

# About this document

Publication  
date

**07/03/2023**

Title

## **Consultation Report of the Low Carbon Tender**

**Public Consultation - 13 January 2023 - 10 February 2023**

Context

Elia organised a public consultation on their proposed updates for the CRM & LCT Functioning Rules. The purpose of the publication and consultation of said proposal was to provide all stakeholders with a clear view on the design modalities of the Low Carbon Tender, as described in the third iteration of the CRM's Functioning Rules, and to receive and incorporate any useful feedback from market parties on the latest design proposals, before sending the proposal to CREG on March 1st 2023.

About the  
consultation

The consultation period was set from Friday the 13th of January 2023 until Friday the 10th of February 2023, 6:00pm and was publicly announced on the Elia website and during the WG Adequacy of 16/12/2022.

In total 4 public reactions were received, from the following parties:

- Centrica
- FEBEG
- Fluvius
- FEBELIEC

Purpose of this  
document

Via this consultation report, Elia formally addresses all remarks and questions received from stakeholders on the CRM + LCT FR v3. Elia also communicates, if applicable, how the feedback is incorporated in the proposal sent to CREG.

How to use this  
document

The format of the consultation report is via an excel file, in order to exhaustively list all received questions and provide an answer to each one of them. The report contains thus a table per chapter of the Functioning Rules, a reply on each remark and if it has been considered in the updated design or not. If a certain comment could not be taken into account, Elia also provides a reason why.

Fully confidential responses are answered in a separate version, sent only to the involved party.

Answers provided by FPS Economy in view of the proposed CO2 thresholds are to be found in annex, at the end of the document.

## General Comments

#	Stakehold Received Comment	Elia's answer in EN
1	<p>Febeliec would like to thank Elia for this consultation on the Functioning Rules of the Low Carbon Tender (LCT).</p> <p>Febeliec wants to refer to its numerous comments on the shortcomings and issues with the Belgian CRM, which are also reflected in the Functioning Rules for the LCT as these are based on the Functioning Rules for the CRM. Febeliec wants to explicitly refer to the comments it has made on the Functioning Rules for the CRM in the recent consultation on version 3 as well as to the comments it made at the end of 2022 in the consultation on the design note concerning the LCT, insofar many comments have not been taken into account.</p>	<p>Elia takes note of Febeliec's comment and refers to the feedback in the public consultation report on the CRM Functioning Rules V3 and the LCT design note.</p>
2	<p>On the link with the design of the capacity remuneration mechanism (CRM), Febeliec regrets that this also means that all flaws of this mechanism will also be introduced into this tender. Febeliec has over time provided ample examples of a wide range of issues with the CRM and will in this context refer to all the relevant consultation answer and not repeat all specific points. Nevertheless, and specifically for the LCT Functioning Rules, Febeliec was very surprised to see that for multi-year contracts that might be granted in the auction, after the first delivery year those LCT contracts would automatically revolve into CRM contracts, while (even fundamental) differences might exist between the legal framework and context of the LCT and the CRM, leading potentially to incompatibilities. Febeliec remains concerned on the alignment of the LCT "as much as possible" with the CRM framework except where it might in the end deviate. Febeliec understands that Elia wishes to harmonize as much as possible the Functioning Rules and Contracts of the CRM and LCT, but this leads in many cases to some confusion, as terminology is sometimes confusing (e.g. CRM Candidate or Actor also being used for an LCT participant who is not participating to the CRM) and as for the LCT one has to re-read the CRM Functioning Rules with Section 18 at hand to try to see to which extent the LCT Functioning Rules differ from those of the CRM (no dedicated integrated LCT Functioning Rules version is available), which could lead to confusion or even wrong interpretations.</p>	<p>Elia takes note of Febeliec's comment and refers to the feedback in the public consultation report of all relevant public consultations.</p> <p>Elia would like to clarify that the LCT design is fully aligned with the CRM design, except for the differences as described exhaustively in chapter 18 of the rules.</p> <p>However, Elia understands the complexity for the reader and is available to provide further clarifications during the Working Group Adequacy.</p>
3	<p><b>General comments on the impact of the LCT on the CRM should be carefully assessed</b></p> <p>In its reaction to the public consultation of the LCT design note, FEBEG has expressed its concerns about the organization of such tender, open to new low-carbon technology only and therefore not technology neutral. While FEBEG can only support Belgian Authorities in taking measures to ensure the security of supply in the future, the sector urges the authorities to carefully anticipate the needs in terms of (new) capacity in the future and to ensure a favourable investment climate for existing assets. In particular, FEBEG has often warned about the important volumes reserved for the Y-1 auctions, the (too) optimistic view on the contribution of neighbouring countries as well as the risks of excluding certain thermal capacity out of the CRM due to strict CO2 emissions' limit.</p>	<p>Elia takes note of FEBEG's comment but remarks that this comment refers to the legal framework of the Low Carbon Tender which is out of scope of the public consultation on the LCT Functioning Rules.</p>
4	<p>With the LCT tender, FEBEG wants to point out that the authorities continue to take decisions, e.g. on energy mix, that are impacting existing business cases and are negatively impacting the investment climate as these decisions undermine investors' confidence. In addition, authorities should be aware that, by organizing ad-hoc tenders, the willingness of market parties to bid in T-4 auctions may be further reduced. FEBEG observes that, since the CRM was launched, the rules are evolving quite rapidly. While FEBEG supports the correction of design 'deficiencies' negatively impacting market parties (cfr. proposal to adapt the indexation formula of the strike price, review of the IPC derogation process), it also observes that the mechanism is not stable at all.</p>	<p>Elia is developing the Low Carbon Tender on request of the Federal Government (cf. Winter Plan). Elia acknowledges that the CRM is a market mechanism, and as any mechanism, it should evolve together with experience and changing market circumstances.</p> <p>Changes to both the LCT and the CRM are proposed in close cooperation with market parties and are extensively discussed during the several Working Groups Adequacy. All design changes are publicly consulted upon and the regulator finally decides on the proposed changes.</p>
5	<p><b>Regarding the use of LCT to attract new batteries' projects</b></p> <p>As mentioned in the design note, FEBEG fears that the competition in the LCT auction, and actually also in other T-1 auctions, will be very limited, which may increase the costs of such auction and, hence, the cost for society. Indeed, potential CRM Candidates may face various issues which may prevent them to offer in the LCT:</p> <ul style="list-style-type: none"> <li>- <b>Lead time of 12 months between auction results and start of the LCT is too short:</b> the current lead time is longer than one year for the construction, erection and commissioning of large scale BESS projects. Considering that the permit, the land lease, the grid connection and the supply of the equipment are secured through contract at the "Notice to Proceed" (NTP), the current term between the Notice to Proceed (NTP) and the Commercial Operation Date (COD) is between 14 to 17 months. If the planning is not adapted, an investment decision with significant CAPEX spending will have to be made before the auctions' results which may strongly reduce the appetite of some market parties to participate in the auction.</li> <li>- <b>The conditions to obtain a long term contract are not appropriate:</b> even if the market party would take the risk to spend significant CAPEX before the auction's results, the conditions to obtain a long-term contract are limiting the access to those contracts given that (i) CAPEX spent before the auction's results are not eligible and (ii) the notice to proceed of the investment needs to be given after the auction's results.</li> <li>- <b>Permitting:</b> FEBEG considers that the rules regarding the obtention of the permit may also reduce the competition in the auction.</li> </ul>	<p>Elia takes note of FEBEG's comment regarding the lead time for storage projects and refers to the proposed changes to the regulatory framework (cf. public consultation on update Royal Decree Investment Thresholds) to facilitate the participation of batteries to the LCT and to improve the competition in the auction.</p> <p>On the connection to the grid of storage assets, Elia refers to its feedback during the public consultation on the LCT design note. Grid connection studies for batteries or energy storage devices in the broader sense, currently occur within the boundaries of the given regulatory and legal framework. As such, flexible connections are already proposed by the TSO, where relevant, in order to deal with expected grid congestions, awaiting further grid reinforcements. Elia acknowledges the need for further investigations into future evolutions of this framework in order to bring more flexibility option to market operation and grid management and is engaged to take such actions.</p>

