

Subject: **FEBEG's reaction on Elia's public consultation on the CRM design notes (Part I)
Availability Obligations and Penalties**

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Please find here below the FEBEG's reaction on Elia's public consultation on the CRM design notes (Part I). For the sake of clarity a separate document has been made for each document under consultation.

This document addresses the **Availability Obligations and Penalties**

Disclaimer

The present position is based solely on the documents submitted to consultation. The comments on specific elements are thus based on available information on this specific topic and might evolve as additional elements are clarified in future documents and/or public consultation. Obviously, the availability of all documents in a pre-final stage is required in order to provide a global overview allowing the stakeholders to take a final position on the matter.

Design note on availability obligations and penalties

1. Main comments FEBEG

Before making comments on the detailed elements put forward in the document, we summarize hereafter our main comments which are further detailed in the document.

As mentioned consistently during the CRM TF as well as in FEBEG's position papers, FEBEG would like to repeat the position that the CRM should be as simple and transparent as possible. Elia repeatedly suggests principles without any specific numbers which, firstly makes it impossible to specifically assess and secondly postpones the discussions on the numbers until a later timeframe. Now, we are closer to the deadline and there are still no specific numbers to discuss. FEBEG would like to emphasise that the members will need to be able to make some calculations in order to have an investment decision by their board. A board will not make any decisions based on "principle proposals" and will keep postponing.

While penalties (implicit/explicit) are needed to ensure that market participants with capacity contracts have an incentive to fulfil their availability obligations according to their commitments, these must be fair, reasonable and non-discriminatory and should therefore be clearly defined.

Additionally, Key notions/parameters such as "outages", "reference power", "Eligible capacity" and "obligated capacity" must be unambiguously defined and used in a consistent way. We also deplore that a lot of rules are still to be determined in the 'market rules' (e.g. calibration of Pamt).

Excessive penalties imposed on capacity holders would risk reducing the participation/competition in the auction and increasing the cost for the consumers while bringing them little additional benefits in terms of SoS. Penalties should bring correct and appropriate incentives, taking into account also implicit penalties in the market. In this context, FEBEG considers that:

- A monthly cap¹ (stop-loss) should provide incentive to meet CRM obligations in the future in case the cap has been reached.
- Exceptional penalties should only be possible after severe non-compliance with contractual requirements, subject to a clear & transparent procedure and the possibility to appeal. We consider that the escalation procedure needs to be further clarified.
- Penalties should be fair (a planned outage in summer period should be exposed to no or lower penalty (taking into account CIPU waiver).

Severe violations of contractual requirements are not committed lightly, and have most probably a serious, underlying cause. An individual approach is often the most effective way to return to compliance as fast and best as possible.

¹ For the sake of clarity by "monthly" we mean 1/12 of the yearly value and not an ad-hoc value.

2. Availability Obligations

FEBEG agrees with and supports Elia to collect data as much as possible through other market mechanisms. The capacity mechanism should avoid any double-reporting of data already available to Elia through other mechanisms. In this way, participation to the mechanism can be kept as simple and low-barrier as possible.

Availability Monitoring Mechanism

Regarding the design proposal we have following comments (note that the numbering of the design proposal is not continuous in the Elia document – we hereafter use the numbering as in the Elia document).

- **Design Proposal #4**

FEBEG agrees that technical malfunctions in the market algorithm should not automatically lead to an AMT. However, an actual scarcity situation may lead to tense market situations and could lead to algorithmic issues. In case of such technical issues during the clearing process of the day-ahead market, Elia should communicate as soon as possible whether or not an AMT is triggered.

- **Design Proposal #5**

FEBEG has serious concerns on the use of yet another methodology to calibrate the AMT price. The price level indicated by Elia in a slide set (with levels around 100–120 euro/MWh) seems sufficiently stable and common-sense to avoid yearly calibrations through complicated methodologies. The use of such a yearly calibration is questionable as it overly complexifies the capacity mechanism and remains nonetheless based on modelled data. The calibration could for instance be done once, and the subsequently result only updated if market conditions change considerably or if the AMT level leads to too little or too many AMT hours.

For FEBEG, the calibration method should be aligned with the methodology that is applied in the viability calculation of the CMUs.

