

Subject: FEBEG's reaction to the public consultation on the CRM Functioning Rules  
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## Overall remarks

FEBEG thanks Elia for having the opportunity to react to *ELIA's Public consultation on the CRM Functioning Rules*<sup>1</sup>.

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.

The inputs and suggestions of FEBEG are not confidential.

## Executive summary

FEBEG welcomes the enhancements introduced with this new version of the functioning rules but also has some concerns with some changes or new concepts that are being introduced and which are impacting the availability obligation, liquidity and level playing field within the CRM. Some adjustments to maintain historical principles and to accommodate technical realities are therefore necessary regarding the following elements:

### **Secondary market transaction negatively impacted by the concept of Proven Availability for CMUs with Daily Schedule**

The concept of "Proven Availability" has a negative impact for secondary market ex-post transactions. The proposal of limiting Proven Availability to scheduled production for secondary market ex-post transactions instead of using the Remaining Maximum Capacity constitutes a shift from an availability obligation to a production obligation these transactions, potentially reducing liquidity of the secondary market, limiting the possibility for market actors to valorise their available capacity and is contrary to the initial intention of the CRM to be based on an availability obligation. It will overall be detrimental to the system.

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<sup>1</sup> [https://www.elia.be/en/public-consultation/20231201\\_Formal-public-consultation-on-the-CRM-Functioning-Rules](https://www.elia.be/en/public-consultation/20231201_Formal-public-consultation-on-the-CRM-Functioning-Rules)

**Different treatment of payback obligation for scheduled/non scheduled CMUs should be avoided.**

The proposal sets the Activation Ratio for CMUs with Daily Schedule at 1, while non-Daily Schedule CMUs consider the Required Volume in market reactions while Daily Schedule CMUs also respond to market prices based on their production cost and should not be treated differently. As the proposed strike price calibration and indexation may not ensure that the applied strike price exceeds the variable cost of Daily Schedule peak units, we consider that, to ensure the level playing field and the technology-neutrality, the Activation Ratio for CMUs with Daily Schedule should be based on the scheduled power.

**Scheduled Maintenances allowance duration is insufficient.**

While FEBEG appreciates the allowance of 20 days of scheduled maintenance without availability penalties, it deems this insufficient for major overhauls which can exceed the allocated 20 days. FEBEG proposes calibrating the period based on technology or allowing capacity providers to accumulate unused days for scheduled maintenance up to a maximum of 75 days. Additional flexibility in announcing and planning maintenance days, like CMUs without Daily Schedule, is also strongly recommended.

**Market Time Unit (MTU) change should carefully be assessed:**

FEBEG is of the opinion that it is unacceptable that the fundamental change of 'hour' to 'MTU' is implemented without any analysis and discussion. For this reason, FEBEG explicitly wants to express its reservations with regard to this modification. FEBEG would welcome a more in-depth analysis of the potential impact of the proposed modification as well as possible mitigating measures. We are concerned with the introduction of MTU change without sufficient discussion with market parties and fear that the transition from an hourly granularity to a 1/4-hour granularity raises some risk for potential negative consequences, particularly in payback obligations and availability monitoring.

**The Cap of 50% on the adaptation of the 200h Capacity Reserved for T-1**

FEBEG supports the concept of partial reduction for volumes reserved for later auctions for CMUs that do not have an obligation to prequalify in the CRM. However, we do not support the cap of 50% applied on the volume that would be corrected. We stress the significance of the Y-4 and (future) Y-2 auctions over Y-1 auction which should remain an adjustment auction.

**The Strike Price Indexation Formula still entails some inconsistencies.**

The strike price indexation formula has still some inconsistencies, specifically concerning the reference time used for the indexation. The use of monthly averages for ex-post indexation creates a discrepancy with the calibration of the strike Price (based on average of Day-Ahead prices during Peak Hours, Working Days, winter months) which we suggest resolving. It is utmost important to maintain a strong link with market fundamentals and avoiding undue payback obligations. Therefore, the average over all hours of months considered should be considered for the determination of the Average DAM as initially proposed by Elia.

## Detailed remarks on the CRM Functioning Rules

We hereafter provide comments on the different chapters of the CRM Functioning Rules. For the sake of clarity, we will list all chapters independently if we have specific comments or not.

### 1. Introduction

### 2. General Provisions

- **§ 11: Retroactivity**

FEBEG is of the opinion that the changes in relation to the functioning rules and the CRM contract cannot be applied to existing commitments (cf. previous auctions and related contracts) to the extent the changes negatively impact the balance between rights and obligations of parties (and hence cause additional costs/risks/obligations for the capacity provider), unless there is consent of the capacity provider.

