & 202.
If the CRM Actor receives a notification to confirm the prequalification file is still compliant, for a Delivery Point for which he does not have a GUD for the current period, should he archive the prequalification?

Chapter 6 – Auction

§242:
According to FEBEG, this paragraph should refer to the bid price rather than the missing money, for the following reasons:

- there's no clear definition of the concept 'missing money' in the functioning rules;
- the estimation of the level of the 'missing money' depends on the cost estimations, the market view and the economic criteria that are used: the assessment of the 'missing money' will hence depend from one party to another; as a result, the assessment of the 'missing money' by CREG will differ from the assessment of the 'missing money' of the capacity provider;
- the fact that a derogation of the Intermediate Price Cap is granted doesn't mean that the bid price is reflecting the missing money but only that the CREG assessment of the missing money allows a bid price and a capacity remuneration above the Intermediate Price Cap.

§277.
Cf comment made on §170. If a CMU such as DSM makes a full opt-out, it should be considered as opt-out/OUT.

§ 280.
"… for each unit whether it is expected to receive subsidies and therefore should be considered non-eligible…" The expression "is expected to receive subsidies" is not clear : does it include also units which have a right to apply for an extension or a renewal of the granting of subsidies for the delivery period (eg. subject to a substantial modification for CHP's), or does it concern only the units which have confirmed subsidies for the delivery period (as foreseen in their currently approved subsidies files) ?

Indeed, it is important to mention that the obligation to prequalify was clarified in a "Circulaire" dated 04/06/21 and stipulating the following: "*un détenteur de capacité de production située dans la zone de réglage belge qui a droit à l'aide au fonctionnement pendant la ou les période(s) de fourniture de capacité considérée(s) et ne s'engage pas à y renoncer, ne répond pas au critère de recevabilité concernant l'interdiction du cumul et n'est donc pas obligé d'introduire un dossier de préqualification.*" By reading this, it is understood that the capacities that have a right to prolong their subsidy during the delivery period -even if they have not confirmed this- are considered as non-eligible (since they don't have the obligation to prequalify). Only an active renunciation of the right to request/prolong subsidies (if this possibility is present) will bring the asset to the 'eligible' category.

An asset without the possibility for support in the delivery period is considered as 'eligible' and has the obligation to prequalify (if other conditions are met, eg. minimum threshold)

§293.
"… for which no participation to the CRM has been confirmed following the procedure in the Federal Grid Code." We suppose this is no longer applicable. However, Elia should not calculate grid constraints for existing CMUs with requiring additional connection capacity when the CRM actor can demonstrate that the project is committed before the auctions results.

Chapter 7 - Capacity contract signature

§336.
The reference to §335 is not needed as this paragraph concerns the signature by Elia. The same penalties should apply in the case Elia does not sign the Capacity Contract.

Chapter 8 - Pre-delivery control

§348. Quarterly reports

Can Elia clarify what is the end of the period to be covered by a quarterly report ?

§349.

The proposed change means in practice that the first quarterly report is to be provided by 14th of February of the year after the auctions' results.

§361.

According to the current Functioning Rules, the pre-delivery obligation corresponds to 100% (and not 80%) of the pre-delivery obligations detailed in §359. That being said, FEBEG has always supported an obligation at the level of 80% of the pre-delivery obligation. Given that the effective obligation to be present mainly lies during the delivery period, capacities should not be overly penalized in case, for instance, of long-lasting outage or capacity reduction while at the end they are still present for the delivery period.

§381.

Should the Beta not be reduced for *Additional Other* as the financial security amount is proposed be reduced from 20k€ or 15k€/MW to 11k€/MW?

§385.

This paragraph seems wrongly formulated : it is not the period which is reduced but the contracted capacity in line with the missing capacity established during the $Tcontrol_1$ moment during the first delivery period.

§405.

Could Elia clarify which derating factors are applicable when determining the Secondary Market Eligible volume at the moment a CMU receives the status Existing?

§407.

"ELIA cannot be held liable in the event that the Capacity Provider does not have the possibility to finalize this process prior to the moment of control $Tcontrol_2$ *. It is the responsibility of the Capacity Provider to start the process to become existing taking into consideration the timing foreseen for each ste*p".

What is the consequence of such rule? Indeed, in the paragraph 373, it is mentioned that, as long as Elia can measure the power output from validated metering devices at the $Tcontrol_2$ and the obligation is fulfilled, no penalty is applied, even though the process to become existing has not yet been finalized (potentially because it was not been started on time when considering the maximum terms). It is absolutely unacceptable that a capacity Provider is penalized while the unit is available at the $Tcontrol_2$ moment.

