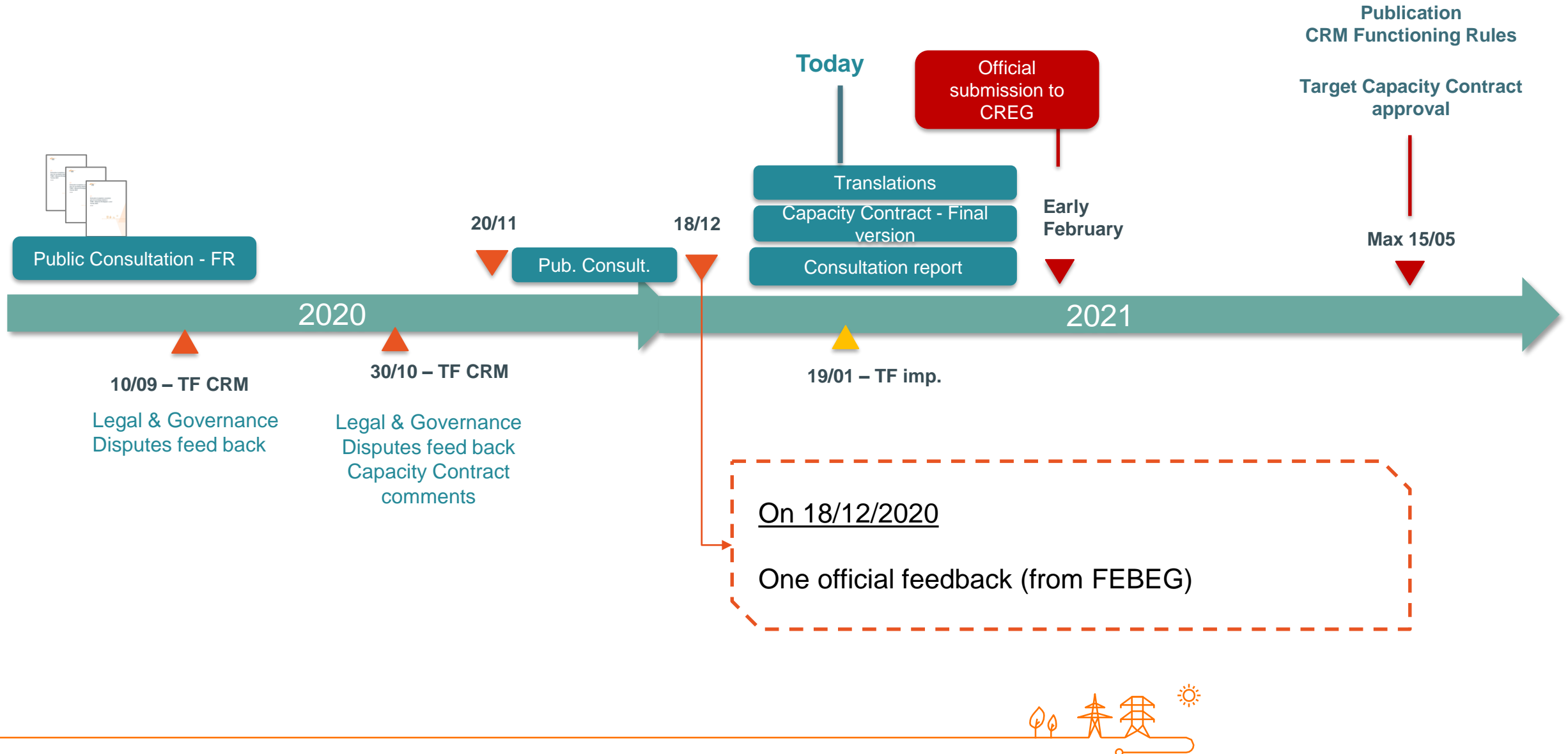


# Implementation TF CRM

19/01/2021



# Capacity Contract planning 2020-2021



# FEBEG's comment through the whole document

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Received comments can be sorted in two categories:

- Formatting / Typos / Interpretation matters
- Content matters

For this presentation, ELIA tried to summarize (based on its understanding of FEBEG's concerns) most important topics and – whenever possible – already present elements of answer.