Indeed, the amendment of each single clause can have an impact (cost/risk/obligation) on the capacity provider: not only changing the applicable penalties, but also modifications to requirements, new operational procedures, changing the liability clauses (higher liabilities), amending the Force Majeure clause, changing payment modalities, adding clauses etc. can have a substantial impact on the capacity provider, and can result in an impairment.

We acknowledge that certain modifications can be made retroactive when duly justified. In that case, FEBEG can support those modifications.

In relation to the current consultation, we consider that the following modifications to the functioning rules cannot be applied retroactively:

- Introduction MTU
- Permitting milestone through quarterly report
- New obligations concerning the CO<sub>2</sub> emissions' ex-post control
- Maximum volume for ex-post secondary market trades based on the P<sub>max</sub> available for the daily-schedule CMUs

### 3. Definitions

- **Market Time Unit (MTU):**
  - It appears to FEBEG that the concept of MTU and its consequences have not yet been discussed with market parties. FEBEG is of the opinion that it is unacceptable that the fundamental change of 'hour' to 'MTU' is implemented without any analysis and discussion:
    - Higher granularity lead to a higher probability of pay-back obligation. We fear that in some scenarios the change from the granularity 'hour' to '1/4h' will have negative consequences. Higher granularity means higher probability that the strike price is above the reference price. On top of that: the higher granularity, the higher the pay-back will become as spikes on a quarter-hour level can become more extreme (we refer also to the examples in Appendix 1).
    - we are of the opinion that lowering the granularity to a 1/4h could lead to availability controls which are linked to an inter-hour profiling issue, thus a flexibility issue rather than an adequacy issue. Also, in the transition phase, the behaviour of some market parties (learning curve) may lead to strange situations (pricing) which are not reflecting adequacy issues. Even if AMT MTU's are combined in AMT moments, there will overall still be more AMT moments.

For this reason, FEBEG explicitly wants to express its reservations with regard to this modification. FEBEG would welcome a more in-depth analysis of the potential impact of the proposed modification as well as possible mitigating measures: at the minimum, we suggest that Elia develops rules in order to not consider inter-hour profiling issues leading to higher 1/4h Day-ahead price as control moments or payback moments.

- The definition of Market Time Unit refers to Article 2 (9) of Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (CACM). We could not find such a definition in the referred article.
- Through the Functioning Rules document, a MTU can be related to the Day-ahead market or to the Intraday or Balancing market. We suppose that, when there is no specific reference to a market, the MTU is relating to the Day-ahead market. This should be clarified in the Functioning Rules.
- **SLA MTU** : "... up to N hours of AMT MTUs over one day where N corresponds to the number of Market Time Units in the CMU's SLA..." The CMU's SLA specifies a number of N hours, not a number of N MTUs.

- **New-build Capacity Market Unit (new Build CMU):** FEBEG supports the clarifications of the definition of a new-build CMU and is of the opinion that such clarification should also lead to a proper assessment of the fast-track CMUs in terms of opt-out IN/OUT.

We are also wondering if reference to all relevant regional permits is sufficient. There could be cases where a developer may have received all relevant permits but has not yet an intention to pursue the project (e.g. connection issues, supply chain issues, still looking for investors, permit not yet definitive/enforceable and potentially still subject to or under appeal ...). Such cases should not reduce the demand curve of the concerned auction. Therefore, given still the important volumes transferred to future auctions, we propose that any CMU for which the installation are not built or not yet in construction phase as a new-built.

See also comments on opt-out categories and 'expected 'in service' arrival.

#### 4. Service Time Schedule (and Prequalification processes)

#### 5. Prequalification processes

- **§83**

FEBEG wonders to which extend the obligation to prequalify into the CRM should remain for capacities that have no intention to participate to the CRM. It indeed significantly increases the administrative burden for the asset owners for limited added value: the information based on the prequalification is not accurate (see discussions in Elia WG 'Adequacy': not all capacities above 1 MW need to prequalify) meaning that Elia anyhow needs to do an assessment of which volumes are to be removed from the demand curve (cf. today the "non-eligible" volumes).

- **§89:**

With regard to the CO2 emission, the sentence 'An offender is liable to sanctions' is added. This is confusing as other articles might also invoke penalties.

