CONSULTATION REPORT

Report on the public consultation regarding amendments to the general conditions for balancing services (T&C FCR, T&C aFRR, T&C mFRR), restoration services (T&C RSP), voltage and reactive power services (T&C VSP), and services related to congestion management (T&C OPA, T&C SA) (ENG)

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1. Introduction

Elia organized a public consultation from 12 November 2021 to 13 December 2021 regarding amendments to the general conditions for balancing services (T&C FCR, T&C aFRR, T&C mFRR), restoration services (T&C RSP), voltage and reactive power services (T&C VSP), and services related to congestion management (T&C OPA, T&C SA) (ENG).

As stated on the consultation page, all stakeholders were invited to submit any comments and suggestions they may have related to these amendments only as submitted for consultation.

The purpose of this report is to consolidate the feedback received from the public consultation, while at the same time reflecting Elia's position on these reactions.

2. Feedback received

In response to the public consultation, Elia received the following non-confidential replies from the following parties:

- FEBELIEC
- FEBEG
- Belgian Offshore Platform

All responses received haven been appended to this report. These reactions, together with this consultation report, will be made available on Elia's website.

3. Instructions for reading this document

This consultation report is structured as follows:

- Section 1 contains the introductory context,
- Section 2 gives a brief overview of the responses received,
- Section 3 contains instructions for reading this document,
- Section 4 discusses the various comments received during the public consultation and Elia's position on them,
- Section 5 contains the annexes of the consultation report.

This consultation report is not a 'stand-alone' document, but should be read together with the proposal submitted for consultation, the reactions received from the market participants (annexed to this document) and final proposal.

Section 4 of the document is structured as follows with additional information on the content per column below.

Subject/Article/Title	Stakeholder	Comment	Justification
A	B	C	D

A. Subject matter covered by the various responses received.
B. It is indicated who made the comment. In general, the comments are listed alphabetically in the name of the parties concerned.
C. This document contains an overview of the main, but also specific comments on the document submitted for consultation.
    - In doing so, an attempt was made to list/consolidate all comments received and to argue whether or not they should be taken into account.
    - In order to maintain authenticity, the comments have been copied as much as possible in this document. However, the comments have sometimes been shortened and term have been uniformed to make them easier to read.
    - For clarification purposes, it is recommended to always include the original comment of the stakeholder concerned, as included in the appendix to this report.
D. This column contains Elia's arguments as to why a comment was or was not included in the final proposal. However, this column does not contain the final text. For this purpose, the final proposal must be consulted.

4. Comments received during the public consultation

4.1 General comments received during the public consultation

This section provides an overview of the general reactions and concerns of market players that Elia received to the document submitted for consultation.

SUBJECT	STAKEHOLDER	FEEDBACK RECEIVED	ELIA'S VIEW
Language of consultation	Febeliec	In general, Febeliec also would like to stress that only an English version of the General Conditions was made available for this consultation, while based on the standard Terms & Conditions language (art. 3) only the Dutch and French versions are relevant from a legal point of view. Febeliec has already made this comment on previous occasions, and strongly insists that stakeholder can also provide their input during the public consultation on the legally binding texts.	A Dutch and French version of the document submitted to public consultation was also provided by Elia a couple of days after the start of the public consultation. Elia will make sure to send a new push mail in the future to make the stakeholders aware that such documents have been uploaded on the consultation site.

4.2 Specific comments received during the public consultation

SUBJECT	STAKEHOLDER	FEEDBACK RECEIVED	ELIA'S VIEW
Art. I.6.4 (Caps)	Belgian Offshore Platform	In Article I.6.4, the last sentence is deleted: "Any compensation due, as the case may be, by any Party is in any case limited to a maximum of twice the value of the Contract per year irrespective of the number of claims, the amount of which cannot exceed €12.5 million (twelve	- It is not possible to cap deception (fraud) and deliberate fault (willful misconduct) under Belgian law. Although this is therefore already implicit in the contract,

		and a half million Euro) per year and per Party. ~~This cap is without prejudice to the caps applicable for contractual third party claims."~~ - "Any compensation" : also cap for indirect claims in the event of deception or deliberate fault? - Cap is for all liability in aggregate, irrespective of the number of breaches? - Last sentence: does deletion implies that the cap now takes into account third party claims as well since the cap includes "any compensation due (…) by any party"? - Proposal: "Any compensation due, as the case may be, by any Party <u>to the other Party</u> is in any case limited to a maximum of twice the value of the Contract per year, irrespective of the number of claim, the amount of which cannot exceed (…) per year and per Party, except in a case of deception or deliberate fault	since it is subject to Belgian law, Elia will add explicitly that the cap is not applicable in case of fraud or willful misconduct. Regarding indirect damages, the Contract already foresees that "Except in a case of deception or deliberate fault, the Parties will under no circumstances be liable to the other Party for compensating or indemnifying the other Party, including for claims by third parties, for Indirect Damage." - The cap is for all compensation due by a Party for a specific year irrespective of the number of claims (and therefore irrespective of the number of breaches). - If the third party is a client of Elia (access holders or grid users), their claims are already covered by the cap in their access contract with Elia. In second place this cap will indeed be applicable. - Belgian Offshore Platform proposes to add "to the other Party". The Contract is only applicable between the Parties. It is therefore implicit that article I.6.4 concerns compensation due between the Parties (which can include compensation due to the other Party due to a third party claim). The proposal made by the Belgian Offshore Platform is therefore superfluous. But Elia sees no problem to add it.
Art. I.7.1 (Emergency Situation)	Febeg	- Febeg proposes to add at the end of the last sentence : "as far as this situation is not a force majeure for the Service Provider".	The text proposed by Elia reads as follows: "In case of an emergency situation (as defined in the applicable legislation and regulations), Elia is entitled and/or obliged to take all the measures provided for in the applicable legisla-

