POSITION

Subject: FEBEG's position regarding the public consultation on the CRM Functioning Rules
Date: 4 January 2023

Contact: Jean-François Waignier
Telephone: +32 485 77 92 02
Mail: jean-francois.waignier@febeg.be

Overall remarks

FEBEG thanks ELIA for having the opportunity to react to *ELIA's Public consultation on the CRM Functioning Rules*[1].

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.

FEBEG's opinion on ELIA's specific questions

Q1: Retroactive application of the update of the indexation mechanism for the Strike Price. In a nutshell, Elia proposes, as suggested by the study realized earlier in 2022 (covering among others the Payback Obligation), to index the Strike Price both for multi-year & one year Capacity Contracts and that as of the 1st (and potentially unique) Delivery Period. Next to that, Elia also proposes to amend the indexation mechanism of the Strike Price itself and transform it into an ex-post mechanism that would lead to a monthly indexation of the Strike Price after each month of a Delivery Period. Such an ex-post mechanism would allow to capture shorter market trends while still leaving room for a non-negligible number of Payback Obligation events.

General remarks on the update of the indexation mechanism of the strike price

First of all, **we thank Elia for the ongoing efforts in improving the current design of the CRM and in this case, the payback obligation**. For FEBEG, this is a **crucial element in order to make the CRM design future-proof.** The unprecedent situation on energy markets we live today definitely calls for some adjustments in order to limit unexpected risks for the CRM participants and maintain the needed attractive investment climate. Indeed, the period 21-22 is a real stress test for the current formula and it demonstrates that it is not dynamic enough.

[1] https://www.elia.be/en/public-consultation/20221125-formal-public-consultation-on-the-crm-functioning-rules

Currently, the Payback Obligation is due, irrespective of

- **whether the asset is actually 'in the money'** and therefore economically viable to run and capture revenue on the electricity market;
- whether the delta between the Day-Ahead Market and the Strike Price actually represents net revenue and is not due to increases in underlying costs.

Moreover, the stop-loss only applies on yearly basis but there is no stop loss on both the payback (of earned or even unearned revenues) and availability monitoring. Even if the unit has paid back its entire remuneration, it is still subject to unavailability penalties.

Between Oct 21-Nov 22: **more than 2350** hours were **above the strike price of 300 €/MW.** For an important number of those hours, CCGTs and OCGTs have not been running as their marginal cost was above the Day-Ahead Market price which was in turn higher than the 300 €/MWh level. And for certain of the hours that they were running, having to pay back electricity revenues above the 300 €/MWh level would make them loss making (i.e. power price -the marginal cost of the unit -the Payback Obligation is below 0).

According FEBEG, t**he new indexation formula for the strike price should address the following objective**s:

- **Keep a strong link with the market fundamentals** therefore the formula needs to be dynamic enough to cope with sudden and important market evolutions (closer to the payback moment);
- **Avoid undue payback obligation** à therefore the formula should ensure that the production costs are always covered; to ensure a level playing fields with non-daily schedule, no gas unit (with daily schedule) has to pay back when is it not in the money;
- **Ensure a sufficient level of inframarginal rent** à therefore the formula needs to integrate a sufficient high global floor. Again, it is important to keep in mind that hedged volumes are not considered for the payback, possibly implying a payback of some unearned revenues.

FEBEG believes the formula currently proposed by Elia in the framework of this consultation achieves most of the above objectives. Therefore we can support, in the current market circumstances, the formula proposed by Elia but we regret that there is no direct link with the real production cost of the unit.

Based on the simulations provided by Elia, the new formula limits the payback moments. However, there is still a risk that future market conditions evolve in such a way that the formula leads again to significant payback of unearned revenues. Therefore, **FEBEG strongly recommends Elia to add, in the functioning rules, a clause allowing a review of the formula in the future or to allow to declare a market price in certain circumstances**. This will provide confidence for market parties that the payback obligation remains sustainable in the future for all technologies and actually targets the recovery of the "windfall profit". We also refer to our comments on §826 for some concrete improvements to the formula.

In particular, FEBEG would like to highlight two concrete examples:

- Gas-fired power plants could be in a situation where the production cost (and in particular the CO2 and gas costs) will be higher than the strike price indexed with the new formula, especially in a world with important RES capacities
- 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).

However, we recognize that Elia strives for a market-wide formula but the specificities of the different technologies could require, in some circumstances, a case-by-case approach. Therefore, we consider it important to have a clause allowing to adapt the formula in the future.

Remarks on the retroactive application of the new indexation formula

Because the current crisis revealed an important flaw in the design and important risks for the CRM operator, **we consider it very essential that the improved formula also applies for existing contracts (yearly and multi-year contracts) as from the start of the delivery period 2025-26** so that the level playing field in the CRM is ensured.