- **Section 5.2.3.1.2 – participation of low-voltage delivery points (§§90–94)**

Elia and the Belgian authorities (while setting the demand curve) should make sure there are no double counting of the flexibility that would participate to the CRM. This is valid for the DSM (low-voltage but not only) that would be considered in reduction of the average load during scarcity moments. How does Elia plan to cope with this risk?

- **§105:**

FEBEG assumes that when the targeted permit is submitted, it does not have to be resubmitted even in the situation that the permitting milestone is not yet reached.

- **§106:**

a) In the FRv3 the waiver declaration related to the capacity allocation and reservation was not necessary for Delivery Points of New Build CMUs that were already associated to a Capacity Contract. This exception should remain in place in the FRv4.

b) We don't agree with the proposed track change. There should not be an automatic continuance waiver in case of CRM Candidate sees its prequalification file rejected or if he would renounce to participate to the CRM. In such a case, the Functioning Rules should also clearly describe when the waivers become actually void.

- **§117:Expected 'in service' arrival**

It is not clear for FEBEG how this information will be considered for the opt-out classification (IN or OUT). In the cover note, we understood that all fast track new-build CMUs would be considered as opt-out/OUT. The paragraph also does not provide a clear rule linked to the concept of 'expected in service arrival': from our understanding, it seems that all full opt-out volumes linked new-build CMUs are to be considered OUT (cfr § 196, 199, 201 and 204). FEBEG considers that in the Y-4 at least, all fast track new-build should indeed considered as opt-out/OUT given the volume reserved for the Y-1 (and in the future Y-2).

To the extent that the concept should be relevant for determining the contribution to the security of supply, FEBEG wonders if a justification would not be appropriate rather than just submitting a date.

- **§157:**

'If possible' to be removed again.

- **Section 5.4.2.2 – Classification of Opt-out Volumes (§§194–205)**

FEBEG supports the proposals.

- **§218:**

We understand that in this case it will not be possible to submit a bid in the Auction. Can Elia clarify what are the consequences ? (in the XB Design Note of 23/10/2023, a penalty and the possibility to reduce the volume of the bid were foreseen)

- **§252:**

For the renewing of Prequalification files relating to a Delivery Period not related to the coming auction (eg for an earlier delivery period for which the CMU has a contracted

volume), the process should be simplified and, for instance, no update of the CO2 file should be required in case the CMU is prequalifying for the coming auction with the Fast Track Prequalification process.

Indeed an update of the CO2 number and CO2 documentation has no added value and increases the administrative burden for all parties (CRM Actor, Elia, SPF Economy). FEBEG requests that the CO2 number and CO2 documentation introduced in the Prequalification file for the auction in which the CMU was contracted may be re-used as such.

## 6. Auction Process

- **§286:**

In case the requirement is not respected, Elia should warn the CRM actor before bid submission deadline so that the CRM actor can adapt the bids and/or opt-out volumes related to this CMU. This could be part of the ‘compliance check’ as foreseen in § 295.

- **§315:**

Last indent : the word ‘*his*’ in ‘*from all his bids*’ should be removed (also in the French version).

- **§316:**

We support the proposed concept of partial reduction of the volume reserved for later auctions for both the Y-4 and Y-2 in case volume is bid by CMUs that do not have an obligation to prequalify in the CRM. However, we do not support the cap of 50% applied on the volume that would be corrected. This is particularly relevant as the initial reserved volume (the volume that is expected to be activated less than 200h/year) could also increase in the future.

FEBEG is of the opinion that the Y-4 should remain the main CRM auction and in the future – when the Electricity-Law is adapted– the Y-2 auction the second most important. The Y-1 auction should only remain as an adjustment auction.

In addition, if some capacities that do not have an obligation to prequalify have in fact an increasing willingness to already prequalify for the Y-4/Y-2 auction, and hence do not wait for the Y-1 auction, then it should not be restricted by a cap.

## 7. Capacity contract signature

- **§387:**

As stated in the past, the current rules imply a penalty in the case the capacity contract is not signed by the selected CRM Candidate. However, such penalty should also apply to the counter-party Elia. There could be a prejudice for the selected CRM candidate if the contract would not be signed on time for reasons due to Elia.

## 8. Pre-delivery Control

- **§409:**

Permitting milestone: In the future the Capacity Provider has to demonstrate he has the reached the permitting milestone through the quarterly report. The template in annex for the quarterly report has not been modified accordingly. More important, the modification implies that the Capacity Providers loses flexibility to demonstrate he has reached the permitting milestone. He can only do this on a quarterly basis, in stead of at any moment. It is also not clear what will happen when Elia considers the submitted information as not sufficient. Will Elia reject the submitted quarterly report? What happens if the Capacity Provider cannot provided the required additional information in a short period? Does the Capacity Provider need to wait until the next quarterly report to try again to demonstrate the permitting milestone?