Chapter 9 - Availability

§421.

According to this paragraph, each limitation on the capacity relative to the NRP has to be notified to Elia via the CRM IT Interface. Elia should keep in mind that, for a production unit, the NRP corresponds to the highest production of the unit during a quarter-hour over a year, as a result of amongst others specific atmospheric conditions (temperature, pressure, humidity). Hence for nearly all other days of the year with less 'favourable' conditions, the capacity will be lower than the NRP and a notification of unavailable capacity be required. In this way, the 75 days of Announced Unavailability will be reached after a few months.

On top of that, for CMUs with Daily Schedule, such capacity limitations are already notified to Elia in the Pmax declaration in the Daily Schedule. It should be avoided to create supplementary administrative load with redundant communications.

FEBEG therefore asks that, in the context of the unavailability penalties and the pay-back obligation, the notification of unavailable capacity via the CRM IT Interface is left to the discretion and the responsibility of the CRM Actor, so that the 75 days of Announced Unavailability may be effectively used to notify significant unavailability of capacity.

§436.

Similarly to the remark with regard to the indexation formula, we suggest to ensure that the formula to compute the AMT price effectively reflects the fundamentals of the delivery period considered. If 2021-2022 would have been a delivery period, we consider that the proposed methodology would not have been appropriate (AMT price probably too low) both for Elia and the Capacity Provider. An alternative could be a formula including the max (amt;prod_cost).

§472.

"In all other cases, the Declared Market Price is a composition of (Partial) Declared Intraday of Balancing Prices." Isn't it always based on the (Partial) Declared Day-Ahead Price, as set out in §471 ?

As set out in step (i,) the prices in the price-volume pairs are the (partial) Declared Day-Ahead Price(s) corresponding to the Associated Volume. The reference to the (partial) Declared Day-Ahead Price(s) is missing in steps (iii) (or ii).

§489 & §492.

Can Elia precise what is the "time of Availability Monitoring" ?

§495 – 497.

To clarify the distinction between Method 1 and Method 3, can Elia confirm that Method 3 only applies when the following condition is also fulfilled : "Reference Price is higher than or equal to the CMU's Reference Price"?

Can Elia clarify which method is applicable in the following case : Reference price is higher than the Strike Price and than the Declared Market Price, but lower than the CMU's

Declared Day-Ahead Price ? According to §495, Method 1 applies, but it seems that in the FAQ (FAQ on the Delivery Period, Q1) Method 3 is applied…

§534.
For CMUs which are Linked Capacities, Elia should ease the process of availability monitoring and testing by evaluating the compliance to the rules at the level of the group of Linked Capacities (eg. at the level of the CCGT plant), instead of proposing to exchange obligations on the secondary market which implies administrative workload and follow-up both for Elia and for the CRM Actor, and induces supplementary risks.

§547.
The text mentions that "*For Unannounced Missing Capacity, the penalty factor is equal to 1*" while also for unannounced missing capacity, the values of X depend on the season.

§565.
In case of long lasting unavailability at the end of the delivery period, a capacity provider will have more rapidly its contracted capacity terminated than if the same event occurred at the start of a delivery period. For this reason, and to avoid risk of discrimination, FEBEG proposes to terminate contracted capacity only after a period of 18 months as from the start of the unavailability. This proposal should also be applicable to existing contracts.

Chapter 10 - Secondary Market

§611.
It should be possible to make secondary market transactions before the start of the Delivery Period targeted in the auction, for a Transaction Period of (up to) 1 year starting at the start of this Delivery Period. Therefore, the words "whichever comes first" should be replaced by "whichever comes last".

Typos
§581, §613 and §675 contains typos

Chapter 11 - Financial Securities

§689.
We suggest to clarify if the original document (appendix) needs to be sent per post to Elia.

§696.
It is not clear whether if the CRM Candidate provides its financial security and this is being rejected after the max term Elia has to verify it (15 WD), this CRM Candidate will still have the possibility to submit a new financial security and have it approved on time.

§697 (previous version)

Provided that only if the eligible volume is more than 10 percent higher than the requested volume, an additional financial security had to be provided at the end of the prequalification process (else: it could be submitted at a later stage). We ask to keep this margin in the rules.

§706.

FEBEG proposes the alternative "*for an Additional CMU, the Validity Period ends ten Working Days after the first of the following two dates occurs: (i) the end of the Transaction Period and (ii) five years as of the Transaction Validation Date. If the CMU has not reached the 'existing' status before the aforementioned end date, the Validity Period is extended until ten Working Days after the end of ~~the Transaction Period~~ the next delivery period. In this case, an additional Financial Security may have to be provided in accordance with the procedure described in § 692. In addition, if the Capacity Provider fails to submit an additional Financial Security within the required deadline, a financial penalty for an amount of EUR 15,000 EUR/MW of the Contracted Capacity applies*".