However, generally speaking, the retroactive application of new rules on existing contract merits a careful discussion, FEBEG takes therefore the opportunity to share its concern on the topic. Next to the economic parameters, the **CRM Functioning Rules have a significant impact on the costs, risks and liabilities of Capacity Providers** and are, hence, determining business cases and investment decisions, decisions on whether to participate in the Y-4 or Y-1 auction and decisions whether to participate in the capacity remuneration mechanism or not at all.

The following aspects of the CRM Functioning Rules are, amongst others, very important in this respect:

- prequalification requirements (CO_2 emission limits, …)
- predelivery control (distinction between 'new build', 'additional-other' and 'existing capacity', obligated capacity, penalty level, …);
- financial security (distinction between 'new build', 'additional-other' and 'existing capacity', level of financial security, …);
- unavailability obligation (AMT price, level of penalty, modalities, …);
- pay-back obligation (level of strike price, indexation or stop loss, …);
- liabilities and force majeure (definition, level of limits, …).

As a general principle, FEBEG opposes any retroactive application of a modification to the CRM Functioning Rules, without prior agreement with the concerned stakeholders. The CRM Functioning Rules are the basis for the abovementioned economic and strategic trade-offs and decisions that lead to a number of bids at a certain price level in the capacity auction of which some are translated in capacity contracts.
In particular, modifying retroactively the CRM Functioning Rules might increase the costs, risks and/or liabilities for the Capacity Providers. The **Capacity Provider could not in any way have foreseen these increased costs, risks and/or liabilities in his bid price and, hence, he risks not have covered his missing money any longe**r and lacking remuneration to cover for the cost of providing capacity. In this respect, FEBEG is very concerned about the impact of modifications on long term contracts, e.g. 15 year contracts, especially as the CRM Functioning Rules will be reviewed on an annual basis. Several small retroactive modifications, each time slightly increasing costs, risks and/or liabilities, might over time completely distort the balance of rights and obligations in a long-term contract.

For the abovementioned reasons, **a retro-active application of modifications to the elements of the CRM Functioning Rules that are defining the costs, risks and/or liabilities is unacceptable**, as it risks being discriminatory and in breach with other legal principles (respect for contracts, ownership rights, …). **FEBEG therefore asks Elia to have a clear and transparent approach for debating and justifying retro-active application of modifications to the CRM Functioning Rules**.

According to FEBEG, there's **a general exception to this general rule of no retroactive application, namely hardship. An event that could not be foreseen by the contracting parties, that cannot be controlled by the contracting parties, that is common to all parties and that impacts their legitimate expectations and the balance of rights and obligations, justifies a retroactive application of a modification to the CRM Functioning Rules**. In this perspective, FEBEG is of the opinion that a retro-active application of the indexation mechanism of the Strike Price is justified.

The war in Ukraine and its impact on the price level in the electricity market should be considered as an unforeseen and uncontrollable event – common to all capacity providers – that justifies a retroactive modification. Capacity Providers prepared their bid – also depending on their risk appetite – based on forecasts of future market evolutions and assumed a number of pay-back obligations. The soaring energy prices resulting from the war in Ukraine could not be foreseen, let alone controlled. The analysis of Elia during the Elia WG 'Adequacy' of the 13th of September, 2022 clearly demonstrates that his unforeseen and uncontrollable rise of electricity prices impacts the legitimate expectations of the capacity providers and that it impacts the balance of rights and obligations in the capacity contract: **the current CRM Functioning Rules would lead – if the current price level would persist – to almost 3.000 hours with payback obligations, meaning that the capacity providers would lose their capacity remuneration for such a delivery year while the capacity providers legitimately expected to still receive a capacity remuneration taking into account an number of payback obligations (while still being subject to the unavailability penalties)**.

In addition, FEBEG can also acknowledge that certain operational modifications can be made retroactive when duly justified. This is the case for instance on changes related to the availability monitoring providing clarifications on the control modalities.

Q2: DSM exemption, after having repeatedly received feedback from several market parties according to which the application of the Payback Obligation may not lead to the same results for all technologies participating to the CRM, Elia considers proposing an exemption of Payback Obligation for Demand Response.

