

Decision

(B)2356
31 March 2022

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

Non-confidential version

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INTRODUCTION

The purpose of this Decision is to establish the formal requirements for requesting a derogation from the intermediate price cap to be considered for the 2022 auction.

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

This decision was approved on 31 March 2022 by the CREG Management Committee.

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. The CREG Management Committee decided, in accordance with Article 23, § 1 of its internal rules of procedure, to organise a public consultation on its website on the draft decision (B) 2356 of 7 March 2022 on the formal conditions 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 2022 auction. This public consultation ran from 7 March 2022 to 17 March 2022.

3. CONSULTATION OF MARKET PLAYERS

6. In the context of its public consultation on its draft decision (B) 2356 of 7 March 2022, the CREG received three responses, namely from Febeg, Elia and Engie, including a partially confidential one.

7. Comments on the methodology and calibration of the IPC are outside the scope of the consultation on the formal requirements for a request for derogation from the intermediate price cap and will not be dealt with in this decision.

8. Engie fully supports Febeg's position.

3.1. ELIGIBLE COSTS IN THE DEROGATION REQUEST

9. Febeg and Engie do not agree with the CREG that certain costs (overheads, local taxes, rental costs and fixed electricity purchase costs) are excluded in the assessment of the "missing money" of the IPC derogation requests if they have not been included in the IPC calculation. Febeg and Engie consider that these costs are real and are borne by the assets concerned and should therefore be included in the calculation of the missing money.

First of all, the CREG confirms that the cost categories included in the derogation request must correspond to the categories taken into account in the AFRY study "Peer Review of "Cost of Capacity for Calibration of Belgian CRM"" Study", on which Elia based its proposal for the intermediate price cap in its calibration report. Indeed, the report to the King of the Methodology Royal Decree¹ explicitly states the link between the cost estimate for the determination of the intermediate price cap by ELIA and the evaluation of the derogations from the intermediate price cap by the CREG:

In particular, in order to determine certain required cost elements, Elia shall request the assistance of an independent expert. In this respect, the independent expert will present, in a documented study, various data relating to the cost elements relevant for the estimation of the maximum interim price for all existing technologies in the market under consideration. It is considered appropriate that the selection of the independent expert and the monitoring of this study be done, if possible, in consultation with the commission, since there is a link between the estimation of the costs for the determination of the netCONE parameter relevant for the calibration of the demand curve carried out by the commission and the costs for the determination of the intermediate maximum price and the assessment of the derogations from the intermediate maximum price by the commission.

The CREG therefore considers that these costs (overheads, local taxes, rental costs and fixed electricity purchase costs), which are excluded from the calculation of the IPC, should not be taken into account when analysing the requests for derogation from the IPC.

Furthermore, the CREG recalls that market players who consider that costs have been omitted from Elia's estimate of the IPC although they would be borne by the technologies analysed, have had several opportunities to comment on the costs taken into account in the assessment of the IPC:

- from 20 May to 20 June 2021: Public consultation organised by Elia on the scenarios, sensitivities and data for the calculation of the Y-4 auction parameters for the 2026-2027 delivery period;
- from 5 May to 5 June 2020: Public consultation on the scenarios, sensitivities and data for the calculation of the Y-4 auction parameters for the 2025-2026 delivery period.

10. Elia notes that there are items missing from the IPC waiver request files from the previous auction and would like to know whether these items have simply been deleted or whether they should be considered as transferred to another cost category.

The CREG confirms that the elements missing from the IPC derogation request files of the previous auction should not be considered as transferred to another cost category. The deletion of these elements is due to the fact that the cost categories included in the derogation request must correspond to the categories taken into account in the AFRY study "Peer Review of "Cost of Capacity for Calibration of Belgian CRM"" Study", on which Elia based its recommendation of the intermediate price cap in its calibration report.

