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federation of belgian industrial energy consumers

FEBELIEC vzw/asbl
BluePoint Brussels, Bld. A. Reyerslaan 80, 1030 – Brussel/Bruxelles
Tel: +32 (0)496 59 36 20, e-mail: febeliec@febeliec.be, www.febeliec.be
RPR Brussel - TVA/BTW BE 0439 877 578

Febeliec answer to the CREG consultation on the Functioning Rules (v3) for the Capacity Remuneration Mechanism

Febeliec would like to thank CREG for this consultation on the third version of the functioning rules for the Capacity Remuneration Mechanism, after the consultation by Elia on a second version in September 2020. Please note that Febeliec's feedback is based on the review of the English version only and that Febeliec assumes that CREG (and Elia)have made sure that all three language versions (English, Dutch, French) are fully aligned.

Febeliec also wants to voice its concern about the complexity of the CRM, but also in particular the functioning rules. Febeliec evermore wonders to which extent novice readers, who have not been involved in the design phase and discussions, can truly understand the functioning rules and grasp the full meaning of all interactions and interdependencies. Febeliec is of the opinion that the complex terminology, concepts and final texts lead to an additional and undue barrier, which could result in a lesser participation to the CRM auction or parties with obligations being in breach of those because of lack of understanding.

As already stated many times before, Febeliec continues to consider the design of the CRM flawed on many aspects and as such has fundamentally regretted the fact that Elia in its aforementioned consultation in September 2020 did not allow to question the underlying design. Febeliec also continues to be concerned that the legal and regulatory framework has not yet been finalised, making it very difficult if not impossible to give a reasoned view on the functioning rules of a non-finalised legal and regulatory framework. In this light, Febeliec also explicitly wants to refer to the in-depth investigation which the European Commission has started with regards to the proposed Belgian CRM mechanism, which could lead to the abolition of the proposed CRM altogether, but could also result in a range, whether short or long, of required changes to the design and thus the functioning rules. Any significant modifications would according to Febeliec not only require a new public consultation but could also significantly impact the business cases of potential participants to the CRM auction, requiring sufficient time to revise their offers (especially if potential parties under the non-modified rules would not have seen a business case). Moreover, any such changes could also have a significant impact on other actors not necessarily participating to the CRM auction (e.g. parties required to prequalify) and of course last but not least could have a profound impact on the overall cost of the CRM, which could create inference with the legal least cost criterion. Febeliec thus questions the proposed set of functioning rules under such shaky basis, and would also like to know on which draft versions of the proposals of legal and regulatory documents (e.g. a.o. Royal Decrees control, financing, appointing contractual counterparty, foreign capacity participation, …) this version of the functioning rules is based, if any.

In the framework of this consultation, Febeliec explicitly wants to refer to all its input on the previous consultations (by CREG, but also and in particular those conducted by Elia) as well as all the task force meetings and workshops. Febeliec not only continues to have serious doubts about the design of the CRM as proposed by Elia (see also below) but also is of the impression that not all concerns that have been voiced by Febeliec and other parties during those consultations and meetings have duly been addressed in order to create a CRM design and implementation that is compliant with the relevant European and Belgian legislation. Febeliec is mostly concerned about a.o. but not limited to the legal provisions related to the avoidance of any market abuse and the lowest cost criterion for the CRM, which for Febeliec are not sufficiently guaranteed under the current design proposed by Elia, which cannot be commented upon in this consultation, and the functioning rules that result from Elia's design, which is the subject of this consultation.

On the proposed functioning rules version 3 (FRv3), Febeliec regrets that still many of its comment voiced on previous versions have not been taken into account and in some instances (too easily) been discarded

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altogether without sufficient justification according to Febeliec. Febeliec will thus provide a (non-exhaustive and preliminary) overview of its previous comments that still have not been addressed but which for Febeliec should in any case be taken into account. In any case, Febeliec wants to stress that this can however not be seen as any formal acceptance by Febeliec of the design of the CRM proposed by Elia, as Febeliec considers the proposed design to be severely flawed (see also below).