As stated before**, FEBEG welcomes the efforts of Elia to evaluate and modify the CRM design to make it more future proof**. FEBEG also appreciate the efforts of Elia to keep the balance between the interest of all involved parties. Nevertheless, FEBEG observes that the rules are gradually becoming quite different between DSM, small and large-scale batteries, and thermal units. For instance:

- When it comes to the **payback obligation**, DSM would be exempted from any payback obligation while thermal assets are still subject to the payback, even for unearned revenues. Has Elia considered the situations where a DSM capacity provider has hedged its forecasted consumption at a low price?
- When it comes to **availability monitoring**, DSM will be mainly subject to the availability testing in case of high declared market price but they are allowed to announce unpenalized unavailabilities (including during winter) and have a certain guarantee not to be tested during summer months while thermal assets will mainly be subject to the AMT monitoring all year long (esp. if the AMT does not evolve during the delivery year).
    - How can Elia ensure that the MW contracted have the same value as the MW of a thermal plant?
    - Should thermal plants, like DSM, not also be allowed to stop for certain occasions (in particular for maintenances) and should they not also be allowed to plan these without too much financial exposure?
- When it comes to **eligibility to the auction**s, DSM can participate to the T-4 and T-1 auctions (with also an important volume being reserved for them and other innovative technologies in T-1) while some thermal plants may need to participate to the T-4 in case of significant investments with lead time > 1y but the volume in this T-4 auction is reduced with the participation of DSM. Moreover equally non-bid prequalified DSM capacity is taken into account, reducing the room for thermal plants further, without guarantee the capacity will be effectively there.

Considering the abovementioned elements, FEBEG would like to share the following conclusions: itis true that the various technologies eligible to the CRM have different features and behaviors on the market but **it is essential (i) to have as much as possible a technology neutral approach and (ii) to ensure a level playing field on the key principles of the CRM.**

In this perspective, **FEBEG can only accept an exoneration of the payback obligation for demand response in the context of a compromise in which the delicate balance between the interest of stakeholders is shifted as a whole**: an exoneration of the pay-back obligation for demand response without the improved mechanism for the indexation of the strike price and without a retroactive application of this improved mechanism would distort this balance.

Notwithstanding the above, **FEBEG urges Elia to continue to try to look for improvements that restore as much as possible the technology neutral character of the CRM design and the level playing between all technologies and actors.**

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

- **§ 10: Impact of changes on existing capacity contracts**

  We refer to our general comments on the retroactivity. Generally speaking, 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 contractual balance (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 (financial) impact on the capacity provider: not only changing the applicable penalties, but also changing the liability clauses (higher liabilities), amending the Force Majeure clause (eg. Termination for Force Majeure after 90 days of suspension), changing payment modalities, adding clauses etc. can have a substantial impact on the capacity provider, and can result in an impairment.

  As stated before, we acknowledge that certain operational modifications can be made retroactive when duly justified. In that case, FEBEG can support those modifications. However, the guiding principles on the retroactive application should therefore remain that a prior mutual agreement between the stakeholders is required. This is particularly relevant as the CREG can, in its approval process, still adapt the functioning rules before the 15th of May.

  In relation to the current consultation, we consider that the following modifications to the functioning rules cannot be applied retroactively:
  - Appendix B.3.: content of a quarterly report

3. Definitions

- **Definition of Derating Factor** for Energy Constrained CMUs: it is not very clear how to apply the weighing. Can you add a formula? Is the following formula correct:

Total Contracted Capacity(CMU,t) / Sum [Contracted Capacity (CMU, Transaction_i,t) / DF(CMU, Transaction_i)]

4. Service Time Schedule (and Prequalification processes)

- Timings related to the prequalification process: except in case of prequalification for participation to the secondary market only, fixed dates are replacing time periods. For the prequalification of **additional units becoming existing**, relative dates should apply as for prequalification for secondary market, to allow the Capacity Provider to prequalify its CMU in due time.

5. Prequalification processes

- **§81 Requirements per Existing Delivery Point and per Additional Delivery Point**
  - **EAN code**
    "For a Delivery Point that is not CDS-connected, if the Delivery Point is defined on the level of the Headmeter, the provided EAN code of the Access Point will be the same as the provided EAN code of the Delivery Point."
    For units covered by a contract for Outage Planning Agent for which the Delivery Point is defined on the level of the Headmeter, Elia recommended to use the TOPAZ code of the production unit instead of the EAN code of the Headmeter. Can Elia clarify this in the Functioning Rules, as it has not been clarified in the FAQ published in May 2022.
    (this remark is also applicable for §101, in the Fast Track Procedure.)

  - **Full technical offtake Capacity**: as for the Unsheddable Margin, this requirement should be only mandatory for Delivery Points for which NRP cannot be calculated based on injection data only.

- **§91 Requirements per Existing CMU, per Additional CMU and per Virtual CMU**

  In the case of capacity degradation, it is specified that "…the percentage has to be lower year-by-year". It should be allowed to keep the same percentage : we request to adapt the text as follows: "the percentage has to be lower or equal year by year".

- **§110**

  The CRM Candidate should also be allowed to make a modification of the Prequalification File for the transmission of information related to the obtaining of the technical agreement.