¹ <http://www.ejustice.just.fgov.be/eli/arrete/2021/04/28/2021041351/justel#rapportroi>

3.2. DATA TO BE PROVIDED IN THE FRAMEWORK OF THE IPC DEROGATION REQUEST

11. Febeg and Engie consider that the data to be provided in the request for derogation from the IPC should be limited to the data that are absolutely necessary to assess the missing money of the supply period covered by the auction. In particular, Febeg and Engie consider that the revenue data are not useful for the CREG, as the revenue for the delivery period is calculated by ELIA. Engie considers that two years of historical cost data should be a maximum.

First of all, the CREG recalls that Art 22 §2 5° of the Methodology Royal Decree stipulates that the request for derogation from the IPC must include at least :

An accurate estimate and calculation of the missing-money (in €/MW/year) of the relevant capacity market unit, or units in case of linked capacities, for the capacity supply period to which the request applies.

The CREG therefore considers that the request for derogation from the IPC must include the data relating to the income that was taken into account for the calculation of the missing money for the period during which the CRM was supplied. In addition, the CREG requests a history of all the data necessary for the calculation of the missing money in order to enable it to assess the merits of each request for derogation. In fact, the CREG assesses the validity of the data transmitted for the year in which the CRM is supplied on the basis of the justifications transmitted to certify the historical data and to justify the expected changes in these historical data. In order to respond favourably to the requests of Febeg and Engie to limit the complexity of the IPC derogation requests, the CREG will limit its request for historical data to 3 years instead of the 5 years previously envisaged.

12. Elia notes that a category "Compensation of Black start costs" has been added in relation to the IPC derogation files of the previous auction. This does not seem to be in line with the current legal framework as it is not foreseen in the Royal Decree on Methodology. Therefore, Elia wonders whether this category can indeed be added.

The CREG introduced this additional heading to enable applicants to deduct the specific costs of providing the black start service that would be included in the total costs of the CMU. Indeed, in the "income" category, it is the net income of the black start service that is requested, so the specific costs of providing the black start service must be deducted from the CMU costs.

3.3. APPLICATION OF THE WACC

13. Elia notes that the new formal requirements for a derogation application only allow the applicant to submit a single weighted average cost of capital ("WACC") for the entire missing money calculation in the tab "Application of the IPC derogation". However, the WACC may vary depending on the investment, and the law explicitly allows the applicant to submit a different WACC for different investments.

The CREG agrees with Elia that the Methodology RD provides for a different level of "technology-specific risk premium" and therefore by definition a different level of "WACC" depending on the investment. To this end, note "34 a" of the formal requirements for a request for derogation from the IPC provides as follows:

If several investments are needed for CMU, with different lifetimes, the specific risk premium results from the average of the different weighted specific risk premiums of the annualised investments.

3.4. REMARKS ON THE WORDING

14. Elia made some comments on the terminology used:

- for the FR form :
 - "coûts variables d'entretien" should be renamed "coûts variables de maintenance";
 - The term "facteur d'efficacité" should be renamed "rendement énergétique". For a battery, it is called "rendement de charge-décharge" and for a PSP it is called "rendement de pompage-turbinage";
- for the NL form :
 - In the tab "Aanvraaggegevens", "Derating Factor" should be translated as "Reductiefactor" instead of "Declasseringsfactor" in order to be in line with the definitions in the Electricity law;
- for the EN form :
 - In the "Application IPC Derogation" tab, a distinction is made between "Income" and "Revenues", whereas this is always translated into French and Dutch as "Revenus" or "Inkomsten", respectively. Elia would like to know if there is a particular reason for the use of these two different concepts in the English version.

The CREG has included the proposed corrections in the adjustments to the formal requirements for a request for derogation from the intermediate price cap. The CREG confirms that the words "Income" are replaced by "Revenues" in the EN form.

3.5. ADDITIONAL REMARKS

15. Engie disputes that both personnel costs and salaries are subject to the growth of the consumer price index (CPI) forecast by the Federal Planning Bureau. The electricity production sector requires and must attract very specific and technical profiles. In addition, the CPI will not reflect the annual increase in salaries in the context of performance management. Therefore, companies should be allowed to provide their own percentage increase that can be demonstrated on the basis of, for example, historical data.