Of course, detailed answer to each point of attention will be proposed in the consultation report, along with the updated capacity contract proposal.

- Contractual counterparty not identified yet;
- Definitions (contract, service, transaction) need to be improved to facilitate the understanding;
- Interaction with the FR not always clear and sometimes could be also clarified in the capacity contract

- ELIA worked on one scenario based on the resolution DOC 55 1220/007 approved by the Parliament, in which the Transmission System Operator has been put forward as the designated contractual counterparty.
- ELIA understands FEBEG's request for clarification and will analyze how and if these can be improved.
- Capacity Contract purpose is not to repeat what is already specified in the Functioning Rules; but only makes reference to it, whenever relevant.



- ELIA only acts as facilitator (capacity put at disposal of **the market, not delivered to ELIA**) ;
- Discretionary powers given to ELIA in its role of facilitator without CREG being always consulted / without third party in case of contestation

- ELIA confirms this reading but this does not prevent it to suffer some damages triggered by events related to this contract. Hence the proposed liability clauses, which are being revised (see slide on liability)
- 1/ Both Capacity Contract and Functioning Rules are being approved by CREG in the end, following intense cycle of formal and informal consultations (both contains contestation procedures).  
2/ Similar to the existing processes of the energy market (e.g: balancing), intervention of the CREG remains always possible  
3/ A draft KB Control being elaborated to further clarify CREG's monitoring role in the context of the CRM



- Unclear distinction between the contract and the different CMUs covered by the Annexes of the contract ;
- Timing of contract signature unclear and not fully aligned with Functioning Rules;
- Sequence with the connection contract signature needs clarification.

- ELIA will clarify and reminds that one contract (main contract) includes as many Annexes A as Transaction(s) for one Capacity Provider.
- ELIA will clarify to ensure consistency between both documents.
- The signature of the connection contract, as a **preliminary step to the signature** of the Capacity Contract, is an obligation and may trigger penalties (FR) if not compliant.



- Is the capacity remuneration or Monthly remuneration is to be understood as excluding VAT in the entire contract?
- Effective timing of the proposed invoicing cycle challenged by FEBEG, as for VAT and income tax purpose special attention (Q4 transaction) and timing is to be respected (15<sup>th</sup> of the month following the supply)

- ELIA confirms that whether for the submitted offer or the prices/remuneration referred to in to FR, all is to be read VAT exclusive. However, the final invoice/credit note will include the VAT
- Proposed invoicing process is similar to the one implemented in balancing mechanisms. However, ELIA will investigate the need to adapt those to consider FEBEG's concern on the income tax and make sure it respects such legislation.



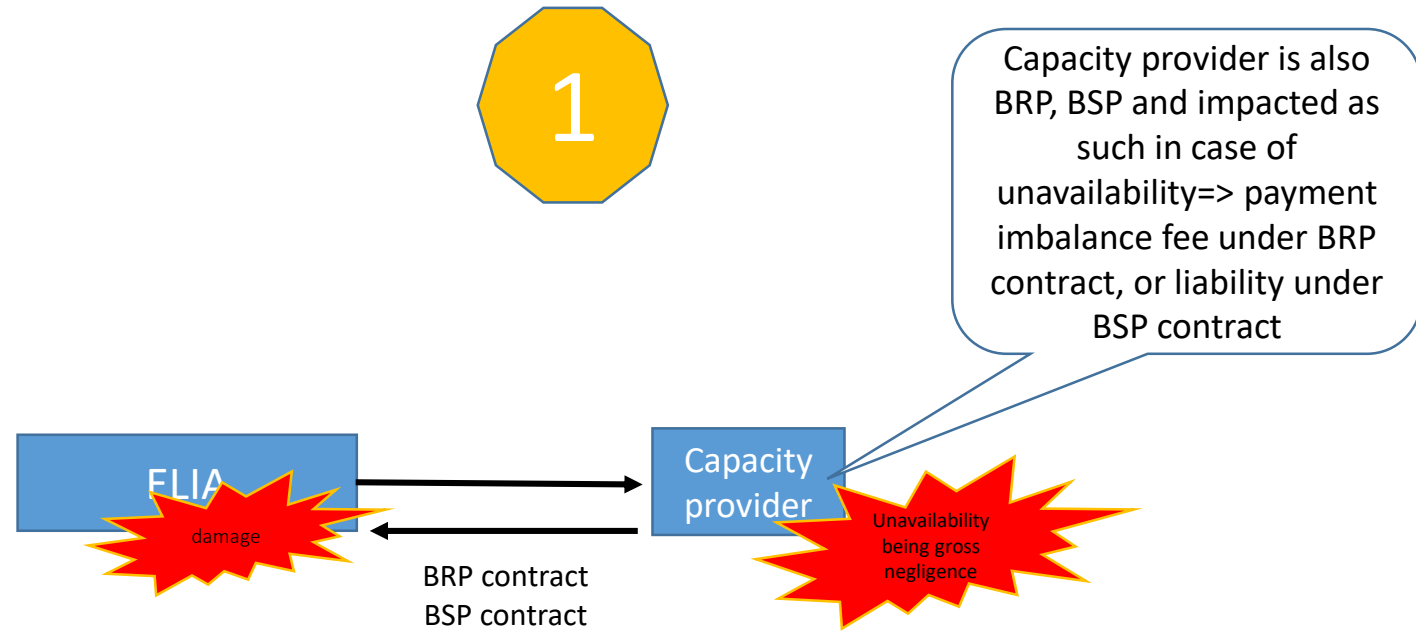
- Capacity provider not providing service to Elia but to market
- Only sanction for non-availability : penalty
- Elia cannot suffer damages, not already covered by the penalty, or in the framework of regulated contracts
- Contract cannot regulated third party liability: claims ruled by other contracts
- Definitions (gross negligence vs simple fault, indirect damage)
- Asymmetric cap
- Elia cannot limit its extra-contractual liability
- Redundant paragraphs