FEBEG is also concerned to note that, in reality, Elia is going very far into the requirement for demonstrating the permitting milestone. According to annex B.3, the Capacity Provider can demonstrate reaching the Permitting Milestone by including a copy of the permits. However, this does not align with the practical scenario, as Elia is requesting additional information, such as attestations from third parties confirming the absence of ongoing appeals. Experience indicates that authorities are generally hesitant to provide such statements. The §409 and the annex B.3 are, hence, not self-supporting as the relevant information is to be found in the 'Questions and Answers'.

- **§475-476:**

FEBEG considers that a delay of the start of the Capacity Contract with one year in case of a delay on Infrastructure works is not in all cases in the benefit of the Capacity Provider, Elia nor beneficial to Security of Supply of our country.

More in particular, if the delay on Infrastructure works can be limited to a few months, FEBEG is of the opinion that the Capacity Provider should have the right to delay the start of the delivery under the Capacity Contract, corresponding to the incurred delay (and hence not always with one year).

However, and obviously, in such case no penalties are due by the Capacity Provider. In practice this means that:

- the penalty at Tcontrol\_2 should not apply (or Tcontrol\_2 should be postponed with the incurred delay),
- no penalties can be asked for unavailabilities during the delay period,
- and the escalation procedure should not apply



- **8.6.1. From Additional CMU to Existing CMU**

FEBEG welcomes the clarifications and additional details describing the process to go from Additional CMU to Existing CMU. A Delivery Period starts on the 1st of November. So, in theory, the Capacity Provider should make sure its asset is available by the 1st of November. FEBEG understands that administrative and technical checks need to be done and that Elia wants them to be done before the start of the Delivery Period. FEBEG can accept such approach but under the condition that the maximum flexibility is provided to the Capacity Provider to go the process from Additional CMU to Existing CMU. In this context, FEBEG cannot accept the following constraints:

- **§485:**

FEBEG does not understand why the organization of a Prequalification test cannot be used to contest the NRP determined following the use of historical data, and requests to keep this possibility.

- **§485:**

If the timing of the process to evolve from Additional to Existing was launched after the Bid submission deadline and if historical measurement data in July, August or September are available, the CRM actor should be allowed to request to use these historical data for the NRP determination next to the use of the organization of a prequalification test, or the use commissioning data (cfr §486). Having the possibility to use historical data for the NRP determination is the most efficient and less impacting way of proving the power of the capacity in those circumstances.

## 9. Availability Obligation

- **§517–519 :**

An unavailability notified in the Outage Planning Process before 11:00 am in day-ahead should not always by default be registered as Announced Unavailable Capacity. The CRM Actor should have the possibility to change the ‘by default’ registration (as Announced Unavailable Capacity or not) in the course of the Delivery Period, next to the case by case modification of this registration via the CRM IT Interface.

- **§527:**

Although we welcome the idea of 20 days of Scheduled Maintenance per delivery period that are not subject to an availability penalty, this measure does not meet the technical reality of existing assets. Though 20 days could cover the yearly maintenance and inspections, these 20 days do not cover a typical Major overhaul. Depending on several factors, like running hours and number of start-ups, every 4–5 years a gas fired power plant has to make such a major overhaul and these can easily exceed the 20 days of

scheduled maintenance (and last up to 10 weeks). Moreover, as powerplants age and exceed their initial lifetime, unforeseen extra maintenances tend to become more frequent.

The limitation of 20 days is not technology neutral as it favours capacities for which maintenance works are limited in time. Therefore we propose to calibrate the period in function of the technology (e.g. based on the Elia database) to allow longer periods for assets needing longer maintenance periods.

Alternatively, FEBEG proposes that capacity providers may cumulate unused days for scheduled maintenance, up to a maximum of 75 days outside of winter period, that can be used over a year.

More flexibility regarding the announcement and planning of these maintenances would also be welcome. Being capable of changing the selected Schedule Maintenance days 90 days in advance, like for CMUs without Daily Schedule, would be an improvement. If this would not be possible, the CMU without Daily Schedule should also be asked to notify their Scheduled Maintenance before 31/12/Y-1 to remove this discrimination.