- On the **cost of the capacity holder's or capacity provider participation to the CRM**, while Febeliec fully agrees that those parties wishing to participate to the auction should in no case be remunerated for their incurred costs, as these will presumably be incorporated into their offers for the CRM auction and in case of successful selection thus be remunerated implicitly (with selection in the auction being under control of the participant in its offer), Febeliec has severe issues with all the costs for those owners who will have to go through a prequalification process (mandatory for all generation facilities after derating above 1MW in Belgium), without in many cases even participating to the CRM. As a result, these parties incur costs related to the CRM, which they will never be able to recover as they will not participate (or in some cases are not allowed, a.o. generation facilities with on-going subsidy schemes) to the auction and will thus never earn any revenue from the CRM. Febeliec regrets that these costs are never taken into account by Elia, not on an individual level for the concerned actor nor on a general societal level, as these implicitly increase the overall cost of the CRM in Belgium and thus by the omission of Elia in all its calculations and design features are not taken into account with regards to the legal lowest cost criterion. Febeliec still remains very much in doubt of the usefulness of obliging a very broad set of market participants to prequalify, even if they are not intending to participate to the CRM auction itself. In this context, Febeliec also explicitly wants to refer to the specific cases of emergency generators. Many of Febeliec's members but also many other market participants (e.g. hospitals) have a wide range of emergency generators with installed capacities above 1MW, yet despite several questions from Febeliec on this point, it has still not been clarified whether these are obliged to prequalify for the CRM, even if not participating to any offer in the auction. Febeliec wants to stress that merely based on an overview of its own members' installed capacity (to a very large extent known by Elia as connected to the Elia grid) and a study by the CREG on installed capacity at a.o. hospitals, it concerns several hundreds of MWs in Belgium. Most worrisome remains that while it might be that these emergency generators would have to prequalify for the CRM, with all related costs, Elia still, despite many comments from Febeliec on this points, does not take these assets into account for the determination of the required volume for the CRM auction. This means that several hundreds of MWs of capacity (according to Febeliec in any case above 600MW in Belgium) are not taken into account for the determination of the required volume, yet would still have to fulfil the administrative burden of a prequalification process. Febeliec finds this approach by Elia extremely worrisome and not in line with the legal lowest cost criterion.
- On the new section on **data protection** in FRv3, Febeliec insists that also the rights of those parties that have to prequalify for the CRM but that do not wish to participate (see also above) are duly safeguarded, as it is not convinced that the current text proposal sufficiently covers this category of market actors.
- On the **definitions**, Febeliec remains concerned on the quality of some definitions as well as the translations between the different languages. After the modifications made by Elia in light of the replies on the consultation of the second version of the Functioning Rules, Febeliec still remains with following questions and remarks (non-exhaustive):
    - Definition of CDS: this still only refers to the CDSs connected to the Elia grid, while also certain elements will be required to be treated by CDSs connect to public distribution grids or other CDSs. Febeliec had asked Elia to perform a very thorough check whether all these aspects have been taken into account, as those CDSs as relevant system operators for the underlying connected grid users will also be impacted by the participation of any such grid user to the CRM (e.g. capacity reservation, financial guarantees, …). Febeliec regrets that Elia in its consultation report on the consultation of FRv2 only refers to the DSOs for the alignment

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process, yet has still not provided any input nor facilitated any discussion on this point, despite many request from Febeliec.

- More in general and beyond the scope of CDSs, Febeliec strongly regrets that it is still at this point, less than one year before the auction of the CRM and about half a year before the start of the prequalification process, still completely unclear how any assets connected to the **public distribution grid** will have to fulfil their legal obligations or the obligations following their voluntary participation to the CRM auction. Such elements should according to Febeliec, as also mentioned at many occasions, be part of the Functioning Rulers of the CRM, or at the very least be provided and consulted upon in a parallel track. Febeliec can however only observe that this has not been done at all nor does it seem foreseen at this point.