5bis FEBEG

- **Connection to the grid of storage assets:** FEBEG also sees a risk of limited competition in the auction due to Connection constraints on the grid. Timely obtaining a Connection to the transmission grid can be complex for project developers due to congestion issues. storage assets are considered as injecting in the worst grid configuration for injection and off taking in the worst grid configuration for offtake. This approach makes storage assets highly subject to grid congestion and completely neglects their positive impact on grid integration

## Regulatory Framework

#	Stakehold Received Comment	Elia's answer in EN
1	<p>Febeliec</p> <p>On the context and regulatory framework of the LCT, Febeliec would like most strongly to reiterate its concerns, as it has already done during previous consultations and meetings were this tender was discussed. In case there is a real and important risk for Belgian system adequacy for the winter 2024-2025, Febeliec considers the framework too restrictive, as the tender is not technology-neutral (nor allows direct foreign participation) and could thus jeopardize system security by excluding volumes and technologies that could alleviate these concerns and even lead to not being able to contract sufficient volumes. Febeliec in this context refers to art. 6.3.3.1.2, number 335, which already covers such situation of insufficient volumes yet does not describe how the lack of required volumes will be covered. Moreover, by explicitly excluding technologies, it is not ensured that the outcome of the tender will lead to the lowest possible costs for the system and consumers as all available (yet not sufficient) volumes will have to be contracted at any cost and thus could lead to very high costs. Last but definitely not least, Febeliec also wonders about the legal framework, which is currently lacking (and which creates issues with this consultation as all reference to a legislative framework are only placeholders and as such it is impossible to judge whether the as of yet non-existing legal framework will resolve all outstanding issues) as well as the approval of this subsidy scheme by the relevant authorities, which does not seem to have been granted at this moment and where Febeliec has doubts (a.o. referring to the lack of technology-neutrality and foreign participation). Febeliec can only hope that Elia's assumption of the necessarily legal and regulatory changes being completely and timely provided will prove correct and in line with Elia's assumptions for the development of the Functioning Rules (and other related documents such as the contract) for the LCT.</p>	<p>Elia takes note of Febeliec's comment but remarks that this comment refers to the legal framework of the Low Carbon Tender which is out of scope of this public consultation. In any case, LCT contracts will only be signed after EC state aid approval is obtained. To obtain this approval, the Belgian State needs to demonstrate the need for the tender. Finally, the mechanism itself is designed in a technology-neutral way as all new capacities within the CO2 emission limit are eligible to participate.</p>
2	<p>Febeliec</p> <p>Specifically also on the LCT, Febeliec wants to reiterate that the CRM/LCT is a year-long product (with a.o. implications for maintenance periods, availability monitoring and secondary markets), while the tender is supposed to "ensure security of supply during Winter 2024-2025" which does not require availability over an entire year and could alleviate important concerns from demand facilities and thus demand side response which have been voiced over the years vis-à-vis the CRM.</p>	<p>Elia understands Febeliec's concern on the Availability Obligation holding up for the entire year rather than only during the winter period. However, Elia wishes to highlight again that among others in the proposal of the Functioning Rules that was submitted for public consultation on 25 November 2022 it put forward substantial design changes with regards to the Availability Obligation: among others, based on an analysis by Elia no Availability Tests would be performed during Summer. Elia has already taken the liberty to perform such an analysis to verify the results in current market circumstances, and if a Delivery Period were to take place now no Availability Tests would be carried out during Summer.</p> <p>Moreover, Elia maintains that the current design that makes use of, among others, Declared Prices and Announced Unavailable Capacity, provides enough flexibility for Capacity Providers and safeguards them from excessive obligations during periods with a low risk of adequacy.</p>