- **Design Proposal #6**

Elia states that *“In addition, there is no strong need for market parties to know the value of the AMT Price before the Capacity Auction in Y-4 as long as they can have a view on the expected amount of AMT hours. A calibration close to the Delivery Period is desirable. Figure 9 shows a simple timeline.”*

FEBEG disagrees with this statement. To the contrary it is very useful to potential investors to know the level of the AMT Price when preparing a bid. The combination of the AMT Price and the expected amount of AMT hours will be the basis to assess the required risk premium resulting from the implementation of the availability penalty. FEBEG suggests a simple absolute price level could be set in front of the auction (as is done with the strike price). Then potential investors would be able to assess the risk and act/price in the risk accordingly.

We understand that the Capacity Market Rules will define the value for “T–“, currently proposed at **20 hours** (instead of 100 hours as mentioned in the text) This should be more explicitly mentioned in the design note.

FEBEG also proposes to express the cap on the maximum number of AMT hours explicitly and up-front, instead of the T+ methodology proposed by Elia. This to similarly provide upfront visibility on the risk to which market participants are exposed.

The determination of the number of hours T comprising the likely and adequacy relevant occurrences should be better justified

Obligated Capacity

- **Design Proposal #8**

Elia states that “For non-energy constrained CMUs, the Obligated Capacity is at every AMT hour equal to the Eligible Volume as established in the Prequalification phase preceding the Capacity Auction.” According to FEBEG this seems not correct. Although it can be expected that the Eligible Volume (The Reference Power of each CMU multiplied by the Derating Factor) could be available at any AMT hour the Obligated Capacity is at every AMT hour equal to the Eligible Volume – possible partial opt-out volumes as CMU’s might decide not to offer the full Eligible Volume into the auction.

Furthermore, the text in the design note is not fully clear and should be clarified as it currently raised a number of questions:

- why should the CMU make ‘eligible volume’ available to the market, and not only ‘obligated capacity’ (meaning the Reference Power of each CMU multiplied by the Derating Factor – possible partial opt-out volumes).
- On page 22 Elia states that “In practice, these units will be available at full capacity at some AMT moments and significantly less or not at all at others. Using the principles of Secondary Market trading as explained above, the CMU’s should be able to deliver at least the Eligible Volume on average. Elia probably is mixing up terminology. The text should be adopted such as “In practice, these units will be available at Reference Power at some AMT moments and significantly less or not at all at others. Using the principles of Secondary Market trading as explained above, the CMU’s should be able to deliver at least the Eligible Volume on average (meaning the Reference Power of each CMU multiplied by the Derating Factor – possible partial opt-out volumes).

- **Design Proposal #9**

The wording of the first paragraph is a bit confusing, we believe the issue mentioned here is governed by the SLA so we would make the wording conditional:

“it would have expenses on covering the Missing Capacity (...) This would not be compensated (...) This would be contrary to the cost-efficiency objective”.

Available Capacity and CMU Types in the Capacity Market

FEBEG is questioning how will availability monitoring apply in case of grid constraint imposed by TSO during operation (red zone)? According to FEBEG, this should not lead to a penalty.

- **Design Proposal #12**

Could Elia further clarify the link with the Ancillary Services?

- **Design Proposal #13**

FEBEG thinks that the link between ‘Reference Power’ and Pmax nominated should be ‘Obligated Capacity’ and Pmax.

For FEBEG, it is also not clear how the calculation on available capacity is performed for an aggregated CMU with DSR and generation/storage.

FEBEG asks that the penalty will be imposed if the reference price is above the Declared Market Price (DMP) and the unit is not delivering .

For the sake of level playing field as well as sufficient guarantees of presence, the DMP should be capped at strike price.

- **Design Proposal #14**

If market parties declare a DMP which is high, it will increase the likelihood to be tested, but decreases the number of real controls (based on measured power when the reference price exceeds the DMP). As there are only 4 availability tests possible (of which 3 during winter time) but a large number of monitoring moments, it may be advantageous to capacity holders to declare a too high DMP.