- For the definition on infrastructure works, despite comments made by Febeliec on FRv2, Febeliec notices that the definition has not been modified and still refers to "DSOs", thus presumably still covering also CDSOs (as these are DSOs under European legislation and "DSO" is not defined in the Functioning Rules). Febeliec is surprised by this, as Elia in the consultation report of FRv2 stipulates that CDSOs are to be excluded because of a possible conflict of interest (which Febeliec does not see), yet omits to adapt the definition to reflect this position (also CDSOs might have to perform infrastructure works in order to allow an underlying grid user to participate to the CRM and are not excluded by the current definition in FRv3). Moreover, Febeliec observes that a.o. in section 6.4.2 CDSOs are explicitly included for external constraints, yet would not be included for infrastructure works (although the text proposal does not reflect Elia's opinion provided in the consultation report on FRv2).
- On the definitions of partial declared prices (day-ahead, intraday and balancing), while Febeliec understands the comments provided by Elia in its consultation report on FRv2, Febeliec still considers the applied terminology (name) of the concept to remain extremely confusing, as it is not a partial price, nor a partially declared price, it is a declared market price (in the different segments) for part of the volume of a CMU. Febeliec hence yet again would suggest to either remove the definition altogether and work with the definition of declared market price or rename the concept to avoid any confusion. Febeliec considers Elia's comment on "recognizable terminology" and "sense of brevity" as insufficient justification for the introduction of a very confusing terminology in already overcomplex concept in an even more overcomplex set of functioning rules. Febeliec insists, as it has done on many occasions and in many context in the past, that it prefers documents to be longer yet clear and unambiguous to (slightly) more condensed yet overly confusing, leading to undue and unwarranted lack of understanding by readers, especially novice readers who have not been involved in the entire discussion.

- On the **DSO-CRM Candidate agreement**, Febeliec wonders how and when DSO-connected CDSs (or CDS-connected CDSs) will be implicated in these discussions when an underlying grid user of such CDS would want to participate to the CRM auction. Febeliec strongly regrets that Elia claims to organize a TF CRM together with the FPS Economy, yet omits to cover any topics that are not related directly to Elia and this despite being the party composing the complete set of Functioning Rules (not necessarily only related to the Elia operations). For Febeliec, it is clear that these aspect should also be exhaustively covered in the functioning rules of the CRM, especially in light of the prequalification obligation (see also above).
- On the **prequalification procedure** (including fast track procedure), while Febeliec appreciates that Elia has clarified in FRv3 to apply a CDS cooperation agreement to formalize a.o. the exchange of QH metering data between the CDSO and Elia, Febeliec insists that the FRv3 provides a clear and complete overview of the exact role of the CDSO (responsibilities, timing, …), in particular but not limited to the situation where a market actor would have to prequalify an asset without participation to the CRM (see above), in which case no such agreement would exist nor be required, while without support of a CDSO a CRM-candidate connected to a CDS will not be able to provide all information requested by Elia as part of the prequalification file. Moreover, Febeliec also wants to refer to its

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comment below on Annexe A21, as this CDS cooperation agreement only seems to cover Elia-connected CDSs and not DSO-connected CDSs.

