

# Draft decision

(B)2526

14 March 2023

## Draft decision on the formal requirements for a request for a derogation from the intermediate price cap

Article 22, § 2, paragraph 2 of the Royal Decree of 28 April 2021 laying down the parameters for determining the volume of capacity to be anticipated, including their calculation methods, and the other parameters necessary for the organisation of the auctions, as well as the method and conditions for granting an individual derogation from the application of the intermediate price cap(s) under the capacity remuneration mechanism

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# TABLE OF CONTENTS

- TABLE OF CONTENTS ..... 2
- INTRODUCTION ..... 3
- 1. LEGAL FRAMEWORK..... 4
- 2. BACKGROUND ..... 5
- 3. CONSULTATION..... 6
- 4. ADJUSTMENTS TO THE FORMAL REQUIREMENTS FOR A REQUEST FOR A DEROGATION FROM THE INTERMEDIATE PRICE CAP ..... 6
- 5. FORMAL REQUIREMENTS FOR A DEROGATION REQUEST..... 7
- APPENDIX 1 ..... 8
- APPENDIX 2 ..... 9

# INTRODUCTION

In application of Article 22, § 2, paragraph 2 of the Royal Decree of 28 April 2021 laying down the parameters for determining the volume of capacity to be anticipated, including their calculation methods, and the other parameters necessary for the organisation of the auctions, as well as the method and conditions for granting an individual derogation from the application of the intermediate price cap(s) under the capacity remuneration mechanism, the purpose of this draft decision is to establish the formal requirements for requesting a derogation from the intermediate price cap to be considered for the 2023 auction.

This draft decision consists of five parts. The first part briefly describes the legal framework. The second part describes the background. The third part deals with the public consultation. In the fourth part, the CREG details the adjustments made to the formal requirements for a request for derogation from the intermediate price cap. The fifth part contains the formal requirements for a derogation request.

This draft decision was approved on 14 March 2023 by the CREG Management Committee by written procedure.

# 1. LEGAL FRAMEWORK

1. In accordance with Article 22, § 2, paragraph 2 of the Royal Decree of 28 April 2021 laying down the parameters for determining the volume of capacity to be anticipated, including their calculation methods, and the other parameters necessary for the organisation of the auctions, as well as the method and conditions for granting an individual derogation from the application of the intermediate price cap(s) under the capacity remuneration mechanism (hereafter: Methodology RD), it is the CREG's responsibility to define the formal requirements for requesting a derogation from the intermediate price cap (hereafter: IPC)

2. This article lists the minimum elements that the request must contain:

*“1° the identification of the capacity market unit, or units in the event of linked capacities, via a unique identification number from the pre-qualification procedure as defined in the operating rules, and the auction to which the request applies;*

*2° an accurate estimate and description, or a description of the absence, if any, of the following cost components with respect to the capacity market unit, or units in the event of linked capacities, for the capacity supply period to which the request applies:*

- a) broken down by delivery point where applicable, the annual fixed operational and maintenance costs (in €/year), including the additional specification of fixed network tariffs and activation costs for the availability tests requested by Elia, as defined in the operating rules, if these are deemed relevant, supplemented where applicable by the assumptions as to at least the number of hours during which the unit(s) has (have) been activated and the number of start-ups or activations on which these estimates are based, as well as the relationship between the fixed costs and the number of activations on the one hand, and the number of operating hours on the other;*
- b) the fixed costs associated with the management of a portfolio of delivery points relevant for operating on the energy market (in €/year) by the relevant capacity market unit, during the capacity supply period to which the request applies;*
- c) broken down by delivery point where applicable, the annualised recurring investment expenditure not directly linked to an extension of the technical lifetime of the installation or to an increase in the nominal reference power, including, where applicable, the provisions for major maintenance work on the installations, which does not necessarily take place every year, (in €/year), supplemented where applicable, by the assumptions as to at least the number of hours during which the unit(s) has (have) been activated and the number of start-ups or activations on which these estimates are based, as well as the relationship between the fixed costs and the number of activations on the one hand, and the number of operating hours on the other;*
- d) broken down by delivery point, where applicable, the annualised non-recurring investment expenditure relevant for the provision of the service with the relevant capacity market unit, or units in the event of linked capacity, during the capacity provision period to which the request applies (in €/year);*
- e) the variable costs for the energy supply (in €/MWh), including the additional specification, where appropriate, of at least the following elements included in these variable costs: variable operational and maintenance costs, including variable network tariffs if deemed relevant, the efficiency factor or, in the event of storage systems, the round-trip efficiency;*

- f) *for an aggregated bid, the difference between the capacity offered and the sum of the installed capacity of the various delivery points;*
- g) *the fixed start-up or activation costs by specifying the cost per start-up or activation, excluding the costs for the fuel needed purely for start-up (in €/start-up or €/activation), supplemented, where appropriate, by an indication of the type and quantity of fuel needed purely for start-up (in GJ/start-up).*

*For each investment, at least the following data should be provided: the total investment expenditure, the financing expenditure including the weighted average cost of capital, the economic lifetime of the investment, the justification relating to the provision of the service, the year of the investment and the resulting annualised cost.*