## Auction

#	Stakehold	Received Comment	Elia's answer in EN
1	Febeg	<p>§250. We regret that it is not possible to submit exclusive bids for long term contracts in the LCT(or Y-1) and the Y-4 auctions organized in the same year: it should be possible that if a bid for a long term contract for a certain CMU is not retained in the LCT (or Y-1) auction, another bid for a long term contract for the same CMU is taken into account in the Y-4 auction.</p>	<p>ELIA thanks FEBEG for this suggestion and has adapted the Functioning Rules to allow CRM Candidates to make mutually exclusive bids for multi-year contracts for the same CMU in multiple auctions that are organised in the same year.</p>
	Febeg	<p>§1083 – We understand that ELIA will correct the volume to be purchased with any new derated capacity 'put in service' between the publication of the grid operator report in the context of the LCT and the auction opening gate. We propose to make the end-date more explicit in this paragraph in line with comment made in §1045. Does ELIA, in its grid operator report in the context of the LCT, only take into account the batteries according to the same definition as "put in service" in the LCT Functioning Rules?</p>	<p>ELIA agrees with the proposed rewording and has adapted the Functioning Rules accordingly. With respect to the question on the "in service" definition considered in the grid operator report, ELIA can confirm that this definition will be applied consistently.</p>
2	Febeg	<p><b>On impact on future auctions</b>            FEBEG is of the opinion that the capacities contracted for several years in the frame of the low carbon tender 2024-2025 should be reduced from the volume Y-1 reserved capacity for delivery year 2027-28, and not from the volume open in Y-4. FEBEG considers this practice would be coherent with the initial objective of the Y-1 auction, for which a volume is specifically "reserved", targeting capacities with shorter lead-time, such as batteries and DSR. Indeed, no doing so would imply that the room for additional capacities in the Y-4 2027-28 could potentially be significantly reduced while the gap in the T-1 for 2027-28 will remain huge (1,2 GW). This implies too much risks for the SoS and is not a good-father practice according to FEBEG. Therefore, at the very minimum, FEBEG proposes to not change the volume to contract, according to the future Ministerial Decree, that will be determined by the Minister for the T-4 2027-28 and to reduce the volume contracted with multi-year contracts from the reserved volume for T-1 auction.</p>	<p>ELIA thanks FEBEG for this feedback. However, ELIA would like to point out that this logic would go against the principle as described in the Electricity Law to reserve a volume that corresponds to 200h exclusively for the Y-1 Auction. Moreover, it would not be in line with the rules that have since the beginning been set out in the Functioning Rules, to clear auctions following the order of the Delivery Periods and to take into account the volume impact of multi-year contracts in the subsequent auction clearings. Therefore, ELIA does not agree with FEBEG's proposal on this matter.</p>

#	Stakehold Received Comment	Elia's answer in EN
1	<p>Fluvius <b>1042</b> <b>Opmerking</b> Er is niet noodzakelijk een NFS voor alle DP.</p> <p><b>Verantwoording</b> Aangezien voor LCT deelname met LS DP mogelijk is moet deze verplichting geschrapt worden. Het is immers niet noodzakelijk zo dat voor alle punten op LS een NFS zal uitgevoerd worden.</p>	<p>Elia bedankt Fluvius voor de nuttige feedback. Elia heeft de regels aangepast om er voor te zorgen dat deze de mogelijke netwerk beperkingen terecht zouden beschouwen.</p>
2	<p>Fluvius <b>1042</b> <b>Opmerking</b> Deelname van LS DP buiten de VCMU moet expliciet uitgesloten worden.</p> <p><b>Verantwoording</b> Bij de voorwaarden van de VCMU staat vermeld dat die enkel uit LS DP kan bestaan. Dat is correct, maar het sluit niet uit dat iemand LS DP zou proberen te prekwalficeren op de klassieke manier (per DP, geaggregeerd in een Existing of Additional CMU)</p>	<p>De deelname van Leveringspunten op laagspanning is tot hertoe nooit expliciet uitgesloten geweest in de Werkingsregels voor de CRM. In de praktijk is echter wel gebleken dat Leveringspunten op laagspanning momenteel niet kunnen deelnemen aan de CRM (en dus bij uitbreiding aan de LCT), zoals ook blijkt uit de volgende vereisten die opgelegd worden in de FSP - DNB overeenkomst: aansluiting &gt; 1kV &amp; AMR (Automatic Meter Reading) vereist. Zolang de situatie niet verandert, zullen Leveringspunten op laagspanning niet kunnen deelnemen aan de CRM. Echter, vanaf het moment dat dit wel gebeurt en deze vereisten aangepast of opgeheven worden, meent ELIA dat het niet nodig is om de deelname van laagspanning Leveringspunten nog verder te blokkeren. ELIA wenst daarom geen verdere bepalingen op te nemen in de Werkingsregels m.b.t. het al dan niet toelaten van laagspanning Leveringspunten.</p>
3	<p>Fluvius <b>1042/1060</b> <b>Opmerking</b> Schrapen dat de DNB de NRP van Additionele DP of VCMU 'bepaalt'. De DNB kan deze hooguit bevestigen. De Decalred NRP moet gecapteerd worden door Elia.</p> <p><b>Verantwoording</b> Bij de voorwaarden van de VCMU staat vermeld dat die enkel uit LS DP kan De DNB heeft geen informatie (meetgegevens of zelf EAN in het geval van een VCMU) om deze NRP te bepalen.</p>	<p>Zoals ook aangegeven in het consultatierapport m.b.t. de CRM werkingsregels, meent ELIA dat de huidige bewoording niet aangepast dient te worden. Indien er ooit een conflict zou optreden tussen het NRP aangegeven door de CRM Kandidaat of door de DNB, wordt voorrang gegeven aan het NRP zoals "bepaald" door de DNB.</p>
4	<p>Fluvius <b>1049</b> <b>Opmerking</b> Verwijzing naar het TR PVN vervangen door één naar het TRDE (Technisch Reglement voor Distributie Elektriciteit) en de corresponderende benamingen in de andere regio's.</p> <p><b>Verantwoording</b> De meldingsverplichtingen zijn beschreven in het TRDE (niet TR PVN).</p>	<p>Elia bedankt Fluvius voor de nuttige feedback en heeft de werkingsregels dienovereenkomstig aangepast.</p>
5	<p>Fluvius <b>1049</b> <b>Opmerking</b> De voorgestelde eligibility check kan niet uitgevoerd worden bij de prekwalficatie van punten op MS. We stellen voor deze uit te voeren bij de pre-delivery controle, net zoals voor punten op LS.</p> <p><b>Verantwoording</b> De voorgestelde check gaat na of de keuringsdatum van de installatie van de kandidaat DP niet voor 30/6/2023 valt. Tijdens de prekwalficatieperiode zullen wij dit echter niet met zekerheid kunnen zeggen. De melding gebeurt immers niet steeds onmiddellijk na de keuring en er is een doorlooptijd voor de verwerking van de meldingsdossiers. De keuringsdatum die uiteindelijk gemeld wordt kan voor of na 30/6 vallen.</p>	<p>Elia bedankt Fluvius voor de nuttige feedback. De eligibility check tijdens de prekwalficatie is behouden (om al zoveel mogelijk 'non-eligible' capaciteiten ex-ante uit te sluiten), maar Elia heeft een bijkomende pre-delivery controle ingevoerd.</p>
6	<p>Fluvius <b>1070</b> <b>Opmerking</b> Graag verduidelijken dat de uit te sluiten dagen door Elia aan de DNB worden doorgegeven.</p>	<p>ELIA bevestigt dat het de uit te sluiten dagen zoals aangegeven en gejustifieerd door de CRM Kandidaat - net zoals andere informatie die relevant is om de NRP, dan wel de Bestaande DSM berekening te maken - door zal geven aan de DNB. ELIA wenst dergelijke procedurele elementen echter niet op te nemen in de Werkingsregels, aangezien dit ook niet voor andere procedures het geval is. Indien de DNBs van mening zijn dat dergelijke procedurele elementen wel vastgelegd dienen te worden in de Werkingsregels, stelt ELIA voor om in de loop van 2023 hier een ruimere analyse voor op te starten.</p>
	<p>Fluvius <b>Opmerking</b> Waarom moet de CRM kandidaat de ID van zijn leveringspunten uit het Elia platform doorgeven aan de DNB?</p> <p><b>Verantwoording</b> Elia kent immers zowel de EAN als deze ID en geeft deze mee in de DP snapshot en in de aanvraag voor NRP berekening.</p>	<p>Elia dankt Fluvius voor zijn feedback en beseft dat deze stap niet meer nodig is gezien het feit dat Elia de nodige informatie al ter beschikking heeft. Elia heeft dus de regels in die richting aangepast.</p>
	<p>Fluvius <b>Opmerking</b> De CRM kandidaat moet de FSP-DNB overeenkomst ondertekenen vooraleer de prekwalficatie op te starten bij Elia.</p> <p><b>Verantwoording</b> De FSP-DNB overeenkomst is een kaderovereenkomst. Een FSP moet dit kader accepteren vooraleer hij dossiers met betrekking tot punten</p>	<p>Elia dankt Fluvius voor zijn input maar wenst te benadrukken dat dergelijk overeenkomst tegen dezelfde deadline moet voldaan worden als het indienen van een PQ dossier. Volgens Elia stemmen de regels dan ook af met dit principe.</p>