- On the **specific conditions for Virtual CMUs** (which encompass demand side response, but also many more different types of smaller assets, including non-CIPU generation capacity, storage, …), even after the justification given by Elia in the consultation report on FRv2, Febeliec keeps wondering about the limitation of this category to an arbitrary volume of 400MW while such limitation does not exist for (unproven as not yet built) generation capacity. Febeliec thus has questions about the existence as such of an arbitrary limitation but also on the low level of this limitation (as compared to the non-existing and thus infinite level for generation capacity). Especially in light of the very rapid introduction of new technologies in the near future and within the timescale of the first Y-4 auction (e.g. smart meter roll out, incentive schemes for several technologies, …), Febeliec considers this artificial limitation an undue barrier, which could result in artificially and unduly increasing the overall cost of the CRM, which would not be in line with the legal least cost criterion, while Virtual CMUs as compared to single unit CMUs have the advantage, also taking into account the intermediate steps during the pre-delivery monitoring phase, to ensure that not all capacity would be unavailable at delivery time (as opposed to a single unit CMU of even more than 400MW which could be entirely not yet available to the system at that point).
- With respect to the evolution of **derating factors**, Febeliec on FRv2 wondered how this would be treated in practice, as this was not extensively discussed during the design phase. Febeliec considered that there is a potentially very important implication for all CMUs as well as the overall volume determination if derating factors for certain categories of technologies are revised over time. Febeliec stated in its answer to the consultation on FRv2 (numbering referring to the sections in FRv2): "*Imagine that for a certain category, the derating factor is increased over time (resulting in less eligible volume). This could mean for existing and selected CMUs in the CRM that they could not longer fulfil their obligations under their contracts as their eligible volume would decrease, and thus they could even be eligible to penalties (which would then also be taken into account by them in their bids, which could substantially increase the overall cost of the CRM). Alternatively, if the derating for contracted units would not be adapted and thus their contracted capacity would remain the same (as per 5.8.1), this would lead to discrimination with regards to other not yet contracted capacity of the same technology category, as these would be derated at the general derating factor for that category, which under the above assumption of an increase in derating over time would be higher than the initial derating factor under which the already contracted CMUs were considered, meaning that they would have to spread their costs over a smaller volume. Moreover, on the overall volume determination the impact would even be more pronounced as Elia would either have to consider subcategories for each technology category based on the different derating factors over time or would have to compose artificial derating factors to correct for the changes over time, in order to avoid ending up with an artificially increased needed volume because of an increased derating factor over time applied to all capacity in each category. Febeliec finds all the above options unacceptable and would like Elia to provide a very clear and concise view on how to apply the evolution of derating factors over time and the implications on all the involved steps of the CRM, including the volume determination and cost impact. Febeliec can extend the scope of this request to any changes of parameters over time (strike price, reference price, capacity category update, …), as these could lead to similar effects, which would also be unacceptable to Febeliec if this were to lead to discrimination or cost increases, especially beyond the legal lowest cost criterion. Febeliec also has questions regarding 5.8.5.3 and the evolutions due to legal updates, and how these could negatively impact the overall cost of the CRM or lead to discrimination or other impacts as described above. In this context, Febeliec also refers to section 392 where it is unclear how the impact of updates of the derating factors will be considered. The same applies for updates of the calibrated strike price (e.g. section 571)*". Febeliec has taken note of Elia's answer in the consultation report: "*A change made to a Prequalification File (because of the adaptation of a Derating Factor e.g.), does not in any way impact the obligations linked to a Contracted Capacity. It means that the Contracted Capacity will never evolve over time because of the Derating Factors. The evolution of a Derating Factor has only an*

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impact on the Eligible Volume - which is the volume available for a forthcoming Auction or Secondary Market deal and not the volume of the Contracted Capacity(ies). It is to be noted that the mere fact of having multiple derating factors emerges from the Law and the Royal Decree governing these aspects and follows the fact that for a considered delivery period the adequacy contribution of a technology could be different. At the same time, it is a balanced trade-off to fix the derating factor within a contract for the duration of the contract as from the moment it is signed. Otherwise, a changing derating factor would imply a significant financial risk. Towards a volume determination, signed contracts are to be taken into account by CREG in its proposal for demand curve, like towards the signed contracts there is no impact of a derating change towards volume determination. However, for any newly signed transaction, the last known derating factor will be used, thereby ensuring the best adeqaucy coverage known at the moment. If this means that for already contracted capacity some extra MWs would come available, they can of course participate with those eligible MWs towards a new auction or secondary market transaction, as mentioned above". Febeliec does not agree with the approach proposed by Elia as this clearly leads to a different treatment of assets of the same category (or in an extreme case even of different parts of the same asset if those are bid in at different auctions) and could be considered as discrimination. Febeliec also has not seen an answer to its comment in case derating is revised in a direction that reduces the available MWs of a certain technology, which would result in historically signed contracts to underdeliver compared to the most recent derating factors. Febeliec thus urges to provide a concise answer to avoid any discrimination and to modify the functioning rules accordingly. Febeliec also notices a.o. in section 176 of FRv3 that the derating factor will lead to different eligible volumes for the Y-4 and Y-1 auctions for the same technology class. As referred to above, in case an asset has only participated with part of its volume to the Y-4 auction and with another part of its volume to the Y-1 auction, it would, for the same asset, have two different derating factors applicable at the same time, which according to Febeliec is difficult to understand. This results according to Febeliec in some very worrisome modifications in FRv3 (e.g. section 5.8.5 where is stipulated that the total contracted capacity and obligations can never be influenced by a modification of the prequalification file, which seems very strange to Febeliec, as some capacity might be contracted for 15 years, yet no revisions would ever be conducted).