- **§129 Table**

  There is a typo "That the pool" in the first column

- **§ 130-142: 5.4.1.1.1 NRP determination**

  FEBEG appreciates the efforts of Elia to adapt the NRP computation. It should indeed lead to more stable values considering the average effect.

  The new method requires at least fourteen full calendar days of data (in a period that ends five working days before the last day of the month before the submission date of the Prequalification File or of its change) and is based on an approach by month. FEBEG is wondering how this methodology can be applied on capacities changing status from 'new' to 'existing'.

  Up till now, new capacities had the possibility to use the method based on the use of historical data to determine their NRP when they change status from 'new' to 'existing'. The use of the already available set of historical data, even if only a few days of data are available just before submission of the prequalification file, provides more certainty on establishing an accurate NRP than a one-off prequalification test on a particular moment.

  This modification has clearly an impact on the already selected 'new capacities', as they cannot longer make use – at least it is not clear how – of the method based on the use of historical data. **We therefore propose to allow the computation of the NRP for units becoming existing using the number of calendar days actually available since the commissioning of the unit (without the requirement of having at least fourteen full calendar days).**

  Additionally, **we regret that the new methodology will continue to generate exceptionally high NRP** which is not representative of the power this CMU can deliver under normal circumstances and thus represents a too optimistic view of the capacity in the market.

  Given that some of these MW cannot be guaranteed and thus counted for the security of supply, **we propose several alternatives to address the incorrect determination of the NRP:**
  1) Allow any Grid User to cap the NRP
  2) Allow to make an opt-out 'OUT' to correct the NRP (also in Y-4)
  3) Allow the declaration of "Non-representative days for NRP determination" for any Delivery Point (also for DP for which the NRP can be determined based on injection data only) to exclude days with weather circumstances leading to high injection data which are not representative.

- **§136 and 142: For DP for which the NRP can be determined based on injection data only**
  - §136 : the provisional NRP should be determined as *the absolute value* of the average of the lowest 3 values determined per month

- §142 : the NRP should be determined as *the absolute value* of the lowest observed quarter-hourly measurement

- **§142**

  For DP for which the NRP cannot be determined based on injection data only : the Unsheddable Margin should be taken into account

- **§172**

  "In case there is a Transaction related to the CMU with a Transaction Period that (partially) overlaps with the Delivery Period to which the Auction relates, the Opt-out Volume cannot be higher than the Nominal Reference Power, minus the maximum Total Contracted Capacity over the Delivery Period to which the Auction relates divided by the *Derating Factor(CMU,t)."*
  For a Non-Energy Constrained CMU, we think it should be the Derating Factor related to the auction (in accordance with §91) instead of the Derating Factor(CMU,t).

- **§181-184**

  First, existing capacity should be allowed to declare an **opt-out/OUT** in case of incorrect NRP determination. This will allow to avoid counting MW that cannot be guaranteed by the Capacity Provider (cf. remark on NRP determination §130-142)

  Secondly, prequalified demand response capacities that are opted out are considered as 'opt-out/IN', i.e. contributing to security of supply. Article 4 bis of the Electricity Law obliges operators of generation facilities to announce a temporary or definitive closure or capacity reduction. Such procedure doesn't exist for storage or demand response. As a result, storage or demand response capacities that have prequalified and that are opted out, could already have – partially – left the market just after the prequalification. These capacities cannot be counted upon for security of supply and lead to an underestimation of capacity needs jeopardizing security of supply of the country.
  If a CMU had no obligation to prequalify (no production facility) but did prequalify and at the end makes a full opt-out, it should be considered as **opt-out/OUT**.

  Generally speaking, **a reasonable level of confidence on the presence of these volumes should be ensured before considering volumes as "IN" (including when an additional CMU has prequalified under 'fast track').**
  To the contrary of production capacities, the main activity of industrials is not to contribute to security of supply by reducing their demand but to produce goods & services. On top of that, generation capacities are obliged to notify the authorities when they would leave the market, i.e. notification of decommissioning or structural decrease of capacity.

Considering DSM volumes in the opt-out 'IN' block can have a significant impact on the technologies that are only eligible to participate in the T-4 auction (due to the lead time for their construction or replacement of parts). We have observed in the last two auctions, that respectively 276 MW in 25-26 and 172 MW in 26-27 have been counted in the opt-out 'IN' block while there is absolutely no guarantee this capacity will be there and committed to reduce its demand during scarcity moments in the concerned delivery periods. Those volumes could be replaced by new-built such as batteries which would have been able to commit. This reasoning is even more relevant considering the already important volume reserved for the T-1 auction aimed at being fulfilled partly by DSM.