- This is a true assumption, also being the basis for our liability clause, but the law does not prevent Elia from suffering damage.
- Penalty not to cover damage.
- Consequences non-availability to be ruled under and according to regulated contracts (eg. capacity provider to pay unbalance fee under BRP contract, liability and penalties under BSP contract); causal link. Only if other direct damages, application of liability clause under capacity contract
- Third party claims against Elia => recourse claim Elia against capacity provider, if and when, within caps contractual/legal rights of third parties.
- Definitions Ok (in)direct damage better aligned
- Cap extra-contractual liability only in/at the occasion of the performance of the (rules of FR implemented by) contract
- Symmetric cap, also applicable to recourse claim from capacity provider for claims from grid users contributing to the aggregated CMU
- Redundant paragraphs deleted.

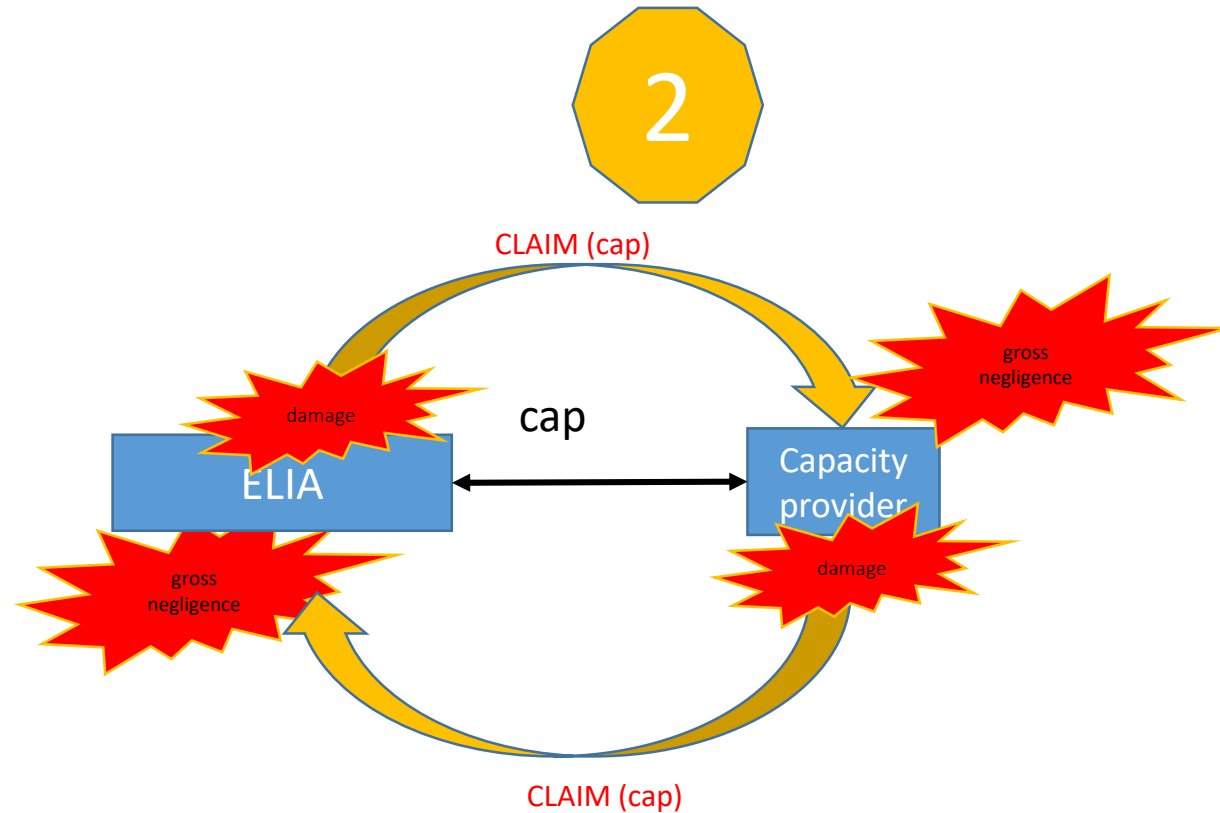




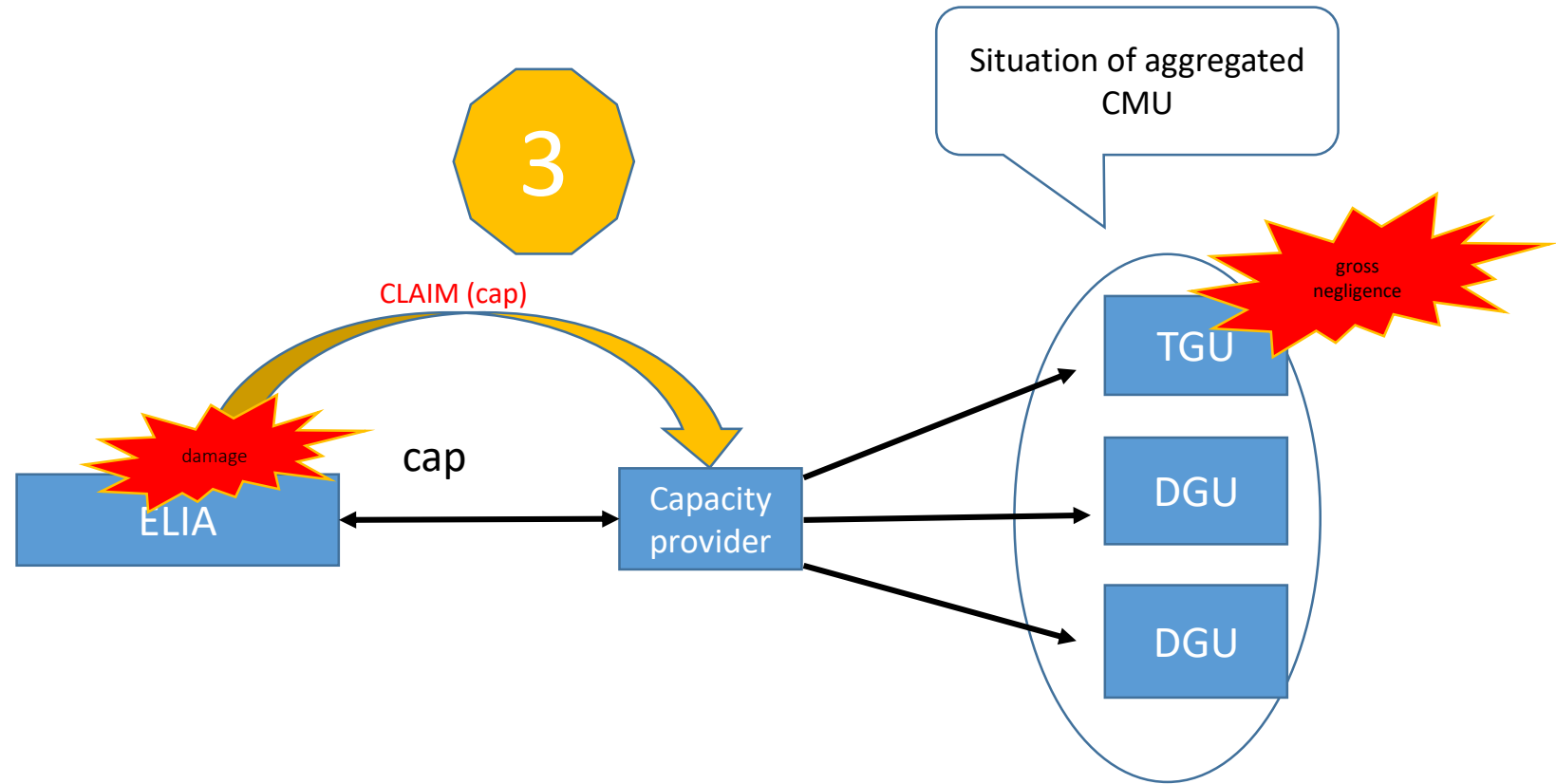
# Relationships => liability between parties