			tion and regulations. In case of contradictions with the provisions of this Contract, such measures as foreseen in the applicable legislation and regulations shall prevail on the rights and obligations of this Contract. Except if Elia notifies expressly otherwise and/or except in case of a provision of the applicable legislation and regulations stating otherwise, the Service Provider will continue to fulfil its obligations as foreseen under this Contract during this situation." The underlined text constitutes the proposed amendment submitted to public consultation. Febeg proposes to add at the end of the last sentence "as far as this situation is not a force majeure for the Service Provider". Elia would like to stress that the Contract already foresees in Art. I.7.3 that "the Parties will be discharged of their respective obligations under this Contract in a case of force majeure that prevents the performance of their obligations under this Contract, either partly or entirely, with the exception of the financial obligations that arose before the force majeure event." The remark of Febeg is therefore already covered by this generally applicable sentence.

Art. I.7.1 (Emergency Situation) and I.7.2 (Alert, Emergency, Black-Out and Restoration State)	Belgian Offshore Platform[1]	Elia has proposed to add the following sentence in both articles: "Except if Elia notifies expressly otherwise and/or except in case of a provision of the applicable legislation and regulations stating otherwise, the Service Provider will continue to fulfill its obligations as foreseen under this Contract during this situation." It seems like a quite broad obligation for the counterparties of ELIA. Shouldn't there be any 'default caps' on this obligation: - E.g. timing (max amount of time during which the obligations of the ELIA counterparty remain in place) - Cost (max cost/damage) - At least possibility to request break from obligations (and obligation of ELIA to answer in due time and motivated?)	Elia would like to stress that there are already limits foreseen on this obligation: - It is not applicable if Elia notifies expressly otherwise; - It is not applicable in case a provision of the applicable legislation and regulations states otherwise; - Furthermore, EU law (subject to the bullet above) requires the Service Provider to continue to fulfil its obligations (see eg EU network codes and guidelines); - It is not applicable in case the Service Provider faces a situation of force majeure regarding its obligation. Apart from that, Elia sees no reason why the Service Provider's obligations under the Contract should be limited. The Contract continues to be applicable (including its duration and cost arrangement).
Art. I.14 Protection of personal data	Belgian Offshore Platform	Is this new article checked with GDPR experts?	Yes, this article has been drafted by a GDPR expert.

Some comments were provided on articles/wordings not submitted to public consultation:

[1] During the public consultation, Elia has also received a similar informal comment from Febeliec on this point (the addition of the sentence in Art. I.7.1 and I.7.2).

Definition of Annex	Febeliec	Twice the word “annexes” is used without capital letter, whereas it is a defined concept and thus a capital letter should be applied “Annexes” (cfr. Art. I.3 and Art. I.4.1).	Elia would like to stress that only the modifications proposed to the general conditions were submitted to the public consultation. No changes were proposed to those sentences. However, Febeliec is right to stress that Annexes should be capitalized since it is a defined term. Since the use of a small letter is an unintentional omission, Elia will make sure that the word Annex is capitalized everywhere in the document.
Definition of Indirect Damage	Febeliec	Febeliec considers it not opportune to apply the concept one wants to define in the definition itself (“Indirect Damage” means “any indirect damage…”). Febeliec would for example propose to apply “any consequential damage…”.	Elia would like to stress that only the modifications proposed to the general conditions were submitted to the public consultation. No changes were proposed to the definition of Indirect Damage. Elia decides not to change the current definition (which already mentions consequential damages as well): “Any indirect damage or consequential damage, such as, but not limited to loss of revenue, loss of profit, loss of data, loss of business opportunities, loss of (prospective) clients, missed savings;”
Typo in Art. I.3 (Rules of Interpretation)	Febeliec	Art. I.3 further contains a typo: “unless the context require**s** otherwise”	Elia would like to stress that only the modifications proposed to the general conditions were submitted to the public consultation. No changes were proposed to this sentence. However, Febeliec is right to stress that there is a typo. Elia will make sure that the typo is corrected.
Art. I.6.2 (Direct Damages)	Febeg	“Except in case of deception or deliberate fault….”: the word “deception” and “deliberate fault” are quite unusual. We propose to use “willful misconduct” and “fraud” instead (much more standard).	Elia would like to stress that only the modifications proposed to the general conditions were submitted to the public consultation. No changes were proposed to this paragraph. Elia will nevertheless use the terms “fraud” and “wilful misconduct” since those terms are indeed more standard and since this does not imply a content change.

5. Next steps

On the basis of the reactions received from market players and its views, as set out in this consultation report, Elia will finalize the new version of the general conditions for balancing services (T&C FCR, T&C aFRR, T&C mFRR), restoration services (T&C RSP), voltage and reactive power services (T&C VSP), and services related to congestion management (T&C OPA, T&C SA).

These amendments to the General Conditions will enter into force for a concerned T&C once a new version of such T&C has been approved and enters into force.

6. Attachments

The reactions Elia received to the document submitted for consultation:

- FEBELIEC
- FEBEG
- Belgian Offshore Platform

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