Providing such rules is, in FEBEG's opinion, also justified as some capacities will be more likely subject to availability tests only, meaning that in that case, they have up to 75 days of unpenalized unavailability (of which 25 max in winter) that can be announced up to the day before.

- **§575:**

Step v, last sentence : *'The Required Volume equals zero MW if no such price was surpassed.'* Can Elia clarify if 'such price' indeed relates to the (partial) Declared Day-ahead Price ?

- **§577:**

It is not clear how in step iii, the *'y prices corresponding to the y volumes obtained in step iii for determining the Required Volume in section 9.4.2.3.2'* are determined. We understand that, according to the volume retained, the price is determined either in the previous step ii, or as the (partial) Declared Day-Ahead Price corresponding to this volume. Is it correct ? Can it be clarified in the Functioning Rules ?

- **§593–594: Concept of “Proven Availability” for CMUs with Daily Schedule – impact on secondary market ex–post transactions.**

For Availability Monitoring, a CMU with Daily Schedule(\*) is considered available in function of the  $P_{\max\_available}$ . No scheduled or real production is required. Otherwise the CRM would interfere with the energy market. This has also been acknowledged in the Commission Decision (EU) 2022/639 of 27 August 2021<sup>2</sup>, in chapter 2.8.2. *Availability Monitoring* :

*(173) Capacity providers with a daily schedule obligation in the energy market are presumed to have an available capacity at each AMT hour of maximum power ( $P_{\max}$ ) available.*

(\*) with the exception of Energy Constrained CMUs with Daily Schedule outside of its SLA Hours

It is the same to determine the volume that a capacity can buy ex–ante on the secondary market: it is limited by the Remaining Maximum Capacity, which is determined based on the  $P_{\max\_available}$ .

For secondary market ex–post transactions, “*Proven Availability*” is needed. Until now, Proven Availability was determined in the same way as the availability for Availability Monitoring. The definition of Proven Availability in the FRV1, FRV2 and FRV3 refers also to  $P_{\max\_available}$ . Elia now proposes to limit Proven Availability to scheduled production.

We do not see for which reason a volume which is considered as available for Availability Monitoring, would not be considered as available for a secondary market ex–post transaction. Also we assume that a capacity fully reserved to deliver mFRR but not effectively producing would be considered for its  $P_{\max\_available}$  – we don’t see a reason for different treatment for secondary market ex–post transactions.

The proposal to limit Proven Availability to scheduled production is a significant change in the design of the CRM:

- it changes an availability obligation to a production obligation for secondary market ex–post transactions
- it reduces the liquidity on the secondary market

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<sup>2</sup> Additionally it should be noted that the Commission’s Decision explicitly mentions in recital (8) that the capacity fee paid to capacity providers with a reliability option consists of a fixed payment for maintaining the contracted capacity available for any periods of scarcity. It thus remunerates the availability of the capacity:

*(8) Under the CRM, the beneficiaries would be selected through a competitive bidding process and would be remunerated for their availability. The support would take the form of a capacity payment for the duration of the capacity agreement. In exchange, the successful bidders would give their availability to meet the transmission system operator’s (“TSO”) demand during stress events that could occur.*

Limiting the volume available on the secondary market for ex-post transactions in function of the scheduled production (instead of available capacity) limits the possibility for market actors to valorize their available capacity and will increase considerably the risks for the CRM actors: up to 16% of the annual remuneration can be lost in one event of Forced Outage if no mitigation through the secondary market is possible.

Furthermore the Daily Schedule CMUs have no pooling possibility (contrary to non-daily schedule units), which creates a distortion as they are obliged to go through the secondary market to cover their unavailabilities.

Generally speaking, FEBEG would like to remind that, in the design discussions but also in the approval decision of the European Commission, the CRM has always been associated to an availability obligation and never to an delivery obligation. This principle should be applicable for both the primary and the secondary market transactions (ex-ante or ex-post). Only when Elia does not have sufficient means at disposal to verify the availability of CMU (e.g. no scheduling obligation), then an obligation to deliver could be justified.

- **§594:**

Next to the previous comment on the concept of Proven Availability for CMUs with Daily Schedule, FEBEG points out that the correction applied to  $P_{\text{Schedule}}$  for participation to Ancillary Services should be limited to the volume reservations for upwards services. Indeed,  $P_{\text{Schedule}}$  integrates a derating for the volume reservations for ancillary upwards services (and thus must be corrected for these reservations), while in case of ancillary downwards services, the uprating integrated in  $P_{\text{Schedule}}$  is to be considered as “proven”. Also no correction for Ancillary Services and Redispatching activations should apply.

