



# **EXPLANATORY NOTE ON THE PUBLIC CONSULTATION OF THE PROPOSAL OF AMENDMENTS OF THE T&C BRP FOLLOWING THE IMPLEMENTATION OF TRANSFER OF ENERGY FOR THE DA AND ID MARKETS AND FOLLOWING REQUESTS OF THE CREG AND THE VREG IN PREVIOUS DECISIONS**

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## PRACTICAL INFORMATION

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This note serves as an explanation for the current consultation on the **proposal of amendments of the Terms and Conditions for Balance Responsible Parties** (hereafter referred to as “T&C BRP”). The purpose of this consultation is to obtain comments from the market parties. At the end of the public consultation, Elia will provide a consultation report that will be available to all market parties.

All responses to this public consultation will be made public on Elia’s website, except those comments for which market parties ask to treat their contribution as confidential. However, all responses to this public consultation will be submitted to the relevant regulatory authorities in the context of the official approval procedure<sup>1</sup> for the Rules organizing the T&C BRP.

Elia invites all stakeholders to submit any comments and suggestions they may have on the documents submitted for consultation. The consultation period runs from 22 October 2020 to 22 November 2020. All responses must be submitted via the online form on the Elia website. The draft proposal for the changes to the T&C BRP is available for consultation on the Elia website.

Questions regarding these documents can be sent to the following email address: [BMMconsult@elia.be](mailto:BMMconsult@elia.be).

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<sup>1</sup> Article 6(3) of Regulation 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing

## INTRODUCTION

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In 2019, Elia performed a study relative to the implementation of Transfer of Energy (hereafter ToE) to the DA and ID markets (hereafter DA/ID markets). This study concluded with a recommendation for the implementation of ToE for the DA and ID markets. In addition, the study concluded not to apply Asymmetric Imbalance Adjustment (hereafter AIA) for DA/ID markets and to remove the use of asymmetric imbalance adjustment from other market segments with ToE. An implementation plan has been proposed to the CREG, and presented to the market participants during the working group balancing meeting of March 2020. In July and August 2020, a consolidated design note<sup>2</sup> describing in detail the final proposed design for the implementation ToE for the DA/ID markets has been published and publically consulted.

This public consultation proposes adjustments to the T&C BRP in line with this consolidated design note.

In addition to the changes relative to the implementation of ToE for the DA and ID markets, modifications are proposed to address the requests made by the CREG in decision (B)1913/2 of 27 May 2019 and (B)2013 of 2 December 2019, as well as requests made by the VREG in decision BESL-2019-23 of 27 June 2019.

Finally, a small adaptation for the nominations for external commercial trade programs is required due to the evolution towards higher resolution (smaller market time unit) of intraday cross-border exchanges.

To summarize, the proposed changes to the T&C BRP can be grouped into changes related to:

1. The implementation of ToE for the DA and ID markets
2. The modifications based on requests made by the CREG and the VREG in earlier decisions
3. The evolution of the time unit for intraday exchanges.

An overview of the proposed changes relative to each of the above elements is discussed in the sections below.

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<sup>2</sup> The consolidated design note of the implementation of ToE for the DA/ID markets can be consulted via the following link: [https://www.elia.be/-/media/project/elia/elia-site/electricity-market-and-system--document-library/transfer-of-energy/2020/2020\\_07\\_design\\_note\\_toe\\_da\\_id.pdf](https://www.elia.be/-/media/project/elia/elia-site/electricity-market-and-system--document-library/transfer-of-energy/2020/2020_07_design_note_toe_da_id.pdf).