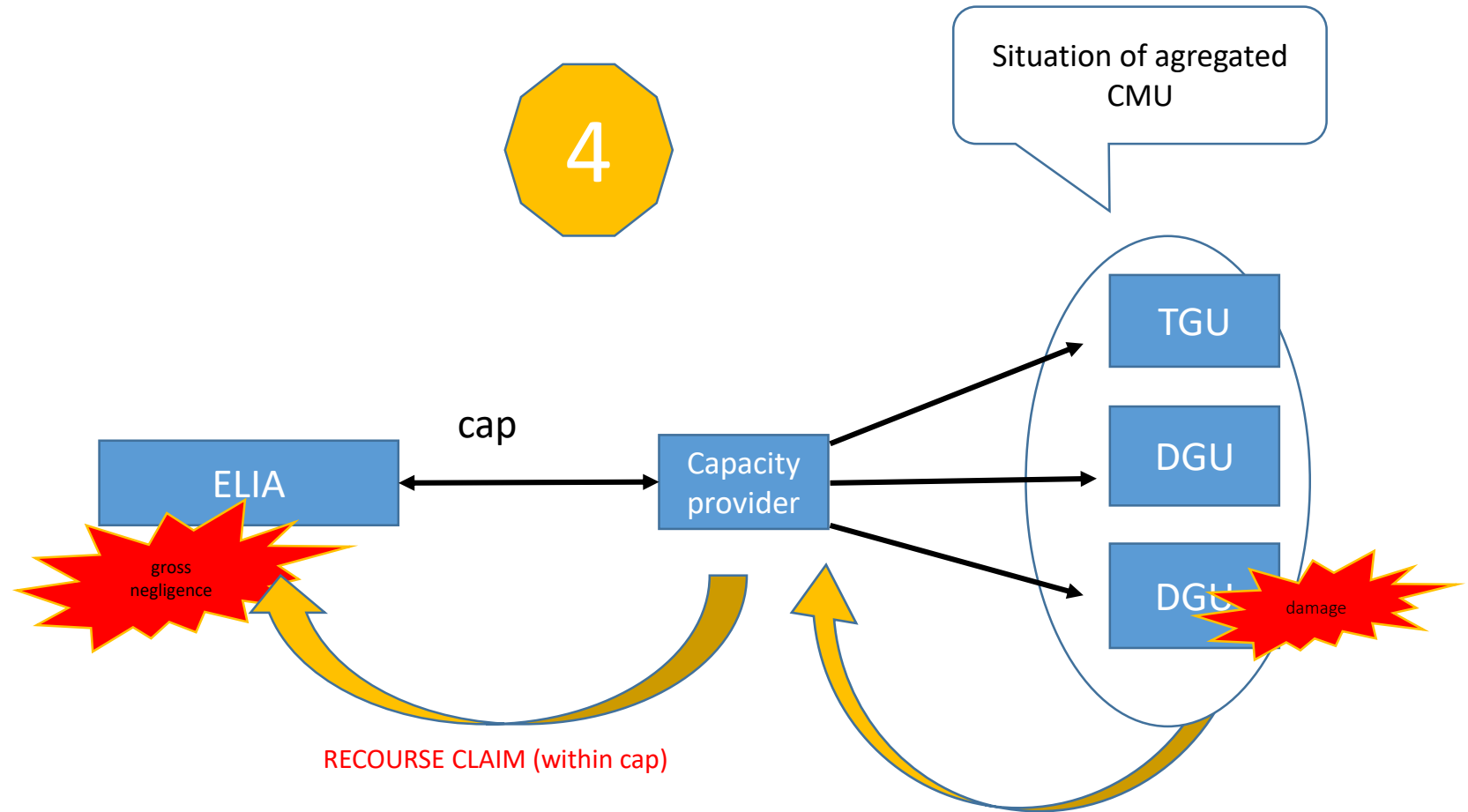
# Relationships => liability between parties