- If the financial security needs to be extended, it cannot be until the end of the transaction; else it will be too costly for the Capacity Provider. We propose until 10 WD after the end of the next delivery period.
- 15 k€/MW as penalty in case the new financial security is not provided is completely disproportionate. In addition, we also encourage Elia to notify the Capacity Provider is such extension is needed.

§727

In this paragraph a reference is made to §336 – Chapter 7 Contract signature – where the updated version add the following " (…) *The application of this penalty does not exempt the prequalified CRM Candidate from his obligation to sign the Capacity Contract, or his liability as under chapter 13. If need be, ELIA will activate the dispute resolution mechanism set out in chapter 14 in this respect. (…)*". The situation and the role of the penalty (10.000 €/MW) in case of the Capacity Contract would not be signed is unclear to us:

In the previous version of the Functioning Rules in force for the 2021 Y-4 auction process, you could argue that, if, for whatever reason, you were not able or in the position to sign the Capacity Contract, the payment of the penalty (not a minor amount) could release you from the obligation.

Now it is explicitly stated that a penalty has to be paid (the purpose seems then is to avoid any delay in the signature of the Capacity Contract that is an administrative achievement) and that the candidate is additionally exposed to other sanctions mentioned in chapter 13. Reference is made in §792: " (…) The application of Penalties provided for in the Functioning Rules when the CRM Actor breaches its obligations does not preclude ELIA's entitlement to compensation for any Direct Damage suffered as a result of such breach, provided that ELIA establishes that said Direct Damage is the result of fraud, wilful

misconduct or gross negligence on the part of the CRM Actor, on the one hand, and that it affects ELIA's assets, on the other hand (…). (Former version: "(…) When provided for in the Functioning Rules, Penalties are the only financial sanction for the CRM Actor in the event that it breaches its obligations. However, ELIA will be entitled to compensation for any Direct Damage suffered (…)"). If not signing the Capacity Contract is a breach and ELIA could claim Direct Damage, could additionally the non-signature of the Capacity Contract be qualified as wilful misconduct or gross negligence ?

It seems that an explicit link is created between the breach of not signing the Capacity Contract, the penalty and in addition a possible claim with the qualification of wilful misconduct or gross negligence. Not signing the Capacity Contract becomes a risk with consequences that could not be assessed. Previously, we could state that this risk was worth 10.000€/MW, but have we to understand that we could now have an undefined value (unlimited liability) ? In addition, this clause and its consequences are applicable unilaterally on the CRM Candidate and not on Elia in case the contract is not signed.

§732.

Shouldn't a stop of the prequalification process or non-selection of a bid also be a moment where the financial security is released?
In addition, it is not clear in which moment the release of the financial security prevails between the moment of the transaction validation date and the moment of the capacity contract signature. The soonest, the better to avoid extra costs for the Capacity Provider.

§733/735.

We ask Elia to reduce the terms for the release. 10 working days for the notification to the Capacity Provider and 30 working days for the release by Elia is too long and represents a cost for the Capacity Provider.

Chapter 12 – Payback

§755.

FEBEG asks to adapt the indexation formula for the determination of the strike price. The recent market evolutions (important increase of CO2 prices & fuel prices leading to higher electricity prices) show that, if such situation would occur again during the future delivery periods, the indexation formula would not reflect those sudden market changes. This would have as consequence that some market parties may have to payback unearned revenues. Therefore FEBEG pleads for a more dynamic indexation formula, integrating important, sudden and/or long lasting changes in the market (possibly also for 1y contract if relevant) so that variable costs of a unit are always covered. This formula could be defined for instance as indexed strike price = max(CSS/marginal prod cost; indexation formula_reviewed). This would ensure that the initial objective of the payback obligation – avoid windfall profit – remains respected

- **Why the Strike price indexation formula should be reviewed**

The index is a factor determined with a rolling formula based on the comparison between the Day-ahead Market (DAM) simple average prices over the three last years preceding the Delivery Period and the DAM simple average prices of the last three years prior to November 1st of the Auction year. The DAM simple average prices prior to the November 1st of the Auction year are remaining a fixed part in the rolling formula, where the three years DAM simple average prices prior to the Delivery Period is evolving in time.