7	<p>Centrica</p> <p>-&gt; Centrica welcomes the improvements proposed by Elia compared to the previous consultation with regards to the eligibility criteria of batteries as well as demand response</p> <p>Centrica welcomes the improvements proposed by Elia compared to the previous consultation with regards to the eligibility criteria of batteries as well as demand response Elements provided by Elia regarding both (i) clarification of the definition of "not in service" for batteries as well as (ii) the possibility to foresee a qualitative test for new DR MWs that would fail the quantitative test go in the right direction and will improve the overall LCT scheme. Centrica asks Elia to further consider or clarify its position regarding the risk of double counting that Centrica raised in its previous response.</p>	<p>Elia has taken note of Centrica's comment, both the current and previous one and has adapted the Functioning Rules and the Eligibility specifically to address these issues.</p> <p>"Not in service" has been clarified explicitly as much as possible by setting clear rules, both for TSO- and DSO-connected capacities. These can be found in Section 18.5.1 of the Functioning Rules.</p> <p>The possibility of a qualitative test has been added to the Functioning Rules. Elia is currently still investigating this possibility.</p>
8	<p>Centrica</p> <p>-&gt; Centrica asks Elia to further consider or clarify its position regarding the risk of double counting that Centrica raised in its previous response</p>	<p>Elia wants to point out that the risk of double counting has been one of the main guiding principles in reworking the rules for Eligibility of DSM.</p>
	<p>Looking at the cover note for this new consultation, Centrica could not identify any response nor proposal regarding the risk it raised during the previous consultation (see extract below) regarding the risk of double counting some implicit MWs that are already counting as contributing to adequacy but would still pass the eligibility test for the LCT as not having been sufficiently activated in the past to show a 0 MW flex baseline. Centrica therefore asks Elia either to provide some elements to explain the absence of elements in this risk, or to further consider the possibility to look into the supply contracts of new DR MWs applicants in order to mitigate this risk</p>	<p>This is explicitly addressed by defining and calculating an amount of "Existing DSM" that is excluded from remuneration but is to be added to the obligation if the capacity decides to offer additional DSM. The time window proposed by Elia should be sufficient to identify any "Existing DSM" considering the high prices and extraordinary circumstances in the past.</p>
8bis	<p>Centrica</p> <p>Extract of the previous response from Centrica on this point: <i>"Centrica supports the proposal of Elia and the rationale with it to target only the DR MWs that are not already contributing explicitly or implicitly to adequacy, as the LCT is not a market-wide mechanism but rather intends target a specific capacity gap that would be identified to ensure adequacy. However, looking at the criteria proposed, Centrica believes there is a risk that implicit DR MWs could pass the eligibility test, being allowed to take part to the LCT, while already being counted in the adequacy exercise: for example, a DR MW that would today implicitly contribute to adequacy via the overall "market response" volumes considered by Elia, but would do so with an activation price high enough to not having been activated sufficiently often in the past to impact its baseline, could very well pass the "No implicit participation in the energy market" filter proposed by Elia, and be allowed to take part to the LCT. If it consumes for example 10 MW, and can lower its output to 0 MW in case of need, as long as its baseline shows 10MW as a result which will be the case if the site did not activate in the past) then it will pass the test. Centrica believes that in this case there is a risk to double count these MWs, as they would already be counted in the adequacy exercise, and therefore not help to close the adequacy gap if they would explicitly contribute via the LCT. This of course links to overall design discussions around the CRM that can't be addressed in the specific exercise of the LCT but still. Centrica therefore points out the need to collectively work on finding a way to either (i) make sure the implicit MWs that are already counted in via the market response MWs are not made eligible to the LCT in order not to be double counted, or (ii) that the CRM design is modified in order to not anymore count in these MWs in the implicit part if they become explicit. As option (i) is probably the more realistic one to implement by the LCT timeline, Centrica suggests Elia to assess whether looking at the supply contracts of the DR sites that would apply to the LCT could not provide some elements to guarantee that they are not already providing some implicit participation to adequacy".</i></p>	<p>See above.</p>
9	<p>Febeliec</p> <p>Concerning Prequalification, Febeliec notices that the FPS Economy will no longer make a decision but only give an advice concerning compliance of a CMU with the CO2 emissions cap, which leads to questions about governance as it is unclear who will make the final decision on this topic (the Functioning Rules only cover the absence of an advice as a rejection, yet does not clearly indicate who will make a positive decision, based on the advice of the FPS Economy).</p>	<p>ELIA would like to clarify that the change in question actually concerns a translation inconsistency and that the FPS Economy has always only provided an opinion on the matter. ELIA does confirm though that it always follows the advice of the FPS Economy and indeed, the absence of an advice results in a rejection of the PQ file.</p>
10	<p>Febeliec</p> <p>Febeliec appreciates the efforts done by Elia and the other involved parties to ensure that as much as possible "new" demand side response can be identified and allowed to participate (a.o. beyond the DSR which some parties are already currently delivering), yet Febeliec remains very worried about the lacking complete definition of "new" concerning all different asset classes (for which Febeliec also wants to refer to the comments made on this topic during the WG Adequacy meeting). As already mentioned, Febeliec is very strongly concerned that if an important security of supply issue were to be found for winter 2024-2025, the framework could be too restrictive and exclude very important volumes of flexibility, which would drive up the overall cost and maybe even in itself jeopardize system security. In any case, Febeliec continues to find it extremely worrisome that at this point a complete and exhaustive definition of "new" or "low carbon" are not yet available. As stated above, Febeliec nevertheless appreciates the additional clarifications and degrees of freedom that were added for additional DSR and insists that a continuous effort is maintained to remove as much as possible all remaining barriers for participation, including a.o. more flexible approaches towards metering, testing, monitoring and volume determination. Febeliec refers in this context a.o. towards the periods taking into account for the baselines and the determination of volumes (e.g. related to outages, maintenance, shutdowns for sanitary reasons or on government or system operators requests, preventive shutdowns to avoid potentially important damages from unplanned curtailments, etcetera). Febeliec also in the context of monitoring and testing towards existing activations of assets (e.g. in the balancing context).</p>	<p>Elia takes note of Febeliec's comment and wants to point out that the current Functioning Rules provide a definitive definition of both "new" and "low carbon" (cf. CO2 threshold that will apply).</p> <p>Both the "in service" (found in 18.5.1) and "existing DSM" (found in 18.5.2) cover the aspect of a certain capacity being "new". The CO2 threshold covers the "low carbon" aspect.</p> <p>Elia takes into account specific circumstances such as closure, strike days, outages, ... by allowing Market Parties to indicate these as "non-representative" in the "Existing DSM" determination process.</p>
	<p>Febeg</p> <p>§1045. The 'not in service' check for eligibility is mentioned only in this article: "...if the unit is considered as not 'in service' at the moment of Prequalification File submission deadline". There should also be a check at the auction closing gate (or in coherence with §1083).</p>	<p>Elia thanks FEBEG for this comment and agrees that it should be clarified in the rules that the "in service" definition is also checked at the Prequalification File submission deadline. The Functioning Rules are updated accordingly.</p>