# Relationships => liability between parties

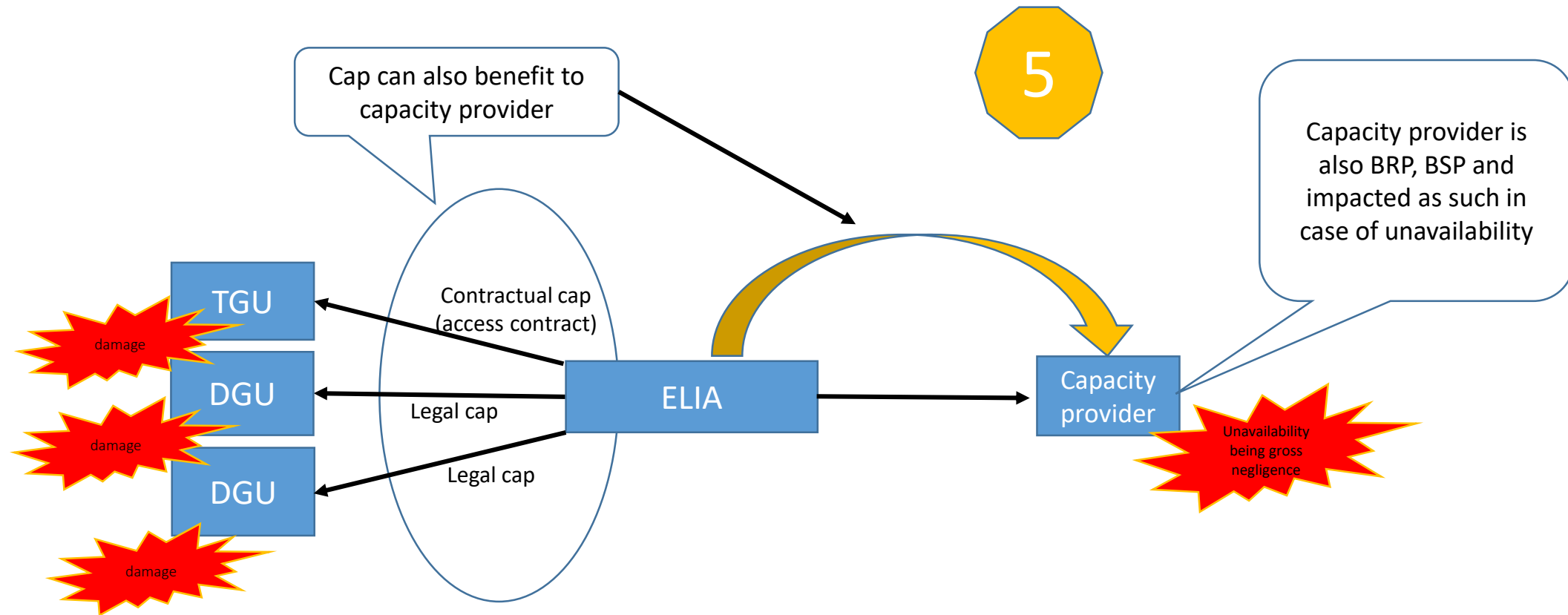


# Relationships => liability between parties





# Relationships => third party liability



## Art 8 - Force Majeure

- List of situations to be extended to certain circumstances,
- Obtaining permits and authorizations are to be considered as a Force Majeure event (even on “project works”), under certain conditions,
- Force Majeure gives right to a suspension of the commitments under the Capacity Contract but not to a termination,
- In the event of an early termination due to Force Majeure (on “infrastructure works”), such situation should give right to a partial reimbursement by ELIA to Capacity Providers, with regards to investments costs already incurred.