Example 1 : for a capacity participating to a up service (eg. mFRR) with is full volume:  $P_{\text{Schedule}} = 0$ . With the correction proposed in the FR, in case of a full activation by Elia ( $V_{\text{activation}} = V_{\text{reservation}}$ ),  $P_{\text{available, proven}} = P_{\text{Schedule}} + V_{\text{reservation}} - V_{\text{activation}} = 0$ , while the capacity was fully available and has delivered the requested power. The activation should not be taken into account in the correction.

Example 2 : for a capacity participating to the aFRR down service, with the correction proposed in the functioning rules, in case there is no activation by Elia, the proven availability would be lower than  $P_{\text{Schedule}}$ . Only in case of full activation, the proven availability would be equal to  $P_{\text{Schedule}}$ . The proven availability should in fact not be dependent on the activation or not by Elia of the service, and should be equal to  $P_{\text{Schedule}}$  (no correction for down services).

Determining the Proven Availability on the basis of  $P_{\text{max\_available}}$ , as requested in the previous comment, avoids the necessity to apply corrections for participation to Ancillary and Redispatching Services.

- **§596:**

$P_{\text{Measured}}$  should be taken in absolute value and should be corrected for participation to Ancillary and Redispatching Services (as is the case for CMUs without Daily Schedule). Indeed  $P_{\text{Measured}}$  includes the effects of the volumes reservation and activation by Elia, and thus should be corrected. Proven Availability should not be impacted by the participation to Ancillary and Redispatching Services.

- **§598:**

Also the data needed for the correction related to participation to Ancillary and Dispatching Services should be provided by the foreign TSO.

- **§630:**

Instruction of an Availability Test should not only take place via the CRM IT Interface, but also by other communication means with more visibility for the CRM actor, to be discussed with the market parties.

- **§639:**

The correction for Ancillary and Redispatching Services are denoted by ' $V_{\text{Act,AS}}(\text{CMU},t)$ ' and ' $V_{\text{Act,RD}}(\text{CMU},t)$ ': they should be denoted by ' $V_{\text{correction,AS}}(\text{CMU},t)$ ' and ' $V_{\text{correction,RD}}(\text{CMU},t)$ ' as per annex 18.3.4.1.1 and 18.3.4.1.2

However, in case of ancillary downwards services, no correction for the volume reservation should apply. Indeed, in case of correction for volume reservation and if there is no activation of the downwards service, the available power would be determined as being lower than the measured power, which is not correct.

Also no correction for upwards activations should apply in case of not reserved Ancillary Services or in case of Redispatching Services. Indeed, available power should never be lower than the measured power.

- **§652:**

We think that in the definitions, 'T' should be 't', and Q should be 'T' (also in the sum); 'of' should be replaced by 'or' in the definition of 'T'.

## 10.Secondary Market

- **§738:**

In the Remaining MEC calculation, the '*total Bid volume that has been selected from Bids in the Y-4, Y-2 and Y-1 Auction related to Foreign CMUs across this border*' should be replaced by the '*total Bid volume that has been selected from Bids in the Y-4, Y-2 and Y-1 Pre-Auction related to Foreign CMUs across this border*'.

## 11. Financial Securities

- **§822:**

A penalty of 15.000 €/MW should only be applied after a first reminder by Elia

- **§836 :**

*“15,000 €/MW from the moment the ‘Permitting Milestone’ has been reached during the Pre-delivery Period”*: this should apply also if the Permitting Milestone has been reached before the Pre-Delivery Period

## 12. Payback obligation

- **§875 :**

*“Average DAM (winter months calibration) is the average of Day-Ahead prices during Peak Hours, Working Days, winter months used for the calibration of the Strike Price as detailed in article 26 of the Royal Decree on ‘Methodology’.”*

As for the ex-post indexation the monthly average Day-ahead prices (and not the average of Day-ahead prices during Peak Hours, Working Days) is taken into account, the average over all hours of the considered months should also be taken into account for the determination of the Average DAM (winter months calibration), as discussed during the Working Groups Adequacy in 2022. Otherwise, there is an asymmetry in the formula. FEBEG had opposed the current formulation during the consultation organized by the CREG on the Functioning Rules V3. We remind that the CREG, in its approval process of those Functioning Rules in May 2023, had mentioned that their updated formula could be rediscussed in the future: *“La CREG demande néanmoins à Elia d’étudier et de discuter, au sein du WG Adequacy, des améliorations possibles à la détermination du Prix d’Exercice Calibré et du Prix d’Exercice Calibré Actualisé”*.