If large and bigger than anticipated volumes of DSM are already being considered in T-4, regardless whether they are effectively bid or retained, it is not reasonable anymore to continue to reserve an equally big share of volume for these technologies in the T-1 auction. Not changing this is a threat on Security of Supply and the possibility to find the required volume in the T-1 auction.

According to FEBEG, keeping this rule (DSM in opt-out 'IN') is discriminatory for the capacity that can only participate to the T-4 auction and eventually putting a threat on security of supply.

6. Auction Process

- **§257**

"The volume of a Bid is greater than or equal to the minimum participation threshold in MW, ~~after application of the Derating Factor~~, as determined in the Royal Decree on "Eligibility Criteria. Does Elia anticipate a change in the concerned Royal Decree? At this stage, this rule is, in our opinion, not in line with the regulation.

- **§ 290-298 Adaptations and corrections to the Demand Curve**

General remark: FEBEG asks Elia, the SPF Economy and the regions to ensure that the computation of the non-eligible volume in the calibration report is the most accurate possible to avoid ex-post "modifications of the demand at the clearing of the auction.
It is essential for market parties to be able to make a proper assessment on the need for additional capacity in the next auction at the moment of the publication of the calibration report so that investments can be triggered in time for participation in that auction. Having a stable methodology and related results is more transparent for the entire market.
In parallel, **authorities should also ensure that the criteria linked to the obligation to prequalify are as clear as possible for the market parties to avoid ex-post modifications on the demand curve.**

- §291
  - Formula of the first bullet : *How is the "average" determined ? (simple average, time weighted,…?)*
  - "capacities that indicate not willing to participate to the auction via an Opt-out Notification, but that can be expected to stay in the market". We have the following observations
    We suggest being able to indicate in our prequalification file (standard or fast track) if a capacity should not be expected to stay in the market but no definitive closure has been announced yet.
    As suggested for §184, DSM should not be considered as "to be expected to stay in the market", any prequalification with ultimately no bid or a partial bid should not lead to a shift of the demand curve to the left.

7. Capacity contract signature

- § 353

We support the translation of the degradation principle into the capacity contract.

8. Pre-delivery Control

- Quarterly report (articles 382 to 384)

FEBEG regrets that the modifications to the template of the quarterly report were not discussed in the Elia WG 'Adequacy'. Initially, Elia rather provided a non-binding 'check list' to facilitate provision of quarterly reports. Now, the quarterly report has – all of a sudden without discussion with the involved parties – an imposed content with new administrative obligations and even attestations by third parties and/or disclosure of minutes of construction site meetings.

FEBEG considers these modifications to the template of the quarterly report unacceptable. The new requirements increase the administrative burden, and related administrative costs. More important, they are not matching day-to-day reality and are simply impossible to comply with. On top of that, they are including the provision of sensitive and confidential information.

FEBEG is convinced that Elia is not aware of the impact of the new requirements. During site meeting very technical and complex matters are discussed, referring to codes, purchase orders, etc. The information in the minutes will not be comprehensible requiring clarifications and possible disclosure of underlying contracts, work instructions, etc. No need to repeat that this information is sensitive and confidential while no sufficient guarantees on the confidentially is provided. The new requirements therefore seem to be unreasonable and unproportionate.

FEBEG is also very indignant to see that – in reality – Elia goes already further than what is required in new requirements. According to annex B.3, the Capacity Provider can demonstrate that he reached the Permitting Milestone by including a copy of the permits. This is not matching reality as, in practice, Elia is requesting additional information such as attestations by third parties that no appeals are ongoing: experience learns that the authorities are very reluctant to provide such statements.

Considering these elements, FEBEG can certainly not accept that the new requirements are imposed retroactively. Elia should be clear on such requirements upfront so that the requirements can be passed on the to the involved third parties when negotiating contracts, especially as the attestations and confirmations are related to delays, a very sensitive topic in the concerned contracts to which liabilities and penalties are linked. In this stage, contracts are concluded and being executed.

If a copy of the permits has already been transferred to Elia with a previous quarterly report, it should not be included again in the following quarterly reports.

We propose that Elia and the concerned TSOs/DSOs also provide quarterly report on infrastructure works, as it was proposed by the CREG in April 2022.

- **Determination Missing Volume on Existing CMU's (articles 403 to 411)**

Elia is proposing to retroactively modify the determination of Missing Volume of Existing CMU's to the advantage of existing capacities already contracted.

- **Determination Missing Volume on Additional CMU's (article 413)**

FEBEG does not agree with the proposed changes.
On top, Elia is retroactively reinforcing the controls linked to the quarterly reports, by a 'thorough compliance check' and by demanding a 'duly justification' of the extended obligatory elements in the quarterly report. These elements are very vague and leave a lot of discretionary freedom to Elia, while the day-to-day practice is already not matching reality. These new elements create, hence, uncertainty which is reinforced with the retroactive application of such modifications.