- **Design Proposal #15/16**

For FEBEG; it is not clear how the level of the DMP and changes in the DMP will be translated into checks on the available capacity. The definition and detection parameters of ‘suspicious’ DMP setting should be clearly defined and audited by the regulator. It should also be sufficiently stringent that any opportunistic adjustment of the DMP should have sufficient penalisation risk – both in risk of detection and penalization level per failed test. The dynamic nature of the DMP – while valuable to allow DSR to adjust to market circumstances – should not lead to non-firm capacity participating to the capacity market.

- **Design proposal #17**

When a Delivery Point associated to a CMU is reserved in the Ancillary Services (AS) as part of a larger pool consisting of multiple CMU's or non-CRM delivery points, Elia will consider the activated volume for AS when determining Available Capacity during AMT hour. However, in function of the type of AS and delivery point, the reserved band to be able to deliver the AS should be considered, not only the activated volume. The AS activation volume could indeed be zero while the reserved band is not (e.g. for aFRR Upwards, a permanent derating may be necessary to be able to deliver the AS). Considering only the activated volume will prevent the participation of CMU's to some AS.

According to FEBEG the table 5 on P.33 is not correct: there is no difference between "AS Activation" and "No AS Activation".

Rules for Availability Testing

As a general comment, FEBEG sees many unclear provisions and issues in the availability testing procedure.

According to chapter 3.4, all CMU's are subject to availability tests, but on page 6 it seems that these tests will be only performed on CMU's with Unproven Availability: "in case the Availability Monitoring leads to insufficient proof of capacity to deliver energy when needed (i.e. Proven Availability) for certain CMU's, they are prone to availability tests." As mentioned in a previous comment, the definition and detection parameters leading to availability tests should be clearly defined and audited by the regulator.

Tests are also possible outside of the AMT hours. So the link with scarcity explained on P.10 is lost: "*in order to reflect actual contribution towards adequacy, the monitoring should happen during adequacy-relevant moments*".

Therefore FEBEG considers it not logic to perform tests outside AMT hours. The fact that Elia would execute test outside an AMT hour which are penalised outside AMT hours would mean that availability penalties are not only applicable to AMT hours but to any other hour during the delivery period.

Scheduling of tests should be avoided during planned maintenance. Elia knows by advance all planning maintenance and should thus be able to conduct tests outside of these periods. By doing so, the risk of systematic penalty due to scheduling tests during planned maintenance would be avoided. This should be added to the design note. During an availability test, the Reference Power must be reached. Should this not be 'Contracted capacity' ? If the test takes place in the summer, how is the temperature effect (derating) on thermal units taken into account? Quid for weather-dependant technologies (e.g. if there is no wind at the time of the availability test,...)

Can Elia confirm that if a test has been unsuccessful in the sense that the CMU could not attain the Obligated Capacity, this will not count against the limit of 3+1 (winter + summer) tests that can be performed on any contracted CMU? Put differently, if for example a CMU fails its first test, it can still be subject to 3+1 subsequent tests?

- **Design Proposal #18/19/20**

FEBEG asks Elia to confirm such tests will not take place outside a PAMT hour.

3. Availability Penalties

Penalties should bring correct and appropriate incentives, taking into account also implicit penalties in the market.

FEBEG therefore considers that:

- No penalty should be applied in case of planned maintenance in coordination with Elia according CIPU rules.
- No penalty should be applied in case of grid constraint or external cause such as curtailment requested by TSO.
- A monthly cap (stop-loss) should provide incentive to meet CRM obligations in the future in case the cap has been reached.
- A factor $(1+x)$ should reflect the increased (decreased) risk to Security of Supply during the winter (non-winter) period:
 - $(1+x) = [0,5]$ in case of unannounced unavailability / forced outage during non-winter
 - $(1+x) = [1]$ in case of unannounced / forced outage during winter time
- Exceptional penalties should only be possible after severe non-compliance with contractual requirements, subject to a procedure involving an external party such as CREG or SPF and the possibility to appeal:
 - Severe violations of contractual requirements are not committed lightly, and have most probably a serious, underlying cause.
 - An individual approach is often the most effective way to return to compliance as fast and best as possible.
- Availability is contracted for 8760 hours. Having the Unavailability Period limited to only stress events (12-24 hours/year?) results in an unfair and disproportionate penalty scheme that will discourage investors to invest in new capacity.