FEBEG takes the opportunity to repeat its position on the subject: the actualized strike price indexation’s formula do allow to keep a strong link with the market fundamentals, which is a clear improvement but do not avoid undue payback obligation as it has no direct link with the production cost of the unit. At the very minimum, the inconsistency mentioned above should be solved and so the average over all hours of months considered should also be taken into account for the determination of the Average DAM as initially proposed by Elia.

- **§877:**

As the RD Methodology has been adapted to allow the actualization of the Strike Price, this paragraph can be removed.

- **§883–888:**

We refer to our previous comment on the MTU concept (cf. definition). We suggest Elia to investigate the impact on the payback obligation.

- **§884:**

*“for a CMU with Daily Schedule,  $t$  is a measure of time which is (a) a Non-SLA MTU, as defined in annex 18.3.3, or (b) a Market Time Unit belonging to the set of Market Time Units having the highest Measured Power that are Non-SLA MTUs forming with the SLA MTUs a continuous period in time within a day. A Non-SLA MTU(s) is (are) only considered on top of the SLA MTUs of the CMU for the concerned day if the SLA MTUs observed during the concerned day remains less than the  $N$  hours of the CMU’s SLA.”*  
 ((a) and (b) are added for clarity of this comment).

To our understanding, all MTUs in (b) are already included in (a). It is therefore not clear how the Non-SLA MTU(s) to be considered are effectively chosen amongst all the Non-SLA MTUs.

- **§886–887:**

In the proposal, the Activation Ratio for a CMU with Daily Schedule is equal to 1, while for non-Daily Schedule CMUs, the activation ratio takes into account the Required Volume, ie. the volume required to be supplied in reaction to the electricity market prices (that is to be dispatched according to the Declared Prices for the CMU). FEBEG does not agree with the proposal in §887. Daily Schedule CMUs react also to market prices in function of their production cost. When a non-Daily Schedule CMU is (partially) not activated because the market prices are below the prices at which the unit is willing to react, it is exactly the same economic reasoning as when a Daily Schedule CMU is not cleared on the Day-Ahead market. There is no reason to make a distinction between both categories: in both cases no payback should be due when the revenues are not realized.

The strike price calibration and indexation do not give certainty that the applied strike price will be higher than the variable cost of a peak unit with Daily Schedule.

To ensure the level playing field and the technology-neutrality of this proposal, the Activation Ratio for CMUs with Daily Schedule should be based on the scheduled power (in the Daily Schedule).

- **§890:**

- in the formula, ‘*Calibrated Strike Price(CMUid, Transactionid, t)*’ should be replaced by ‘*Strike Price(CMUid, Transactionid, t)*’
- “Where : [...] – *CMUidt* is the Market Time Unit to which [...]”: ‘*CMUid*’ should be removed

### 13. Liability and Force Majeure

- **§927:**

We propose a clarification to the following sentence “To the same extent, the creditor of the relevant obligation is not obliged to perform his counter-obligations”: the payment should also be done at minimum in relation with the part of the obligation.

### 14. Dispute Resolution

### 15. Fall back procedures

### 16. Transparency and motivation

### 17. Direct and Indirect foreign capacity participation

- **§1082 & 1088:**

The CRM actor should have the possibility to introduce at the stage of the Light Prequalification all the documents needed for the Prequalification. If Elia does not report any error / issue at the stage of the light PQ, but well in the final PQ, no penalty to the candidate should apply.

This is especially relevant for the permit requirement and the CO<sub>2</sub> file, as the documents may be different from the ones in Belgium eg. concerning the proof that the CMU has been awarded, in the last administrative instance, all relevant permits that are required under regional regulations; or the ETS documents for CO<sub>2</sub> emission factor, ...

### 18. Annexes

- **Annex 18.1.7 – CO<sub>2</sub> emissions**

- 18.1.7.1.: The evolution of the CO<sub>2</sub> emission limits has been extensively discussed in the Elia WG ‘Adequacy’. Market actors have repeatedly asked for stability and a long term view. In this respect, FEBEG is very disappointed to see that the CO<sub>2</sub> emission thresholds have changed again, for existing units: for the Y-1 auction 2025–2026 an annual budget of 306 kg/kWe is proposed instead of 350 kg/kWe. This confirms again that there’s no certainty and visibility on the CO<sub>2</sub> emission threshold. On top of that, there’s a different treatment between the Capacity Providers participating in the Y-4 auction and Capacity Providers participating in the Y-1 auction for the same Delivery Period.