Febeg	<p>§1054. The NRP determination for DSM units is based only on the difference between the maximum offtake and the Unsheddable Margin. As far as we understand it, Predelivery Measured Power is determined in the same way as the NRP. No real activation is therefore needed, it can be considered as purely declarative (based on the declaration of the Unsheddable Margin). In the normal CRM Functioning Rules, NRP and Pre-delivery Measured Power are determined on the basis of the difference between a baseline and the maximum between the measured power and the Unsheddable Margin. This is also the case to determine Existing DSM in the LCT Functioning Rules. This demonstrates at least the capability to reduce the offtake power. We do not see the reason not to check this capability for the LCT. It is of utmost importance for FEBEG that the volume of existing DSM is correctly computed in order to ensure that only new, proven DSM (not yet participating to any market) are eligible to the LCT. Else, it would be totally discriminatory for other existing capacities, low carbon or not, that cannot participate to this auction. Also, any additional qualitative assessment needs to be carefully considered: it can only be a neutral party chosen by ELIA and for which the costs are charged to the CRM Candidate. This is necessary to limit the conflicts of interest.</p>	<p>Elia thanks Febeg for this comments and wants to clarify that the interpretation is indeed correct as this is purely declarative. It is not possible to "check" the capability to reduce the offtake power during Prequalification for the LCT as this is exactly the capacity that is <b>not</b> allowed in the LCT: it is not the goal to contract <b>proven</b> reduction, which is defined as "Existing DSM".</p> <p>Any additional DSM is allowed to be bid in is checked, together with the Existing DSM (which was previously calculated) during <b>Pre-Delivery</b>, where the capacity needs to <b>prove the sum of the additional DSM and the Existing DSM</b>.</p> <p>Elia takes note of the comment on the potential conflict of interest on the qualitative assessment and points out that these are taken into account in the development of the qualitative assessment.</p>
Febeliec	<p>For DSO-connected units, Febeliec takes note of the reference for Flanders towards (only) the technical regulation for the local transmission grid, but wonders how this will be covered for the distribution grids.</p>	<p>Elia thanks Febeliec for this comment and remarks that the functioning rules are updated accordingly.</p>
Febeliec	<p>Febeliec does not agree with the fact that in the event a DSO does not communicate to Elia within the required time period (e.g. for nominal reference power or declared nominal reference power, final existing DSM) the concerned CMU will be provisionally rejected by Elia, as this lies beyond the scope of influence of that CMU. Febeliec insists that a different mechanism is put in place in order to ensure that slow or lacking response by DSOs do not lead to the exclusion of capacities, even if this would imply penalties for DSOs.</p>	<p>ELIA understands Febeliec's concerns about the rejection of PQ files when the DSO does not reply and can confirm that timings and processes have been reviewed in order to avoid this situation whenever possible. For instance, the DSOs are required to send final results to ELIA well before the deadline for the communication of final PQ results to the CRM Candidate, to allow an intervention in case the DSO does not provide a reply. Moreover, ELIA will already remind the DSOs about their deadline 15WDs in advance.</p> <p>However, ELIA would like to point out that in case there is still no information from the DSO on the DSO-connected capacity, it has no other option but to reject the related PQ file.</p>
Febeliec	<p>On existing DSM, Febeliec refers to its comments above, but also would like to oppose the stipulation that a CRM candidate can only contest a provisional existing DSM only once per delivery period and per notification, as it does not see why this limitation is needed</p>	<p>Elia wants to point out that this is a process, similar to other processes such as the NRP determination in the regular CRM. Hence, there is a single contestation "moment" during Prequalification for this "Existing DSM", but this can entail several interactions to provide the correct information.</p>