*The non-recurring investment costs eligible for the calculation of the missing money of the capacity market unit, or units if they are linked capacities, are the initial non-recurring investment costs ordered based on the first decision, in accordance with Article 7j, §6 of the Electricity Law, and that are incurred at the latest on the day before the first day of the capacity supply period.*

*3° where applicable, a precise estimate and description of the revenues (in €/year) with respect to the capacity market unit, or units in the event of linked capacities, for the capacity supply period to which the request applies, other than the annual inframarginal rents and the net revenues from the provision of balancing services referred to in paragraph 8, 3° and 4°, such as, but not necessarily limited to, revenues related to steam and/or heat;*

*4° where applicable, a precise estimate of the operating restrictions linked to operation that affect the provision of the service with the capacity market unit in question, or units in the event of linked capacities, and a description of the impact of these restrictions on revenues, during the capacity supply period to which the request applies, for example, but not necessarily restricted to: energy restrictions, activation restrictions, planned maintenance periods, must-run restrictions;*

*5° an estimate and a precise calculation of the missing-money (in €/MW/year) of the capacity market unit concerned, or units in the event of linked capacities, for the capacity supply period to which the request applies.*

*The components issued by the applicant for derogation referred to in points 2° to 4° in support of the application must be specific to the capacity market unit concerned, or units in the event of linked capacities.”*

## **2. BACKGROUND**

3. In its decision (B)2237, the CREG previously laid down the formal requirements for a request for a derogation from the intermediate price cap to be taken into account in the 2021 auction and made them available on its website on 12 May 2021.

4. In order to facilitate their interpretation, the CREG subsequently published an adapted version of these formal requirements in its decision (B)2237-2 of 17 June 2021. The CREG also published an Excel version of these formal requirements in order to facilitate the input of data by the derogation applicants.

5. In its decision (B)2356, the CREG established the formal requirements for a request for a derogation from the intermediate price cap to be taken into account in the 2022 auction. These formal requirements were published on its website on 31 March 2022. The main objective of the adjustments made to the formal requirements for the 2022 auction is to increase the predictability for the market players regarding the processing of the requests for derogation from the intermediate price cap. The CREG's objective is also to ensure consistency between the assessment of the intermediate price cap and the assessment of the merits of the requests for derogation from the intermediate price cap. The CREG also adapted the Excel version of these formal conditions in order to facilitate the input of data by the applicants for derogation.

### **3. CONSULTATION**

6. The CREG Management Committee has decided, in accordance with Article 23, § 1 of its internal rules of procedure, to organise a public consultation on its website concerning this draft decision on the formal requirements that must be met by a request for derogation from the intermediate price cap in order to be taken into account in the context of the 2023 auction.

7. Given the limited number of changes envisaged by the CREG in relation to the 2022 version of the formal requirements, this public consultation shall run from 14 March 2023 to 21 March 2023.

### **4. ADJUSTMENTS TO THE FORMAL REQUIREMENTS FOR A REQUEST FOR A DEROGATION FROM THE INTERMEDIATE PRICE CAP**

8. The main objective of the adjustments made to the formal requirements for the 2023 auction is to take into account the expected evolution of the consumer price index for the supply period from November 2027 to October 2028.

9. In order to ensure consistency between the assessment of the intermediate price cap and the assessment of the appropriateness of the derogations from the intermediate price cap, the formal requirements specify that the cost categories included in the derogation request must correspond to the categories taken into account in the AFRY study "Update of Peer Review of "Cost of Capacity for Calibration of Belgian CRM"<sup>1</sup>, on which Elia based its recommendation of the intermediate price cap in its calibration report<sup>2</sup>. Based on the clarification provided by AFRY on the categories of costs taken into account in its assessment, the CREG adapted the formal requirements by specifying that the electricity purchase costs that can be included in the request for derogation from the IPC are limited to the electricity imported from the grid when the unit is shut down (for planned maintenance or due to a forced shutdown). These costs are considered as variable costs.

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<sup>1</sup> [https://www.elia.be/-/media/project/elia/elia-site/public-consultations/2022/20221028\\_afry\\_update-of-the-peer-review-of-cost-of-capacity-for-calibration-of-belgian-crm.pdf](https://www.elia.be/-/media/project/elia/elia-site/public-consultations/2022/20221028_afry_update-of-the-peer-review-of-cost-of-capacity-for-calibration-of-belgian-crm.pdf)

<sup>2</sup> [https://www.elia.be/-/media/project/elia/elia-site/users-group/ug/wg-adequacy/2022/20221128\\_dy2027---y-4-auction---calibration-report.pdf](https://www.elia.be/-/media/project/elia/elia-site/users-group/ug/wg-adequacy/2022/20221128_dy2027---y-4-auction---calibration-report.pdf)

## 5. FORMAL REQUIREMENTS FOR A DEROGATION REQUEST

10. The formal requirements that must be met for a derogation request to be considered, are set out in Appendix 1.

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For the Commission of Electricity and Gas Regulation:

Laurent JACQUET  
Director

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Acting Chairman of the Board of Directors

# **APPENDIX 1**

## **Application form for a derogation from the intermediate price cap**



## **APPENDIX 2**

### **Declaration on honour derogation from the intermediate price cap**