9. Availability Obligation

- **§488-492: AMT Price Determination**

The AMT price should be more dynamic than a fixed value determined upfront and applicable throughout the delivery year (keeping the link with the evolution of the production costs). If 2021-2022 had been a delivery period, we consider that the proposed methodology would not have been appropriate (AMT price too low compared to observed day-ahead prices) both for Elia and the Capacity Provider.

- **§488-489**

  According to FEBEG, **updating the AMT price during the delivery year is needed in order to avoid unnecessary AMT controls during, for instance, the period where there is no scarcity issue** (but the prices would remain high due for e.g. an increase of the underlying components) and thermal assets are planning necessary maintenances to remain available.
  Making the comparison with units without daily-schedule having the possibility to declare a (high) market price, we fear that the thermal assets may be more subject to controls (via the availability monitoring during AMT moments) than technologies like DSM which will be mostly controlled via the availability testing with (i) the possibility to announce unavailabilities for which they will not be penalized (incl. in winter up to 25 days) and (ii) with a relative guarantee that they will not be penalized during the summer months.

  In the current rules, the AMT price is computed and published by the 15th of May before the start of the delivery year. Similarly to the principle of dynamic strike price indexation, we consider that updating the AMT price during the delivery year is necessary when the market conditions have changed in such a way that the computed value no longer represents a correct trigger for the controls). Similarly to what is now being proposed for the availability testing (§ 583), there should also be a more explicit link in the AMT monitoring between controls and scarcity periods. **We therefore propose a determination of the AMT price, ex-ante, on a monthly basis, in line with the latest evolutions on the electricity market**. Indeed, using the reference scenario defined in the Royal Decree, even adapted according to § 489, may no longer be up-to-date when entering or during the delivery year.

  If the AMT price is not updated during the delivery period, capacities targeted by the AMT monitoring should also be allowed to declare a number of days where it is not available, especially when there is no scarcity moments identified (cf. possibility for the availability testing).

- **§536** Determination of Obligated Capacity for Energy Constrained CMUs for its SLA Hours : the Total Contracted Capacity ex-ante is divided by the Derating Factor(CMU,t) which is calculated taking into account capacities that are contracted ex-post (included in Annex A). This is not logical and the formula should be adapted.

- **§581 & 587**

  "*A CMU is only tested for its full SLA (if any) if it has failed the previous Availability Test in the same Delivery Period*". We understand that the objective of this clause is to limit the cost of testing for some technologies. However, **we wonder how Elia is able to verify the SLA declared by the DSM as, with the proposed rules, it could happen that the full SLA is never verified.** Will Elia at the very minimum verify the full SLA during the pre-delivery monitoring?

- §583

"*If no scarcity moments are expected in June, July and August of the simulation, no Availability Tests are carried out during these months of the Delivery Period on a CMU unless Missing Capacity is determined for this CMU during Availability Monitoring in the last twelve months".*

Elia is proposing – based on an analysis of forecasted scarcity moments – not to carry out an Availability Test in June, July and August. Although this is a retroactive change, **FEBEG welcomes and supports this proposal**.

However, we have several concerns and propose some improvements to the rule:

- We fear that large assets may again be more impacted by the conditions à if a CCGT would, for instance, miss a few MW on a single Availability Monitoring, it could potentially still be subject to availability testing during summer (if no scarcity is projected). **We therefore propose to link the condition to a percentage of the NRP (e.g. Missing Capacity of at least 10% of the NRP).**
- As mentioned above, there is no similar clause introduced for the availability monitoring via AMT moments. Given that some technologies will mostly be monitored via the AMT monitoring and others mostly via the availability testing, we recommend including **similar provision for the AMT monitoring so that the level playing field is ensured among all technologies**.

- §584

It should also be allowed to request an Availability Test in order to reinstate a testing regime or only on quarter hour (for units with a SLA), as foreseen in the cover note.

- §594

Correction for participation in reserved frequency-related Ancillary Services and Redispatching Services (if applicable). For the determination of Vact,AS(CMU,t) and Vact,RD(CMU,t) it is referred to sections that apply to CMUs without Daily Schedule. This clause should be adapted so that this correction can also be applied to CMUs with Daily Schedule.

10.Secondary Market

- § 691

In the formula of the SMREV for energy constrained CMUs during SLA hours, the Total Contracted Capacity is divided by the Last Published Derating Factor. It should be by the Derating Factor (CMU,t) as in the definition.

- **10.4.10**

  This chapter should be updated to take into account the changes on the strike price indexation, which applies in each case.