The last § on p35 mentions “Finally, the penalties applied for testing require a specific set of rules [...]. Paragraph 4.2. sets out these rules.”

We do not find specific rules regarding the penalties applied for testing in this paragraph 4.2. However, such rules are indeed necessary as explained in the previous comment.

It is not clear in the text, if the downwards revision of the monthly remuneration and the termination of the contract are separate penalties or not: are they automatically linked or can the process still be reverted not leading to the termination of the contract.

- **Design Proposal #18**

- Yearly contract value: Regarding the penalty formula, besides being complex and difficult to understand, the “yearly contract value” should be expressed in €/kW. We would welcome some examples on the application of the formula.
- UP: The design does not give any clarity on how the Unavailability Period is going to be calculated and furthermore the design note mentions that the value for UP will be disclosed with the market in the Capacity Market Rules. This fact makes it very difficult to assess on the reasonability of this number as well on the proportionality of the availability penalty. Elia should give further insight on this expected value.

Secondly it is not clear what the link is between UP and T, T- and T+, the proposal mentions “The Unavailability Period should reflect the minimum number of AMT hours that will be effectively monitored”. From this, it is not clear whether UP equals to T-, i.e. 20 hrs, or another value. FEBEG considers the number of unavailability periods (UP) should not be lower than the number of AMTs. Therefore, the UP should be replaced by the (expected) AMT hours (i.e. T) in the penalty formula. It is strange and makes the mechanism unnecessary complex that Elia first determines an AMT to determine hours during which availability will be monitored, but then makes a difference between AMT hours and hours that availability is ‘effectively’ monitored in the UP. This raises further questions on how UPs would be selected from the AMTs and whether the selected UPs will be the same for all CMUs. It also raises the question on how CMUs with a full schedule will be treated when it was not available during an AMT that is not monitored; will it be penalized or not?

- Yearly penalty cap: The proposed yearly penalty cap removes incentives towards capacity holders to ensure return of capacity as soon as possible once the cap is reached. This in contrast to a monthly cap, where such incentive would remain once a new month is reached. Moreover, for capacity reaching the yearly price cap by failing on its obligation, the ultimate penalty of contract cancellation does not seem to provide a further strong incentive. A monthly cap, as this is the case in the UK, would thus provide a better incentive towards capacity holders to return to compliance with the capacity contract as soon as possible.

▪ **Design Proposal #20**

- Availability tests: Elia states in section 1.2 that “*In case the Availability Monitoring leads to insufficient proof of capacity to deliver energy when needed (i.e. Proven Availability) for certain CMU’s, they are prone to Availability Tests*”.

Febeg deduces from this that non–energy constrained CMU with a full schedule are not prone to availability tests as Available Capacity is primarily determined on the data received via the Outage Planning Agent, according to Table 3. That non–energy constrained CMU will only be exposed to an availability penalty when Pmax nominated is lower than the Obligated Capacity and not covered in the secondary market.

- *Reinstitution original remunerated amount*

Elia states that “The original remunerated amount can be reinstated if the CMU exhibits Proven Availability of at least the Obligated Capacity during three (3) AMT Moments or Availability Tests, without taking into account obligations traded on the secondary market.

The Capacity Provider has the right to request and schedule Availability Tests in order to obtain this criterion.”

This means that a non–energy constrained CMU could ask for availability tests in order to reinstate the original remunerated amount. Could a CCGT ask three availability tests in a row to reinstate remunerated amount after three succeeded availability tests? Can Elia confirm this?

There is no mention of a minimum required period between the different availability tests, can Elia confirm that no minimum period is required between the different availability ?

For non–energy constrained CMU’s these tests should only prove availability and no delivery. Can Elia confirm this?

▪ **Design Proposal #21**

The penalty escalation foresees a contract termination if during two subsequent delivery periods the capacity holder did not reinstate the initially remunerated volume. It is not clear how capacity with a yearly contract is treated in this case. As the capacity contract is renewed every year, can such a capacity holder reach the threshold for contract termination? Is the capacity holder barred from participation to the subsequent auction, or is he allowed with a reduced capacity?

What happens if 800 MW is committed in the auction, but only structurally 750 MW can eventually be delivered: will the contract be completely terminated or only reduced to 750 MW while 50 MW can be covered in the Y–1 auction ?