# 1. Proposed changes relative to the implementation of ToE for the DA and ID markets

## 1.1. Definitions

Article 3 introduces the following new definitions:

- DA/ID flexibility service
- FSP Contract DA/ID
- Nomination  $BRP_{FSP}$ , Day-ahead Nomination  $BRP_{FSP}$  and Intraday Nomination  $BRP_{FSP}$
- Market situation with Transfer of Energy
- aFRR balancing energy bid
- LFC-block
- $BRP_{source}$
- Frequency Restoration Reserves or FRR
- Frequency Restoration Reserves with automatic activation or aFRR
- Frequency Restoration Reserves with manual activation or mFRR
- Delivery point  $DP_{PG}$
- Delivery point  $DP_{SU}$
- Providing group
- SDR-Service

In addition, the following definitions have been removed:

- CIPU Technical Unit
- Non-CIPU Technical Unit
- Provider of Non-Reserved Tertiary Control from Non-CIPU Technical Units
- Provider of Tertiary Control from Non-CIPU Technical Units

Finally, certain existing definitions are modified:

- Balance Responsible Party associated with a Flexibility Service Provider or  $BRP_{FSP}$
- Daily Balance Schedule
- Delivered Volume of Flexibility
- Delivery point
- Federal Grid Code
- Ordered Volume of Flexibility
- Rules governing Transfers of Energy
- Rules governing the Functioning of the Strategic Reserve
- SDR
- Technical Unit

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- Transfer of Energy

## 1.2. Corrections of the balancing perimeter

Article 20.8 is modified in the following ways:

- The description of the perimeter corrections performed in case of activations of Delivery points  $DP_{PG}$  is simplified. The simplification entails that the original Articles 20.8.2 (describing the perimeter corrections in case of the activation of delivery points  $DP_{PG}$  for which no ToE applies) and 20.8.3 (describing the perimeter corrections in case of the activation of delivery points  $DP_{PG}$  for which ToE does apply) are replaced by a single new Article 20.8.2 (describing in general the perimeter corrections in case of the activation of delivery points  $DP_{PG}$ ).
- It is clarified that in case an FSP activates certain delivery points  $DP_{PG}$  in the context of the DA/ID flexibility service, the perimeter of the  $BRP_{FSP}$  associated to this FSP is corrected only with the sum, over all activated  $DP_{PG}$  for which ToE applies, of the delivered volume of flexibility (and hence not with minus the requested volume of flexibility).
- The sentences related to the application of the AIA are removed. Recall that the term AIA is used to refer to the process of capping of the sum of the delivered volume of flexibility by all delivery points activated for the provision of a service to the requested volume of that service, and the pro-rata reduction of the delivered volume of flexibility of the involved delivery points. After stakeholders expressed concerns about AIA when applied to the DA and ID markets, and after an analysis of Elia regarding the relevance of AIA in the context of changes in the balancing markets, it was decided not to apply AIA for ToE in DA/ID and to remove the use of AIA for all other markets where ToE is applicable.<sup>3</sup>

## 1.3. Individual balance responsibility

With the removal of AIA, an overdelivery of a certain activation using delivery points  $DP_{PG}$  for which a market situation with ToE applies impacts the perimeter of the  $BRP_{FSP}$ . In this context, Article 16.2 has to be adjusted to remove the sentence restricting the possibility for a  $BRP_{FSP}$  to deviate from its imbalance.

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<sup>3</sup> A detailed discussion regarding asymmetric imbalance adjustment can be found in the consultation report of the 2019 study regarding the implementation of ToE in DA/ID markets. The study and the consultation report can be consulted on the following site: [https://www.elia.be/en/public-consultation/20190617\\_public-consultation-designnote\\_toeidda](https://www.elia.be/en/public-consultation/20190617_public-consultation-designnote_toeidda) .

## 1.4. Daily balance program

A new type of nomination called “Nomination BRP<sub>FSP</sub>” is introduced on top of the existing types of nominations a BRP submits to Elia. This nomination refers to flexibility volumes that will be activated by the associated FSP in the context of the DA/ID flexibility service. Two subtypes of Nomination BRP<sub>FSP</sub> are possible: Day-ahead Nomination BRP<sub>FSP</sub> and Intraday Nomination BRP<sub>FSP</sub>. A detailed description of these notifications, including an illustration of their use, are presented in Section 4 of the consolidated design note on the implementation of ToE for the DA and ID markets.<sup>4</sup>

Article 24 specifies rules relative to these new types of nominations. Specifically, this Article specifies that only a BRP<sub>FSP</sub> associated to an FSP that has signed an FSP Contract DA/ID has the possibility to submit these types of nominations.