## Pre-delivery

#	Stakehold Received Comment	Elia's answer in EN
1	<p>Febeg</p> <p>Definition Permitting Milestone:</p> <ul style="list-style-type: none"> <li>• Generally speaking, FEBEG asks ELIA to clarify the pieces that are to be communicated in order to prove that a capacity has reached the permitting milestone. However, FEBEG also asks ELIA to check with the relevant administration/authorities if those pieces can effectively be delivered (e.g. proof that no appeal has been introduced, ...).</li> <li>• Permits linked to infrastructure works, which are not under the control of the Capacity Provider, cannot be part of the documents to be requested to reach this milestone.</li> </ul>	<p>Elia understands that there might be some administrative hurdles for this proof. Some context that could impact this burden of proof.</p> <p>- As a general principle, according to its definition, a key milestone is reached when all necessary licenses/permits for the construction of the project have been obtained, delivered in the last administrative instance, be definitive, enforceable and cannot be disputed anymore before the State Council or the Council for permitting contestations. This reality is to be established by the capacity provider and cannot be assumed or accepted on the mere basis of the capacity providers' declaration, especially when the application of penalties depends on this milestone not having been reached at the moment of control (ps: in defining the level of the penalty, due account will also be taken of the reasonable efforts to reach the permitting milestone)</p> <p>- Like 'un train peut en cacher un autre', it is not excluded one or more other annulment/suspension requests have been filed and are still pending next to the proceeding the capacity provider is aware of and is reporting on to us. Because of the possible existence of these other annulment/suspension proceedings, the capacity provider has to provide the necessary comfort to Elia that these other proceedings are excluded, based on the following cumulative proofs to be provided by him to Elia :</p>
1bis	<p>Febeg</p>	<p>oProof 1 : A bailiff (huissier) proof of a display for the public of the permit in the area after being granted will allow to establish the date of the display, from which the 60 days deadline for filing an annulment/suspension request will start to run. But that still leaves the capacity provider with the task to obtain the confirmation of whether an annulment/suspension procedure has been filed, which takes still a few weeks after that 60 days (in Flanders: 45 days) deadline, when the capacity provider is invited to intervene in the procedure. Awaiting that invitation, the capacity provider can either also ask this confirmation from the authority that granted the final permit and could be informed of the annulment/suspension request first, or ask this confirmation from the Council of State/Raad voor vergunningsbetwistingen (see proof 3)</p> <p>oProof 2: Another bailiff (huissier) proof of a display of the permit in the area by the end of the 60 days (in Flanders: 45 days) deadline. Same comment applies here: it still leaves the capacity provider with the task to obtain the confirmation of whether an annulment/suspension procedure has been filed, which takes still a few weeks after that 60 days (in Flanders: 45 days) deadline, when the capacity provider is invited to intervene in the procedure. Awaiting that invitation, the capacity provider can either also ask this confirmation from the authority that granted the final permit and could be informed of the annulment/suspension request first, or ask this confirmation from the Council of State/ Raad voor vergunningsbetwistingen (see proof 3)</p> <p>oProof 3 : After that 60 days/(in Flanders) 45 days, it might still take some time the Council of State / Raad voor vergunningsbetwistingen informs the public authority who granted the attacked permit and, at the same time or even later, the capacity provider to whom the permit has been granted. It is always useful to ask an attestation to that public authority whether they have been informed of an annulment/suspension request, but, in the absence of such attestation, after max 3 or 4 weeks after the 60/45 days deadline it should be clear whether such request has been filed with the Council of State / Raad voor vergunningsbetwistingen or not and the capacity provider is in a position to make such a declare on the honor to Elia. In the Flemish region, there is also</p>
1bisbis	<p>Febeg</p>	<p>oProof 3 : After that 60 days/(in Flanders) 45 days, it might still take some time the Council of State / Raad voor vergunningsbetwistingen informs the public authority who granted the attacked permit and, at the same time or even later, the capacity provider to whom the permit has been granted. It is always useful to ask an attestation to that public authority whether they have been informed of an annulment/suspension request, but, in the absence of such attestation, after max 3 or 4 weeks after the 60/45 days deadline it should be clear whether such request has been filed with the Council of State / Raad voor vergunningsbetwistingen or not and the capacity provider is in a position to make such a declare on the honor to Elia. In the Flemish region, there is also the 'omgevingsloket' that allows the capacity provider to actively follow the further developments of the permit, it is however not sure that the Raad voor vergunningsbetwistingen also compiles the info in the omgevingsloket. Also here a few weeks is therefore to be taken into account.</p> <p>Infrastructure Works are clearly defined in chapter 3 of the Functioning Rules and have subsequently been identified during Prequalification. Elia requests information on any permits related to parts of the project not identified as such, regardless of whether or not they are directly under control of the Capacity Provider. In that context it is useful to point out That according to §365 of the functioning rules the quarterly report "Includes at least the following information:</p> <p>- [...]</p> <p>- when relevant, a follow-up of the Infrastructure Works that could influence the on-going project realization and timing as identified in the project execution plan communicated in the Prequalification File (see annex 18.1.6), supported by a written confirmation from the concerned infrastructure operator, if other than ELIA (Fluxys or the DSOs).</p> <p>[...]</p> <p>366. A delay is identified by the Capacity Provider in his quarterly report when: - it</p>