- On **pre-delivery control** (section 7), Febeliec takes note of Elia's comment in the consultation report on FRv2 to questions from Fluvius that "*roles and responsibilities related to the processes after the prequalification will be clarified at a later stage (after an alignment with Synergrid) and transcribed in a later version of the Functioning rules. According to ELIA, this is not problematic as these questions concern topics of pre-delivery and delivery control*". Febeliec most strongly opposes that these aspects are not covered in the current version of the Functioning Rules, in particular as there will also be roles and responsibilities for CDSOs. This comment is valid for any element that still needs to be covered in the relation with other system operators than Elia. Moreover, Febeliec can only observe that Elia only refers to interaction with Synergrid, whereas there are many system operators that are not member of Synergrid and which yet again as such are thus not included in the discussions on the roles and responsibilities they will incur. The same applies for comments made by a Febeliec member (in casu, BASF) on availability monitoring in FRv2 for CDSs, where Elia refers to on-going discussions within Synergrid, to which Febeliec nor its members are invited. For Febeliec, these discussions should be open to all concerned stakeholders and the conclusions should be an integral part of the functioning rules and duly consulted upon and not be part of a bilateral and non-open discussion between a limited set of actors.
- Concerning **availability tests**, Febeliec insists the methodology to select CMUs on which availability tests are to be performed is included in the functioning rules. While Febeliec understands that it is important for such tests that an element of unpredictability exists, a clear methodology, albeit with a certain randomness or uncertainty factor, should also be included and consulted upon before approval from the CREG via approval of the functioning rules. Febeliec refers a.o. to the (new in FRv3) inclusion of a total load criterion as criterion for the selection of days for testing, to avoid undue testing during periods where no scarcity events are to be expected (a.o. based on Elia's own

adequacy assessments, e.g. summer periods). The impact is a.o. noticeable on unavailability penalties. Febeliec continues to regret that, despite its comments on this point, even during the summer period, where Elia has always maintained that there are no adequacy concerns, CMUs with announced missing capacity will still have to pay a penalty, as only the penalty factor X will be zero, not the entire penalty. While Febeliec understands that during winter period, announced missing capacity could jeopardize security of supply and that this should be discouraged by a penalty scheme (although one could argue about the severity of the penalty), such element seems disproportionate during the summer and will only increase the overall cost of the CRM, without bringing any additional added value. Even though part of the design, Febeliec strongly opposes such approach and wonders whether it is compliant with the legal least cost criterion.

- On the **secondary market**, Febeliec does not understand why for FRv3 section 9.6.4 of FRv2 has been removed.
- On the **financial security obligation**, and despite Elia's opinion, Febeliec still questions the obligation to provide a financial security during prequalification, as such element will create a.o. an additional financial barrier, while at this stage it is unclear whether a candidate will be selected in the auction. Febeliec thus prefers to postpone this to after the auction, possible also by incorporating a fallback mechanism in case a candidate would after selection not be able to provide the necessary financial security in a specific time period. This would avoid that all participants to the auction, also those not selected, would have to incur such costs, as this could especially for certain types of actors be an element resulting in their non-participation to the auction, which would reduce competition and could thus increase prices.
- On the **payback obligation**, Febeliec wants to stress that the purpose of this feature is to remove windfall profits for parties participating to the CRM. Febeliec considers Elia's proposal in FRv2 already not adequate enough to fulfil this role, as it does not fulfil the removal of windfall profits but at best would only limit them to a certain level (which according to Febeliec is thus not in line with the legal lowest possible cost criterion). However, Febeliec could under no circumstance accept that in an updated version the payback obligation would be hollowed out even further, as this would be to the detriment of consumers that have to pay the cost of the CRM. While Febeliec of course understands that participants to the CRM want to pay back as little as possible, this is not a legal nor valid criterion for the development of functioning rules, rather the opposite, and any relaxation of the payback obligation is thus for Febeliec even more unacceptable than the proposal of FRv2 already was. In any case and based on feedback from other stakeholders, it would absolutely be inconceivable for Febeliec to relax the payback obligation under a premise of forward market hedging sales strategies, as Febeliec has noticed that Elia does not take such revenues into account for the assessment of the need for a CRM and it would thus be completely unjustified to apply here the opposite approach, yet again to the detriment of consumers. Also on stop loss and penalty caps, Febeliec already found the proposal in FRv2 quite asymmetric and only to the advantage of participants to the CRM, and thus to the detriment of the consumes who will have to bare the cost, and as such cannot accept an even further deterioration of the proposal and watering down of these provisions. On the context of the Declared Market Price, Febeliec insists that this concept is retained in the functioning rules, despite comments from certain market parties, as without this concept many categories of assets would de facto not be able to offer or only so at high costs, while the concept also foresees the right incentives. Febeliec of course can only join market parties stating that the cost of the CRM should be as low as possible, while this is of course a legal criterion, and can only insist that the lowest possible cost can be reached by the abolishing of the CRM, if this were the wish of those market actors. Febeliec remains convinced that a correct functioning energy only market will provide system adequacy at the lowest possible cost for consumers as it ensures sufficient competition, within Belgium but also across borders.
- On **transparency**, and based on some comments from Elia in the consultation report on FRv2, Febeliec insists that the auction price is published, even if only one asset would be selected, as it would be unacceptable that such information would be kept confidential. In case market parties find such information too confidential, they can always opt out and not participate to the CRM auction.