This is represented by the following formula:

$$Indexed\ Calibrated\ Strike\ Price\ (CMUid, Transactionid, t) = Factor\ (DPe, Auction\ year, Auction\ type) * Calibrated\ Strike\ Price\ (CMUid, Transactionid, t)$$

And for which:

$$Factor\ (DPe, Auction\ year, Auction\ type) = 1 + (Average\ DAM\ (DPe-3\ to\ DPe-1) - Average\ DAM\ (Auction\ year-3\ to\ Auction\ year))/Calibrated\ Strike\ Price\ (Auction\ year)$$

Where:

- $Average\ DAM\ (DPe-3\ to\ DPe-1)$ is the simple average of all hourly DAM prices from November 1st of the year which three years prior the Delivery Period start date until October 31st of the year of the Delivery Period start date
- $Average\ DAM\ (Auction\ year-3\ to\ Auction\ year)$ is the simple average of all hourly DAM prices from November 1st of the year which three years prior the Auction date until October 31st of the year of the Auction year

To illustrate the smoothing effect of indexation formula, let's assume a strike price for the fictive delivery period of 2022 of a multiyear contract. In 2021, this strike price is due for indexation where:

- $Average\ DAM\ (DPe-3\ to\ DPe-1)$ is covering 2018/19/20/21 = 48.9 €/MWh[2]
- $Average\ DAM\ (Auction\ year-3\ to\ Auction\ year)$ is covering 2015/16/17/18 = 43.9 €/MWh

The indexation would only amount to roughly 1.017, leading to an indexed calibrated strike price of 305.2 €/MWh.

The reader can easily understand that this strike price indexation is (too) heavily hampered by a simple comparison of the average of DA hourly prices of 2020 versus 2021[3]:

- Average 2019-20 = 30.9 €/MWh
- Average 2020-21 = 61.6 €/MWh

The example clearly shows that indexation formula doesn't capture electricity price increases such as observed from 2020 to 2021.

[2] As the period encompassed expands till 31/10/2021, weekly prices as of 24/09 were replicated till 31/10.
[3] From 23/09/2019 till 24/09/20 and 23/09/2020 till 24/09/21

The main reason for this hampering effect is the selection of '$Calibrated\ Strike\ Price\ (CMUid, Transactionid, t)$' as denominator which has an order of 10-50 times higher than the nominator.

Possible corrections are:

- Adaptation of the strike price with a multiplier based on the highest of 2 options:
    1. Fuel plus CO2 cost of the marginal plant,
    2. Demand response costs.
- Adaptation of the indexation formula to correct the excessive hampering effect of '$Calibrated\ Strike\ Price\ (CMUid, Transactionid, t)$' as denominator which has an order of 10-50 times higher than the nominator.

On the current indexation in the proposed functioning rules, we would like to learn why the indexation would only be performed as of the 2nd Delivery Period. Since the strike price is determined more than 4 years before for the Y-4 auction, we see the need to already index it as of the first Delivery Period and then it would also apply to the annual CRM contracts.

Typos

§765 We assume that the correct text is "*A Non SLA Hour(s) is (are) only considered on top of the SLA Hours of the CMU for the concerned day if the number of ~~SLA~~ **AMT** Hours observed during the concerned day remains lower than the N hours of the CMU's SLA*"

Chapter 13 - Liability & Force Majeure

Force Majeure: some further explanations are required on why closed grids were deleted.

> ~~785.~~802. Without prejudice to the provisions of the Capacity Contract, the following situations, among others, are to be considered as Force Majeure provided they meet the conditions of Force Majeure set out in the previous section:
>
> - the temporary or permanent technical inability of the grid ~~(including closed grids)~~ to exchange electricity because of disruptions within the Belgian Control Area caused by electricity flows resulting from energy exchanges within another Control Area or between two or more other Control Areas, where the identity of the market players involved in said energy exchanges is not, and cannot reasonably be, known to ELIA;

§802 omits one situation explicitly mentioned in the Capacity Contract (current version) : *« Une décision ou une mesure prise par toute autorité compétente (…)* – A decision made by any competent authority » – (Capacity Contract Art. 8.2)). As this was a proposal from the CREG when reviewing the Capacity Contract and was implemented in the current version, why is this situation not covered in the Functioning Rules (as the other situations are) ?

Chapter 14 – Dispute resolution

Chapter 15 – Fall back procedures

Chapter 16 – Transparency and Motivation

Chapter 17 – Direct and indirect Foreign capacity participation

Typo

Typo in the 4th paragraph of 17.1: "*The Royal Decree on the on the eligibility* […]"

ANNEX

We would like to ask Elia to provide a content table of the annexes. Especially Annex A has many chapters. It would increase the readability of the document if the chapters of the annexes are part of the general content table, or if a specific content table per Annex is given.

18.1.1.1 Why is the measurement of reactive power needed in the context of CRM ?