Article 25 specifies the rules regarding the timing of the submission of these new types of nominations as well as the granularity with which they must be submitted.

## 1.5. Data exchange

In Article 22, the paragraph describing the data Elia will make available to the BRP, in his role as BRP<sub>FSP</sub>, is modified in order to:

- Describe more accurately which data is provided to the BRP<sub>FSP</sub>;
- Generalize it, such that the data exchange does not only cover the data exchange in case of an activation of DP<sub>PG</sub> for the provision of mFRR balancing energy, but also the data exchange resulting from an activation in the context of the provision of aFRR balancing energy, SDR, the DA/ID flexibility service and/or congestion management.

## 1.6. Notifications to the BRP<sub>source</sub> in case of the activation of DP<sub>PG</sub>

Annex 5 is modified to describe a proposal to improve the system to inform the BRP<sub>source</sub> about the impact of activations of DP<sub>PG</sub> on its balancing perimeter.

As discussed in detail in the consolidated design note of the implementation of ToE for the DA/ID markets<sup>5</sup>, the system of notifications to inform the BRP<sub>source</sub> is modified in order to provide the BRP<sub>source</sub>

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<sup>4</sup> The consolidated design note of the implementation of ToE for the DA/ID markets can be consulted via the following link: [https://www.elia.be/-/media/project/elia/elia-site/electricity-market-and-system---document-library/transfer-of-energy/2020/2020\\_07\\_design\\_note\\_toe\\_da\\_id.pdf](https://www.elia.be/-/media/project/elia/elia-site/electricity-market-and-system---document-library/transfer-of-energy/2020/2020_07_design_note_toe_da_id.pdf).

<sup>5</sup> The new system for notifying the BRP<sub>source</sub> is described in Section 4.4, 4.5 and Annex 1 of the consolidated design note of the implementation of ToE for the DA/ID markets. This design note can be consulted via the following link: [https://www.elia.be/-/media/project/elia/elia-site/electricity-market-and-system---document-library/transfer-of-energy/2020/2020\\_07\\_design\\_note\\_toe\\_da\\_id.pdf](https://www.elia.be/-/media/project/elia/elia-site/electricity-market-and-system---document-library/transfer-of-energy/2020/2020_07_design_note_toe_da_id.pdf)

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a more user-friendly and clear overview of the total impact of activations of Delivery points DP<sub>PG</sub> on its perimeter. Thus, instead of informing the BRP<sub>source</sub> about the impact of each individual activation on its perimeter, the proposed system of notifications informs the BRP<sub>source</sub> about the total impact (aggregated over all activations) on his perimeter. This is particularly relevant in case of multiple simultaneous or overlapping activations (in the context of possibly different provided services) impacting the perimeter of the BRP<sub>source</sub>.

## 2. Proposed changes relative to the requests made by the CREG and the VREG

In the framework of the submission and approval process of the first version of the T&C BRP that took place in 2018 and 2019, the CREG and the VREG asked Elia in their respective approval decisions to analyse and adapt or provide clarifications relative to legal, financial or general aspects of the T&C BRP. During the discussions between CREG, VREG and Elia that followed the above mentioned decisions, Elia provided some clarifications and proposed some additional improvements in the contract. As a consequence, the following adaptations are made to the contract:

- Article 3: Contract duration
- Article 4: Rules for interpretation
- Article 5: Invoicing
- Article 7: Emergency situations, Emergency state and on Force Majeure
- Article 8: Confidentiality
- Article 9: Suspension and termination of the BRP contract
- Article 10: General provisions
- Section XI (Articles 17 to 19) : Conditions to become BRP

### 2.1. Duration of the contract

Article 3 has been simplified to avoid repetitions and to refer more clearly to the necessary conditions to become BRP (described in section in XI).