Even though these concerns were already raised and discussed extensively in the context of the design discussions on the pre-delivery monitoring in 2019 and 2020, ELIA is currently looking into FEBEG’s identified points of attention to determine if and how the current text proposal should be adapted.



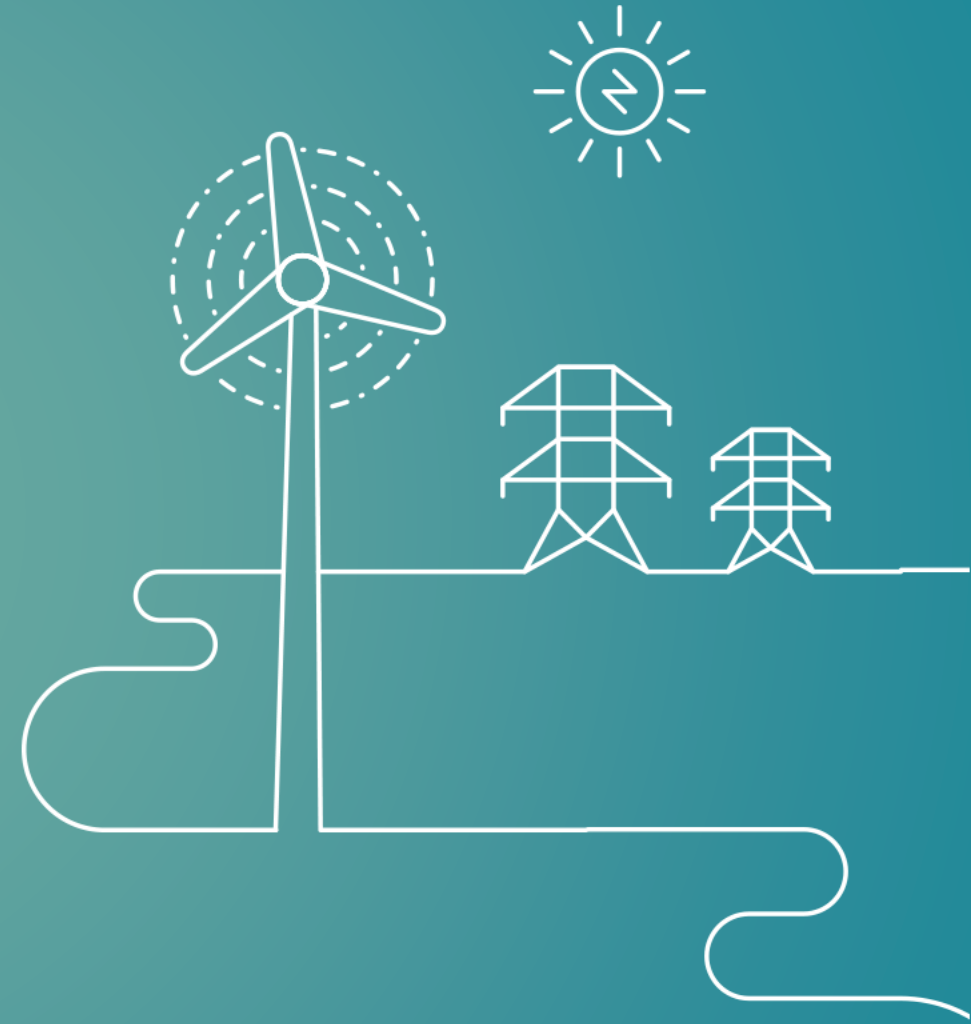
## Art 13 – Early suspension and termination

- Unclear definition (and extensive range of interpretation) of gross negligence while it gives a ground for contract termination
- Proposed timing (30 days) is not an acceptable term for remedial action(s)
- Suggestion to complete the grounds for contract termination with other elements such as failure in obtaining the permit.