			<p>366. A delay is identified by the Capacity Provider in his quarterly report when: - it concerns a Project Works or an Infrastructure Works; and [...]</p> <p>However, according to §367, a residual delay is any delay in the project execution plan, with the exception of any delay linked to Infrastructure Works, for which no mitigation plan has been presented by the Capacity Provider, or which the mitigation plan is not, according to ELIA, able to resolve. “</p> <p>This means that the penalties will only apply for missing volume, which represents, according to § 391, the part of the Total Contracted Capacity determined as per § 356 for which a residual delay (as defined per § 367) is identified by the Capacity Provider.</p> <p>The info on the follow-up of infrastructure works is to be shared by the system operator with the capacity provider, but this is not a reason for the capacity provider not to include it into its quarterly report. This is because of its possible impact on the project works, as referred to in §365.</p> <p>This follows from §421 FR: “As soon as a delay in Infrastructure Work is identified by the system operator concerned, it notifies the Capacity Provider(s) concerned by the delay and specifies the potential impact of this delay on the Capacity Delivery start date. It provides the Capacity Provider(s) concerned with any additional information requested by the Capacity Provider(s). The system operator concerned keeps the Capacity Provider(s) concerned duly informed about developments with regard to the delay.”</p>
2	Febeg	<p>Process to change from additional CMU or virtual CMU to existing CMU</p> <p>FEBEG points out to the modalities of the pre-delivery monitoring in the Functioning Rules. It is currently provided that on 31/10/2024, a pre-delivery Tcontrol2 will be performed by ELIA where the contracted power will be measured. However, the Capacity Provider will have to start, in parallel, the process to become existing. FEBEG does not agree that the Capacity Provider needs to start the process to become existing by 15/06: as it was foreseen in the Functioning Rules V1 and V2, the Capacity Provider should be able to start the process anytime and ensure that ELIA is able to measure the contracted capacity in Tcontrol2 to avoid pre-delivery penalties. ELIA should, in any case, facilitate the process to become existing to avoid any additional financial impact on the Capacity Providers.</p>	<p>The date of 15/06 was chosen initially to be aligned with the existing Prequalification process. Elia is at this very moment still investigating the operational constraints in order to be able to move the deadline to a later date that also offers more flexibility for market parties, but can at this moment not yet give a definitive date. Elia commits to adapting the date once it is clear what is possible.</p> <p>Further Elia would like to clarify that it will always try to perform the switch from additional to existing as quickly as possible. However, for some elements Elia may have to rely on third parties (e.g. when the DSO has to determine NRP). The deadline of 15/06 is therefore rather to be seen as the final date to submit the PQ file such that Elia can guarantee that the full process can be completed in time. But again, Elia will look into moving this deadline to a later date.</p>
3	Fluvius	<p><b>444</b> <b>Opmerking</b> De DNB meldt de eventuele vertraging aan de kandidaat maar beschrijft niet de gevolgen voor zijn contracten</p> <p><b>Verantwoording</b> De DNB beschikt niet over alle informatie om hierover een uitspraak te doen.</p>	<p>Elia understands Fluvius' concerns and has adapted the paragraph accordingly.</p>
4	Fluvius	<p><b>1088</b> <b>Opmerking</b> Graag verduidelijken voor welke periode de 'Bestaande DSM' berekend moet worden bij de preleveringscontrole</p> <p><b>Verantwoording</b> Het is onduidelijk of dit de Bestaande DSM van bij de prekwalficatie is of een nieuwe, berekend voor een latere periode.</p>	<p>Elia confirms that the amount of Existing DSM only needs to be calculated once during Prequalification. The volume that is determined there remains unchanged throughout the Pre-delivery Period and the Delivery Period.</p>
5	Fluvius	<p><b>1088</b> <b>Opmerking</b> Graag bevestiging dat de 'Bestaande DSM' door Elia aan de DNB gevraagd zal worden, net zoals het geval is voor de NRP.</p>	<p>The calculation of Existing DSM happens in the framework of Prequalification and follows the same modalities as the determination of the NRP. From that perspective, it is indeed the DSO who will calculate this, and provide Elia with this information at the same time as the result of the NRP determination.</p>

## Availability

#	Stakehold Received Comment	Elia's answer in EN
1	Febeg For energy-limited capacities, FEBEG asks ELIA to ensure that the rules do not negatively impact the economic dispatch of the assets in the electricity market. E.g. for a CMU with daily schedule, the absence of production during any or each AMT Moment of a day should not be penalized as long as the CMU is available according to its daily schedule.	Elia understands FEBEG's concern and wishes to refer to section 9.4.3.2.2 of the Functioning Rules, where it is included that a Daily Schedule CMU's Available Capacity is determined based (among others) on the last Pmax stated in the Daily Schedule of the unit, which is not necessarily equal to the Measured Power.