### 2.2. Additional rules of interpretation

In Article 4, the sentence relative to conflict of interpretation between the body of the BRP contract and the annexes has been deleted, as the entire document (body and annexes) is one unique regulated document and as there should be therefore no contradiction between different parts of it.

### 2.3. Invoice objections

Two sentences have been added in Article 5.3 in order to clarify what type of objections (relative to the invoices) are considered manifestly justified allowing then the BRP not to pay the objected amount.

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## 2.4. Emergency situations, Emergency state and Force Majeure

The section IV "Emergencies and force majeure" ([Articles 7.1 to 7.3](#)) has been replaced by a section IV "Emergency Situation, Emergency state and Force majeure". In this new section:

- Article 7.1 refers to the notion of Emergency Situation (described in at. 72 of the EU network code CACM and art. 16.2 of Regulation 2019/943),
- Article 7.2 refers to the notion of Emergency state and other system states (as described in the EU network code SOGL and referred in the EU network code E&R), and finally
- Article 7.3 defines Force majeure in coherence with the EU legislation and describes the cases that are considered as Force majeure in the framework of the T&C BRP and.

This new section is also aligned and harmonized with the similar section existing in other regulated Terms and Conditions. More precisely the section "Emergency and Force majeure" of the general conditions of the T&C BSP, VSP and RSP<sup>6</sup>.

## 2.5. Confidentiality

[Article 8](#) is also modified in order to be as much as possible aligned with the similar articles regarding confidentiality in other regulated Terms and Conditions (T&C BSP, VSP and RSP).

More precisely:

- The Article 8.1 "No divulgation of confidential information" has been aligned as much as possible to the equivalent articles in the other aforementioned T&Cs taking into account some additional punctual remarks of the CREG and the specificities of the BRP contract.
- Articles 8.2 "Infringements to confidentiality obligations"; 8.3 "Ownership"; and 8.4 "Duration" similar to those of the aforementioned T&C have been added.
- In addition a specific article "Protection of personal data" has been added in order to comply with the GDPR legislation.

## 2.6. Suspension and termination of the BRP contract

The following changes have been made to [Articles 9.1 to 9.3](#):

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<sup>6</sup> Those general conditions of the T&Cs BSP, VSP and RSP were consulted and approved in the course of 2019-2020.

- In Article 9.1.1 General suspension procedure of the contract by Elia: 5 days have been moved from the period between the start of the suspension procedure and the effective decision to suspend the BRP (minimum 15 days becomes minimum 10 days) towards the period between the decision of the suspension and the start of the suspension (prolonged from 5 to 10 days to 10 to 35 days) in order to inform impacted market parties earlier of the effective decision to suspend a BRP. The minimum period between the start of the suspension procedure and the start of the suspension has remained the same (minimum 20 days).
- In article 9.1.1 : A translation error in the second § of article 9.1.1 has been adapted in the Dutch version in order to align it with the French version, and more particularly the term “met name” in Dutch has been replaced by “onder andere”.
- In Article 9.1.1 (“general suspension procedure”) as well as 9.1.2 (“immediate suspension”), the list of elements that have to be included in the registered letter informing the BRP of his suspension have been aligned and extended with additional information on the duration and the conditions a BRP has to comply with in order to end the suspension period.
- As there is a legal distinction between the different types of termination of a contract, the following terms have been used to designate the specific situations listed here below:
  - “Termination by giving notice”, “opzegging” in Dutch and “résiliation” in French is used to refer to terminations of the contract by the BRP with 3 months’ notice conform article 9.2.1;
  - “Rescission”, “ontbinding” in Dutch and “résolution” in French is used to refer to terminations of the contract by Elia because of a contractual breach of the BRP conform article 9.2.2 or by one of the Parties after legal authorisation conform article 9.2.3;
  - “Termination”, “beëindiging” in Dutch and “fin du contrat” in French is used to refer to all cases of contract termination.
- The notification process aiming at informing the impacted parties and concerned regulators of the start of the suspension/termination procedure and or of the effective decision to suspend/terminate a contract with a BRP have been clarified in Article 9.3.