- **§732**

  "If the Buyer of an Obligation has not signed the most recent version of the Capacity Contract yet, the Buyer of Obligation signs the most recent version of the Capacity Contract as part of the contractual implementation."
  It should also be avoided that 2 different Capacity Contracts are co-existing for the same CMU.

- **§753 of FRV2**

  What is the reason for the removal of this paragraph on the encryption of prices ?

11.Financial Securities

- **§764**

  "No Financial Security can be submitted or adapted – except upon request of ELIA – from September 2 until October 31 inclusive." It should be specified that this concerns only Financial Securities related to Primary Market Transactions.

- **§774**

  End date of the Validity Period, for an Existing CMU : as in the design note for LCT, the Validity Period should end 50 WD after the date of the Capacity Contract signature if there are no possible penalties anymore related to a pre-delivery control after the signature of the capacity contract.

- **§781**

  A new legal opinion should not be requested for an amendment to an affiliate guarantee when the modifications are limited (eg. no change of the Validity Period, increase of the amount with less than 20%).

12.Payback obligation

- **§ 824-828: Indexation of the Calibrated Strike Price of a Transaction in time.**

  Febeg considers that the proposed formula is a significant improvement compared to as-is but refers to the comments provided above.

- §824

  For capacity contracts with one-year contract, Elia proposes an indexation of the strike price formula as from the start of the delivery period. To clarify this, we propose not to refer to the first delivery period but instead refer to the start of the delivery period for capacity with 1-year contract and the first delivery period for capacities with multi-year contracts.

- §826

  - "The value of the fixed component of the *ex-post* Indexed Calibrated Strike Price remains, at all times, identical during the entire Transaction Period of a Capacity Contract.": as there may be several Transactions and Transaction Periods in a Capacity Contract, the words 'Capacity Contract' should be replaced by 'Transaction'.

  - **FEBEG proposed to adapt the variable component of the new formula: it should only be computed on the positive day-ahead prices of the concerned month, and should in any case never be negative.**
  - "The variable component consists in the DAM simple average prices of the previous month. and is adapted on a monthly basis at the end of each month." :
    - "Previous month" is confusing. Proposal : 'of the month for which the ex-post Indexed Calibrated Strike Price is computed"
    - "DAM simple average prices" : it would be clearer to say "simple average of the DAM prices"
    - "at the end of each month" : to replace by "ex-post"
  - the definition of "DAMm" corresponds in fact to "Average DAMm"

- §826-838

  The wording for "ex-post Indexed Calibrated Strike" should be aligned, as different terms are used:
  - §826 "Indexed ex post Calibrated Strike Price"
  - §827 "ex post Calibrated Strike Price"
  - §828 "Indexed Calibrated Strike Price"
  - §829 "ex-post Indexed Calibrated Strike"
  - §838 and 12.4.2 "ex-post Indexed Strike Price"

- §843: The current functioning rules provide that a stop-loss limit on the yearly remuneration is applied to the total amount of payback. FEBEG supports this important feature of the CRM design. Should the update of the strike price indexation formula not be implemented, FEBEG urges to introduce measures to limit the significant risks linked to exceptional and unforeseen market circumstances such as the introduction of stop loss limit with a lower granularity (e.g. weekly), including for contracts that have been signed during the first auction

- §849

  "previous month M" : "previous "is confusing, we suggest to remove it.

- 12.3.2 Payback Obligation formula

  If the *Strike Price(CMU_id, Transaction_id, t)* is replaced by the *ex-post Indexed Strike Price(CMU_id, Transaction_id, t)*, then the maximum between the Declared Market Price and the *ex-post Indexed Strike Price(CMU_id, Transaction_id, t)* is not applied anymore for CMUs without Daily Schedule.

- 12.3.2.2 Payback obligation for an Energy Constrained CMU's ex-ante transaction

  Next to the preceding remark, the Derating Factor(CMU,t) should be replaced by the Derating Factor contractually associated to the Transaction in the Capacity Contract (cfr FRv1)

- 12.4.3 Effective Payback Obligation calculation

  As for the Payback Obligation formula, the ex-post indexed Strike Price should not replace the Strike Price.

13.Liability and Force Majeure

No specific new remark

14.Dispute Resolution

No specific new remark

15.Fall back procedures

No specific new remark

16.Transparency and motivation

- **§ 1003**

  Is the list of prequalified CMUs already available?

- **§ 1005**

  We propose that Elia also provide **the split (in MW) of the opt-out/IN volume in the auction report** per technology, at least for the following technologies CCGTs, OCGTs, CHPs, PSP, Waste, Batteries, DSM. This is needed to better understand the auction results.

- **§ 1007**

  The **current estimation of the non-eligible volumes** in the calibration report varies a lot from year to another. We refer to our comments provided in §290 and following.