The evaluation of the revenues by Elia is done in Euro 2018 before being indexed in Euro 2026-2027 on the basis of the growth of the consumer price index forecast by the Federal Planning Bureau. To ensure consistency between the evaluation of the costs and the evaluation of the revenues taken into account in the calculation of the missing money, the CREG considers that all the costs must be indexed solely on the basis of the growth of the same consumer price index.

16. Engie proposes an alternative methodology for the indexation of prices that are set per calendar year before the delivery year². Engie proposes an indexation formula based on the growth rate of the previous year for prices that are fixed per calendar year and determined before the delivery year on the basis of the inflation achieved during a reference period. For the indexation to be applied for the delivery period November 2026 - October 2027, Engie proposes a formula based on the average price of 2026 or on the average prices of 2026 and 2027.

The CREG has included the proposal for an alternative methodology for the indexation of prices that are fixed per calendar year before the delivery year in the adjustments made to the formal conditions for a request for a derogation from the intermediate price cap by considering, for the delivery period November 2026 - October 2027, a formula based on the average prices of 2026 and 2027. For prices that are not fixed in advance per calendar year, the CREG retains an indexation formula based on the growth rate observed during the delivery period.

17. Engie notes that the Federal Planning Bureau published on 01/03/2022 new "CPI inflation forecasts" for the period March 2022 - December 2023 and considers that these new forecasts should be taken into account.

The CREG has included the new "inflation forecasts - CPI" for the period March 2022 - December 2023 in the adjustments made to the formal requirements for a request for derogation from the intermediate price cap.

18. Engie disagrees that only those technologies for which Elia has calculated a cost for the availability test in its IPC proposal included in its CRM calibration report (in practice only demand side management) are allowed to introduce a cost for the availability test. Engie considers that other technologies - which are only just activated on the electricity market - are also subject to testing according to the (very vague) availability test criteria set out in the operating rules. Therefore, Engie considers that, if the CRM applicant can explain why it assumes that a test is likely for certain technologies, it should be allowed to introduce the corresponding costs.

The CREG considers that Elia is the party best placed to assess which technologies will require an availability test. The CREG therefore confirms that only those technologies for which Elia has calculated an availability test cost in its proposal are allowed to introduce a cost for the availability test. Furthermore, the CREG recalls that market players who consider that other technologies than those included in Elia's proposal are also subject to availability tests according to the availability test criteria set out in the operating rules, have had several opportunities to comment on the availability test costs taken into account in the evaluation of the IPC:

- from 20 May to 20 June 2021: Public consultation organised by Elia on the scenarios, sensitivities and data for the calculation of the Y-4 auction parameters for the 2026-2027 delivery period;
- from May 5 to June 5, 2020: Public consultation on scenarios, sensitivities and data for the calculation of the Y-4 auction parameters for the 2025-2026 delivery period.

² Methodology described in detail in the Excel attached to Engie's response to the public consultation "Proposal for price forecasts - Engie 2021-03-17"

19. Engie believes that the costs of portfolio management cannot be limited to delivery points operating in the day-ahead, intraday and balancing energy market. Portfolio management should also include forward trading and the management of the medium-term power plant portfolio.

In its assessment of CMU revenues, Elia considers the average annual inframarginal rent and an estimate of net revenues from the provision of balancing services. Elia does not consider a hedging strategy on the forward market and does not take into account the additional income that would result from an asset-backed trading strategy. The CREG therefore considers that only the costs linked to participation in the day-ahead, intraday, balancing and ancillary services market are eligible, in order to ensure consistency between the costs and revenues taken into account in the calculation of the missing money.

20. Engie believes that if third party documentation is not available [CONFIDENTIAL] to justify the capital costs, the CRM applicant should be allowed to demonstrate the level of these costs on the basis of other evidence [CONFIDENTIAL].

The CREG will take into account any relevant justification provided by the CRM applicant if third party documents are not available (e.g. due to internal work or for another reason) provided that this unavailability is duly justified.