## 2.7. General provisions

Articles 10.1 to 10.8 have been slightly adapted and completed in order to describe the processes in conformity with the EU network codes and guidelines and to harmonize them with similar articles of the other regulated T&Cs mentioned here-before.

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More particularly:

- Articles 10.1.1 and 10.1.2 clarify the process of amendment of the T&C BRP and its annexes based on EBGL dispositions.
- A more accurate reference to the EU legislation relative to the electronic signatures has been added in article 10.2.
- Precisions have been added in Article 10.4 on the transfer of rights in order to make it coherent with other T&Cs.
- An Article 10.9 “obligation to information” similar to the one existing in other T&Cs has been added.

## 2.8. Conditions to become BRP

Following adaptations have been made to the Section XI.

- Article 17 regarding the financial solvability of the BRP has been adapted in order to align it with the other T&Cs and to better reflect the operational process to become BRP. More particularly any party interested in becoming a BRP must comply with a series of conditions conform articles 217 and 218 of the Federal grid code. Among those conditions the candidate BRP must provide a proof of financial solvability. In practice this will be provided and verified following the procedure described in the “BRP application” form available on Elia’s website.
- Besides the above mentioned proof of financial solvency, the BRP has to provide a financial guarantee under the form of a bank-guarantee or a cash-payment. Some minor adaptations have been made to Articles 18.1, 18.2 and 18.3 to better make the distinction between the notions of bank-guarantee and guarantee under the form of cash-payment and to clarify when and how those guarantees can be used.
- In article 18.4, the rules for adaptation by the BRP of the amount of financial guarantee have been clarified and modified in order to clarify the process and to address one request of the CREG.

Context: The amount of financial guarantee that has to be provided by the BRP is proportional to the “position” of the BRP. This “position” corresponds to the highest of the daily averages of (offtakes and sales) allocated to [BRP] calculated on the basis of the calendar month. The amount of the financial guarantee is calculated once at the beginning of the contract and the BRP has to adapt it based on the evolution of his position over time. If the observed position of BRP is higher than the position used for the calculation of his financial guarantee, the BRP has to adapt (in this case increase) the guarantee to cover that “new” position. In the opposite, if the position observed is lower than the position used to

calibrate the level of the financial guarantee then the BRP has the right to ask for a reduction of it.

Adaptations:

- The conditions to reduce the amount of the financial guarantee have been adapted: the BRP can ask a reduction of his financial guarantee when the observed effective position of BRP is lower than the position used to determine the amount of the financial guarantee during at least 3 months. This aims at reducing un-necessary changes of financial guarantee amount for temporary decreases of the BRP's position (for ex. Only one month).
  - Besides that, in order to address a request of the CREG, the bank guarantee of the BRP should at any time cover the maximum of the last 12 monthly invoices of BRP.
  - Finally, the process of renewal of the bank-guarantee will have to start 3 months (instead of 1) before its end-date in order to align the decision to renew the bank-guarantee with the notice of 3 months a BRP before terminating his BRP contract.
- Article 19 "suspensive conditions" has been slightly adapted to be closer to reality.

### 3. Proposed changes relative to the evolution of the market time unit for cross-border exchanges

In the current T&C BRP, it is stated that all nominations need to be provided on a quarter-hourly basis. The single exception is the nominations related to external commercial trades, which need to be provided on an hourly basis<sup>7</sup>. The resolution of these nominations related to external commercial trades thus need to be changed in order to align the T&C BRP with the application of Article 8 of the Regulation (EU) 2019/943 of the European parliament and of the council of 5 June 2019 that obliged a decrease for the market time unit on intraday cross-border products from hourly products to quarter-hourly or half-hourly products.

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<sup>7</sup> Note that in practice, the nominations are already provided on a quarter-hourly level, but the same value had to be entered for each quarter hour within an hour.

Therefore, in Article 24.1, it is proposed to change the text to require quarter-hourly value for external commercial trade programs;