- Elia analyses the opportunity of the early termination in case of gross negligence
- ELIA agrees and will adapt the proposed timing
- ELIA thanks FEBEG for the suggestion and investigates how to take them into consideration into the final version of the Capacity Contract.



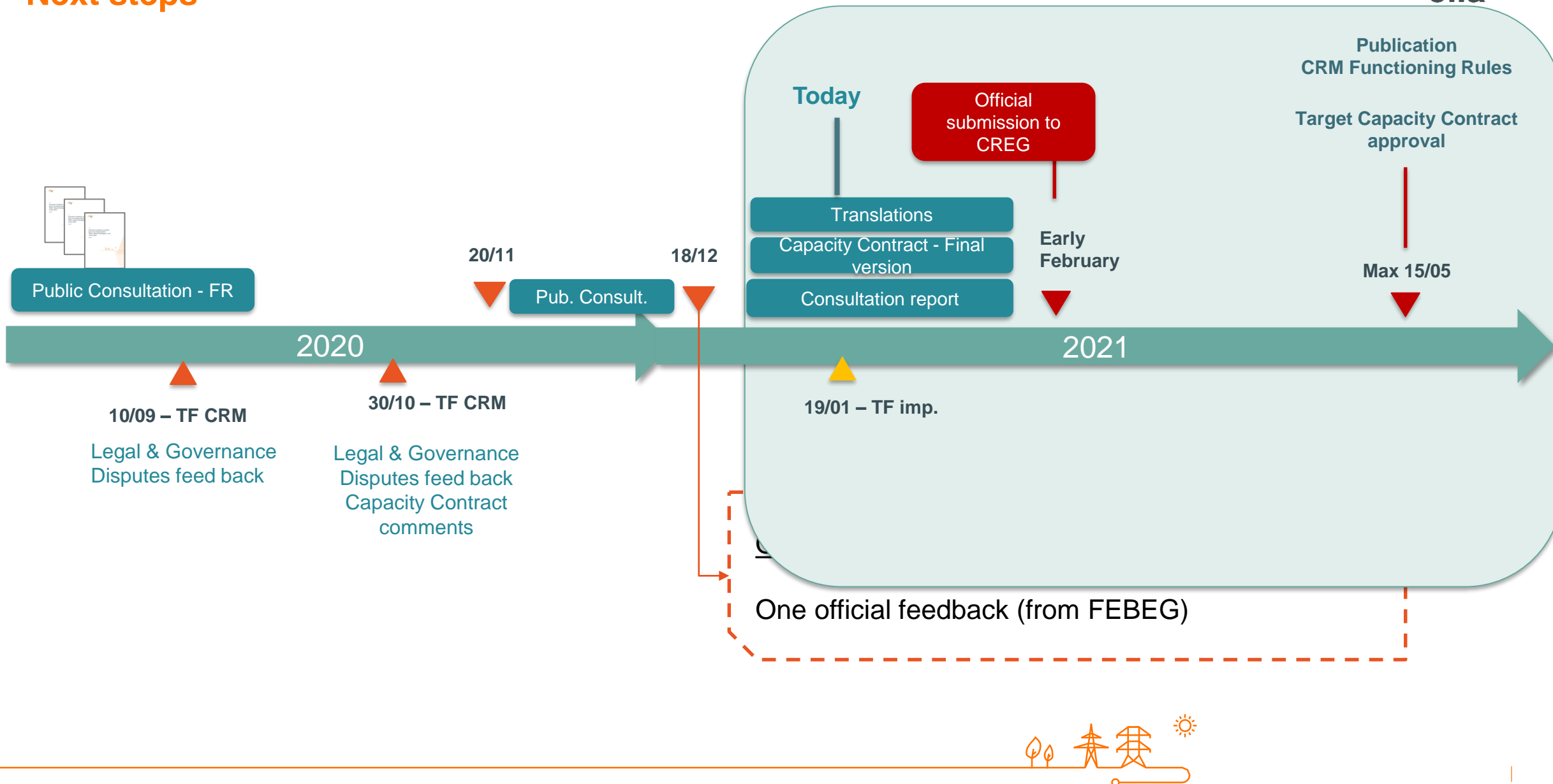
# Next steps





# Next steps

Next steps



**Thank you.**