17.Direct and Indirect foreign capacity participation

18.Annexes

- **Annex A.2 Grid User Declaration**

  Table A.1 : the title "Expected Nominal Reference Power" was not updated in the French version of the FRv2 as in the NL and EN versions.

- **Annex A.6**

  Following the presentation of Compass Lexecon in the last Elia WG Adequacy regarding their study in relation with the proposed trajectories for a progressive reduction of the CO2 emission limits for participation in the Belgian CRM**, FEBEG would like to stress the following**:

  - The CO2 emission limits in the CRM Functioning Rules (version 2) of 29/05/2022, in line with European legislation, already exclude some gas-fired plants from participation in the Belgian CRM for delivery period 2026-2027 (y-4 auction), and potentially for 2025-2026 (Y-1 auction).
  - Even if no decision has been made so far, the FPS proposed several trajectories for CO2 emission limits in the public consultation of 01/06/2022, which confirm and further strengthen the limits for participation in the Belgian CRM and potentially even go beyond obligations and rules imposed by European legislation.
  - We are very concerned that most gas-fired power plants, including cogeneration units, will be excluded from participation in the CRM which will significantly increase the cost of CRM and might put the Belgian security of supply at high risk, as about 5000 MW capacity would become ineligible for CRM support within a very few years.

Therefore, **we welcome the conclusion of Compass Lexecon's cost-benefit-analysis, which show that not allowing the existing plants to participate, in their current configuration, into the CRM would (i) lead to SoS issues for Belgium and (ii) be very expensive for the Belgian customers**. We also support the recommendations made by Compass Lexecon with regards to existing capacities (namely align back to the EU regulation). However, FEBEG cannot agree with the proposal during the presentation of Compass Lexecon, that specific CO2 emissions' trajectory could be applied on signed long-term contracts. This would be considered by FEBEG as a retroactive change compared to the functioning rules V1, clearly impacting the balance of the contract.
In addition, FEBEG regrets that the next steps following this study have not been clearly explained by the Belgian authorities.

In any case, **FEBEG strongly recommends that:**

- The conclusions of Compass Lexecon for existing plants are considered by the Belgian Authorities should a specific trajectory be decided.
- If relevant, a public consultation is held on a clear and detailed proposal for a trajectory;
- the consultation is organized in due time so that market parties have sufficient visibility on future CRM conditions for the next auction. The trajectory should therefore be integrated in the new CRM Functioning Rules (version 3) to be published by the 15/05/2023;
- the full trajectory, and not only the CO2 emissions limits for the upcoming auction, is embedded in the CRM Functioning Rules in order to create a stable and long-term view for investors.

- **Annex B.1 Pre-delivery period definition and Total Contracted Capacity determination**

18.2.1.3 Total Contracted Capacity determination

For the Moment of control on 31th August 2024, for CMU 1: is the new fourth criteria well respected for Transaction 1? The Transaction Period covers multiple Delivery Periods, but the moment of control relates to the second Delivery Period of the Transaction Period, not to the first.

- **Annex B.3. content of the quarterly report**

- Permitting Milestone : If a copy of the permits has already been transferred to Elia (with a previous quarterly report), it should not be included again in the quarterly report.

- Start of Construction Work : in case Construction Works have started, proof of the start need to be transferred in the form of an attestation by supplier / attestation by the contractor.

In our view, this requirement is written for the case of an EPC contractor (turnkey). For a multi-contract approach, a lot of suppliers are involved in the construction of the plant. Hence the supplier / contractor which should supply the "attestation" is not clear. Should it be the Contractor in charge of the preparation of the site (site levelling, temporary facilities)?

- **Annex E.4: Standard Affiliate Guarantee modification form**

We suggest the following improvements in the wording :

- Replace "with regard to [•] (name of the CRM Actor) as follows" by "with regard to [•] (name of the CRM Actor) for CMU(s) with identification number(s) [•] as follows"
- Replace "modification" by "amendment"
- Replace "This amendment shall enter info force as of today" by "This amendment shall enter info force as of the date of the signature of this amendment."
- Replace "confirming the selection of (OR part of) its CMUs in the Auction" by "confirming the selection of (OR part of) the CMU(s) referred above in the Auction"

- **Annex E.5: Illustration of the determination of volume to be guaranteed**

The end dates of the Validity Periods of the different Transactions on the primary market should be corrected (eg. Transaction 1 should be in 2026 instead of 2025), and – if needed – the determination of the volumes to be guaranteed. Also for the Transactions on the secondary market, the Validity Periods should be stated.

- **Annex H : Application of provisions of Functioning Rules to Capacity Contracts already concluded**

This annex should be updated.