- 18.1.7.2.3 “*In this declaration, the capacity holder undertakes to ensure that the energy storage unit is indeed supplied directly by the transmission network and for which no OTC type contract is in force for the delivery period covered by the auction.*” Can Elia or FPS clarify what they mean with ‘*OTC contract*’ and what is the link with CO2 emissions?

- 18.1.7.5 : The timing for the ex–post checks should be determined taking into account the timing for the verification and approval of the ETS annual emission report and the time necessary for the elaboration and verification of the documents. No new constraints or supplementary administrative burden should be imposed retroactively on contracted capacities.

The timing of the ex–post check should also be further clarified as the wording seems to suggest that for a 1–year contract the delivery period starting at 1<sup>st</sup> of November 2025 and ending on the 31<sup>st</sup> of October, 2026 the Capacity Provider needs to submit its report by the 31<sup>st</sup> of December, 2026. The report then provides data for the two parts of the calendar year that encompass a Delivery Period?

It is also stated that the annual report shall include a monthly breakdown of the emissions: FEBEG wants to repeat that the annual emission cap is an annual cap (as the name indicates it) that should be evaluated on a yearly basis and not transformed into a monthly cap (as suggested by the monthly breakdown of emissions to be included in the annual report).. An evaluation on a monthly basis would be an unacceptable strengthening of the requirement.

- **Annex 18.3.3.1 Determination of SLA MTUs for CMUs with Daily Schedule**

- Step ii : “*If no Proven Availability was observed during any AMT MTUs occurring within the concerning day, ELIA retains all MTUs selected in step i as SLA MTUs*”  
With this rule, the total duration of the retained SLA MTUs can exceed the number of hours specified in the CMU’s SLA (in contradiction to what is stated in the second alinea). This may have implication on the payback obligation for ex–ante transactions, which is due during SLA MTUs. As mentioned in our comment with respect to the activation ratio, FEBEG requests that no payback obligation should be due when scheduled power is 0 MW. Also the availability monitoring should respect the number of hours specified in the CMU’s SLA.
- Step iv: the reference to step ii should be changed to step iii.

- **Annex 18.3.3.2**

- Step ii : same remark as for step ii in Annex 18.3.3.1
- Step iv, second bullet point : ‘*the set of N consecutive AMT MTUs with a total duration of N hours*’ : the first ‘N’ should be removed

- **Annex 18.3.4**

- “For Foreign CMUs the corrections are only carried out insofar data with regards to frequency-related ancillary services and redispatching services can be made available by the foreign TSO”  
Elia should clarify this point and indicate in the Functioning Rules whether the data will be made available or not. CRM Actors need certainty in order to assess correctly their obligations under the CRM contract. If Elia has confirmed that these data will be made available by the foreign TSO, and if such data would be missing, this should not lead to any penalty for missing availability, for example if the market participant can demonstrate that these services are provided to the foreign TSO.

Elia should also apply corrections (or exempt from penalties) in case of other constraints imposed by TSO or DSO (Belgian or Foreign) on the availability or production level of CMUs.

- In case Delivery Points are activated downwards at instruction of Elia for Ancillary Services without reservation, a correction the initial Available Capacity (in case of section 9.5.2.2) or the initial Active Volume (in case of section 9.4.3.2.3.1) is necessary. (No correction of the initial Proven Availability (section 9.4.3.2.2) is needed – cf remark on §594).

## Appendix 1

The 2 examples below (for a capacity of 1 MW) show the impact of applying the payback obligation on a quarter-hourly basis instead or on a hourly basis. They demonstrate that it can only increase the total amount to pay back.

### Example 1

	DA price €/MWh	Strike Price €/MWh	Payback €
<b>On Qh basis</b>			
Qh1	400	300	25
Qh2	290	300	0
Qh3	250	300	0
Qh4	250	300	0
<b>Total</b>			<b>25</b>
<b>On hourly basis</b>			
<b>Total</b>	297,5	300	<b>0</b>

### Example 2

	DA price €/MWh	Strike Price €/MWh	Payback €
<b>On Qh basis</b>			
Qh1	400	300	25
Qh2	400	300	25
Qh3	400	300	25
Qh4	250	300	0
<b>Total</b>			<b>75</b>
<b>On hourly basis</b>			
<b>Total</b>	362,5	300	<b>62,5</b>