21. Engie draws the CREG's attention to the reasonableness of potential requests for additional information. Engie reminds the CREG of the limited time to respond to these requests and the period in which they will be launched (summer with many employees on holiday). Moreover, requesting information from third parties will take longer than compiling data internally. Engie also considers that market players should be able to provide any supporting documents they deem relevant [CONFIDENTIAL].

The CREG confirms that it will ensure that requests for additional information are kept to a minimum and that it will only do so if it considers that additional information is necessary for its assessment. In order to avoid requests for additional information, the CREG recommends that Engie explain as far as possible the calculations that led to the values included in the requests for derogation from the IPC and to justify all the evidence used in these calculations by means of third-party documents, or any other supporting document in the event that no third-party documents are available.

22. Elia notes that some corrections are necessary regarding the reduction factors in the "Application Details" sheet:

- the reduction factors "Category I SLA 5h" and "Category I SLA 7h" are missing;
- the value of the reduction factor "Category I SLA 6h" is not correct. The CRM calibration report states that the value is 77 % and not 73 %.

The CREG has included the proposed corrections to the reduction factors in the adjustments to the formal requirements for a request for derogation from the intermediate price cap.

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

23. The main objective of the adjustments made to the formal conditions 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.

24. The CREG thus specified the method of application of the weighted average cost of capital. The weighted average cost of capital is taken into account in the calculation of the missing money. The sum of the cost components and the investment expenses is multiplied by the factor "1 plus weighted average cost of capital". In order to avoid a double application of the weighted average cost of capital to capital expenditure, the formal requirements specify that the annualisation of capital expenditure is obtained by dividing the total capital costs by the economic life of the investment.

25. In order to ensure consistency between the assessment of the maximum interim price and the assessment of the merits of the derogations from the maximum interim price, 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 "Peer Review of "Cost of Capacity for Calibration of Belgian CRM"" Study"³ on which Elia based its maximum interim price proposal⁴. Thus, overheads, local taxes, rental costs and fixed electricity purchase costs are explicitly excluded.

26. In response to the comments received during the public consultation on its draft decision (B)2356 of 7 March 2022 on the formal requirements to be met by a request for derogation from the intermediate price cap, the CREG has made the following changes to the formal requirements for the 2022 auction:

- correction of the terminology used, as outlined in point 14;
- consideration of an alternative methodology for the indexation of prices that are set per calendar year before the delivery year, as described in point 16;
- taking into account the new inflation forecasts published by the Federal Planning Bureau on 1 March 2022 for the period from March 2022 to December 2023, as set out in point 17;
- corrections to the reduction factors in the "Application Details" sheet, as set out in point 22;
- limiting requests for historical data to 3 years instead of 5 years in order to respond positively to requests to reduce the complexity of IPC derogation requests, as explained in point 11;

³ https://www.elia.be/-/media/project/elia/elia-site/users-group/crm-implementation/documents/20201214_afry_peer-review-of-annual-fixed-costs-for-belgian-crm_en.pdf

⁴ https://www.elia.be/-/media/project/elia/elia-site/users-group/ug/adequacy-working-group/2021/20211223_dy2026---y-4-auction---calibration-report_v3_without_annex_psp_with_erratum.pdf

- note 37 is completed by “The CREG will take into account any relevant justification provided by the CRM applicant if third party documents are not available (e.g. due to internal work or for another reason) provided that this unavailability is duly justified.”, as indicated in point 14.

5. FORMAL REQUIREMENTS FOR AN APPLICATION FOR DEROGATION

27. The formal requirements for a derogation request to be considered in the 2022 auction are detailed in Annex 1.

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For the Commission of Electricity and Gas Regulation:

Laurent JACQUET
Director

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Acting Chairman of the Management Committee

ANNEX 1

Application form for a derogation from the intermediate price cap

ANNEX 2

Declaration on honour derogation from the intermediate price cap

ANNEXE 3

Responses to the public consultation from Febeg, Elia and Engie