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In general, on transparency Febeliec is adamant that, taking into account confidentiality rules about sensitive information, all information and data related to the CRM should transparently be shared with all market parties, not only to allow to check compliance of CMUs with the legal and regulatory framework, but also to allow market parties to have a clear view on opportunities for investment in the Belgian market (via the CRM or outside the CRM, in primary market capacity or secondary market capacity) in order to ensure that at some point in time, and as legally stipulated, the CRM market distortion could be phased out and normal market functioning restored.

- On the section on **foreign capacity participation**, Febeliec regrets strongly that Elia has not provided a clear set of functioning rules for such capacities (e.g. penalties, availability checks, payback obligations, …) in order to allow participation of foreign capacity to the Y-4 auction. While some references are made to Belgian legislation (some of it not yet published), any concrete content is missing to ensure that such capacity could participate in the first Y-4 auction (nor any later auctions although for such auctions some more time remains). Febeliec has already made this comment on FRv2 and regrets that in FRv3 still no additional information or clarification is provided, in particular how will be guaranteed that no discrimination will exist between domestic and foreign capacity and that the legal lowest cost criterion will be respected. Febeliec insists that a set of functioning rule for the CRM must also provide a clear and concise overview of all applicable rules for foreign capacity.
- On **penalties**, Febeliec is adamant that a correct approach is taken in order to ensure that the CRM complies with the least cost criterion, implying that all aspects that fall under the control of the capacity providers should not be socialized in the cost of the CRM, including a.o. the non-obtention of permits, in order to provide a correct incentive towards project developers to ensure that they only bid viable projects, as otherwise, as already described above, the cost of their non-respect of obligations would be borne by the consumers and increase the overall cost of the CRM.
- On the **auction process**, Febeliec reiterates that a switch to a pay-as-cleared approach is not acceptable for Febeliec as this would lead to additional inframarginal rents for most selected CMUs, which are not required to remunerate capacity costs as these are exactly already covered by the CRM itself and thus would lead to windfall profits for these CMUs and in any case be in breach with the legal lowest cost criterion according to Febeliec.
- On the **annexe A2** with the proposed submeter solutions, Febeliec is surprised to see that despite its comments on FRv2 that only 3 options are listed, while Elia applies at least a fourth option for its other products, and Elia’s reaction to include this fourth option, FRv3 still only provides 3 options. Febeliec insists that this section is adapted accordingly, to bring it line with the extensive work that has been done by Elia and all other involved stakeholders in the framework of the strategic reserve products and balancing products.
- On **Annexe A21**, Febeliec welcomes the work done by Elia to clarify the collaboration agreement between Elia and the CDSO for the exchange of data, yet regrets that the scope is limited to those CDSs with a connection agreement with Elia. Febeliec asks that also is clarified how this collaboration should be done with CDSs connected to the distribution grid. This is also mentioned before in Febeliec’s general comment on the lack of clarity on how delivery points of the DSO grids, in particular those on CDSO grids connected to the DSO grids, will be treated. While Febeliec has understood that these discussions between Elia and the DSOs are on-going, it is clear that the set of functioning rules is not complete without these elements, also needed for the prequalification of assets, and thus necessary before the first Y-4 auction.