## Disputes

#	Stakehold Received Comment	Elia's answer in EN
1	<p>Febeliec</p> <p>Concerning the CRM Disputes Committee, Febeliec most strongly wants to refer to its comments in previous consultations and still finds it unacceptable that an ad hoc chairman can be appointed by the two parties to the dispute to settle their dispute, without the guarantee that the chairman will not resolve their dispute at the detriment of costs for consumers. Febeliec finds it unacceptable that the overall cost element is still not taken into account in the settlement of disputes and continues to fundamentally oppose this section of the CRM Functioning Rules.</p>	<p>Elia takes note of Febeliec's comment, but emphasizes that the proposed process is in line with the dispute process in the context of the CRM.</p>

## Secondary Market

#	Stakehold Received Comment	Elia's answer in EN
1	<p>Febeliec Concerning the secondary market, Febeliec wants to refer to its comments on this topic above and keeps wondering how the LCT tender and CRM will be seamlessly integrated to avoid perverse effects in the secondary market. Furthermore, it is unclear to Febeliec which will be the impact of the existing DSR in the LCT on volumes of those CMUs in the secondary market as well as for participation in the CRM (primary market) auctions. Febeliec would like Elia to clarify this aspect.</p>	<p>Elia would like to distinguish between participation to the secondary market for the LCT and the CRM:</p> <p><u>- Participation to LCT Secondary Market (cf. Transaction Period covers the LCT Delivery Period).</u></p> <p>Non selected, but successfully prequalified for the LCT capacities are eligible to participate to the LCT Secondary Market. The Existing DSR, determined as part of the PQ Process, is subtracted from the volumes that can be traded on the Secondary Market (cf. determination of Secondary Market Remaining Eligible Volume).</p> <p><u>- Participation to CRM Secondary Market (cf. Transaction Period covers one of the CRM Delivery Periods)</u></p> <p>For participation to the CRM Secondary Market, the capacity should successfully complete the PQ Process for the relevant Delivery Period (cf. prequalification requirements for the Secondary Market in section 5.6.1), given that a Prequalification File is linked to a Delivery Period. This allows Elia to assess the Prequalification File with respect to the specific prequalification requirements for the related Delivery Period. Volumes that are already contracted under the LCT (cf. multi-year contracts) are subtracted from the volumes that can be traded on the Secondary Market, but "Existing DSR" equals 0 MW after the end of the LCT Delivery Period.</p>
2	<p>Febeliec Febeliec furthermore continues to have grave concerns concerning the liquidity of the secondary market for the LCT tender, especially also in combination with the issues concerning overall liquidity for this tender because of a too strict framework for participation.</p>	<p>As elaborated more in detail in the LCT design note, Elia repeats that the LCT scope only includes new capacities. Hence, Elia sees similar concerns regarding potential secondary market volumes. However, Elia refers to the efforts made to broaden the eligibility criteria for the LCT with the aim to increase the competition in the auction and the liquidity in the secondary market.</p>

## Payback

#	Stakehold Received Comment	Elia's answer in EN
1	<p>Febeliec Concerning the payback obligation, Febeliec cannot validate the proposed Functioning Rules by Elia as it is unclear how indexation would be applied, while also the discussion on retroactivity is not yet concluded, nor the discussion on the removal of a strike price for DSR (which is still not removed from the Functioning Rules). Febeliec wants to refer to its comments on this topic during the meetings of the WG Adequacy and related consultations and wonders to what extent the price cap for participation of demand side response will be removed, as it is a major barrier for participation of DSR to the LCT, and could thus jeopardize finding sufficient volumes for the tender. Febeliec insists that legal and regulatory clarity, as well as translation thereof in the Functioning Rules and the Contract is of the utmost importance.</p>	<p>Elia thanks Febeliec for its feedback on the Payback Obligation. Elia can only point out the fact that the final proposal with respect to the amendments of the Payback Obligation principles (updated indexation of the strike price and Payback Obligation exemption for DSM units) has been presented in WG Adequacy early 2023 and was part of the proposal for the CRM Functioning Rules made by Elia by February 1st. Since no additional specific feature are foreseen with respect to the LCT for the Payback Obligation, the abovementioned amendments will be applicable for the Payback Obligation mechanism of the LCT.</p>
2	<p>Febeg FEBEG thanks ELIA for the progress made on the strike price indexation and refers to the comments provided in the consultation organized by ELIA on the CRM Functioning Rules. In particular, for storage assets, the revenues are mainly linked to the spread between peak and off-peak prices, and not to the average electricity price on the day-ahead market. Actually a better approach could have been to link the strike price to a maximum spread above which a payback obligation is due. FEBEG also recommends that the formula is tested for energy-constrained CMUs with daily-schedule as we fear that the formula could induce in some cases higher payback amounts per contracted MW than for non-energy constrained assets (the impact of the derating factor could be more important than the limitation of the payback obligation to SLA hours).</p>	<p>Elia thanks FEBEG for its feedback on the Payback Obligation and takes note of FEBEG's support with respect to the proposals made in the framework of the public consultation on the CRM Functioning Rules.</p> <p>Regarding the updated indexation mechanism of the strike price, Elia would like to remind that one of the initial goals of the Payback Obligation has always been to respect the technology neutrality principle in the design leading to the application of a single strike price to the Belgian CRM. For that reason, Elia has not differentiated its proposal of strike price in function of the technology targeted eg. for batteries (with the exception of the regime applicable to daily-schedule units VS non-daily schedule units).</p> <p>As for the fact that the proposed Payback Obligation mechanism would, all other things being equal, potentially lead to a bigger amount of Payback Obligation per MW of energy constrained units, Elia would like to stress that this seems linked to the intrinsic character of the asset which might decide or not to participate to the CRM given the potential risks &amp; related benefits. Finally, Elia would like to highlight the fact that the principle of a single activation per day was retained since the early discussions on the design of the CRM leading therefore to only one moment per day during which an availability monitoring or a payback obligation could take place.</p>