Febeliec answer to the FPS consultation on the parameters for the determination of the volume to be acquired in the CRM

Febeliec thanks the FPS Economy for the opportunity to react to this draft Royal Decree. Febeliec prefers to answer in English in order to save (translation) time and to give all of its members the opportunity to contribute to our final reaction. Moreover, most of the underlying documents were also drafted and/or published in English.

Febeliec is surprised by the short timeframe of this consultation, only 1 week, justified by the FPS by the "*strict planning in the context of the state aid notification and the implementation of the CRM*". Febeliec regrets this short timeframe, as it does not allow us to properly consult our members, industrial consumers, who can play an active role in improving security of supply (both in the market as well as a contributor in any possible CRM, including strategic reserve) and have a direct interest in minimizing the electricity system cost. Febeliec suggests as "normal" timeframes for a public consultation at least four weeks, in line with e.g. ACER guidelines in this respect (see *Guidance Note on Consultations by the Agency for the Cooperation of Energy Regulators*). If, in specific circumstances the consultation timeframe needs to be shorter, the urgency should be properly justified.

Febeliec further regrets that this consultation is organised at a moment when several other crucial elements of the future capacity remuneration mechanism, the largest modification to the electricity market in Belgium since the liberalisation with potentially very important ramifications over a very long period of time, are not publicly available, such as:

- the assessment of the European Commission of the Belgian implementation plan, and the (impact of) possible additional actions to be taken in order to eliminate regulatory distortions or market failures as mentioned in art. 20 of the Regulation;
- the final design notes of the future CRM mechanisms, as discussed during several months in the TF CRM of the SPF and Elia and as notified to the European Commission in December 2019. Febeliec regrets that the FPS applies a very short deadline based on an argumentation of strict planning, while at the same time these final design notes (or an approved set of functioning rules) have not been made available. Febeliec in parallel also wonders what has been the basis of the state aid notification to the European Commission.;
- the final methodology of the European Resource Adequacy Assessment on the basis of which the need of a CRM is justified, after consultation of market stakeholders is not yet available nor approved. Similarly, no National Resource Adequacy Assessment compliant with the Clean Energy Package and the new Electricity Regulation exists. The last Belgian adequacy assessments organised in Belgium, the Elia Adequacy and Flexibility study of June 2019 and the Strategic Reserve assessment of November 2019, are not at all compliant with the Clean Energy Package, not in the least because no public consultation has ever been conducted on the methodology, not even for the Strategic Reserve adequacy assessment which was at its 7th iteration.

Febeliec is even more surprised to read in the first § of point 2. of the consultation document that "the method as proposed by the CREG does not sufficiently guarantee that (…) the required level of security of supply is assured (…)". The FPS justifies this by "reactions from market parties" to the public consultation by the CREG and during the Task Force CRM meetings. Febeliec cannot agree with this conclusion and invites the FPS to properly justify each of the proposed changes to the CREG proposal. Febeliec would like to underline that most market parties are not neutral in his discussion and do not necessarily defend general interest of society, and having followed all the Task Forces would like to understand how the reactions of the market parties have lead the FPS to the described conclusion.

Febeliec is also very surprised to read in §3 of the same point 2. that "the method developed by the FPS is in line with other European CRMs", since these generally were introduced before the approval of the Clean Energy Package and have not yet been adapted for the new requirements of the Regulation (see art. 22.5 of the Regulation). Febeliec would also like to understand how the proposed methodology of the FPS "takes into account the results of the public consultation of the CREG Note 2024 and the reactions of the market parties as communicated during the different meetings of the Task Force CRM" as no justification is provided and Febeliec in any case does not see many of its comments, nor those of many other stakeholders, correctly reflected in the proposal.

Febeliec would also like to seize the occasion to point out that the consultation of the Pentalateral Energy Forum (see https://economie.fgov.be/sites/default/files/Files/Energy/Belgian-capacity-remuneration-mechanism-Report-consultation-neighbouring-Member-States-December-2019.pdf) is, in our eyes, not sufficient to comply with art. 21.2 of the Regulation is this Forum does not include all relevant stakeholders. In casu (industrial) consumers are not part of this Forum, despite existing and long standing requests to be included in the discussions.

On the proposed text for Royal Decree for the determination of the calculation methodology for the required capacity volume and the parameters required for the organisation of the auctions in the framework of the capacity remuneration mechanism, Febeliec provides below a first list of high level comments. Due to the very short timeframe allowed for this consultation, Febeliec cannot guarantee an exhaustive list nor is able to provide an in-depth analysis of each of these points, but of course remains available to provide such input.

With respect to the **whereas**, Febeliec refers to its previous comment on the final design notes. Nevertheless, no consultation has been conducted on the final design notes despite clear indications from Elia that major modifications were conducted, not all necessarily discussed extensively with all market parties. Moreover, as the whereas also indicates, for many topics, including a.o. the central topic of derating factors, only indicative proposals were discussed without publication of any final conclusion. Also from the whereas it is clear that this proposal of Royal Decree is based on non-validated "proposals" of the TSO, non-approved "notes" of the regulator (where the whereas for example explicitly refers "in particular the contribution of the grid operator", thus causing doubts about the non-neutral assessments of consultations), non-approved "proposals" of the regulator, "proposal of advice" or "advice" of the FPS itself, Febeliec cannot understand on which solid basis this proposal of text of Royal Decree is based and especially not if and how comments from market stakeholders, in particular consumers who will presumably[1] have to carry the burden of cost of the proposed CRM, are taken into account.

With respect to **Chapter 1 on Definitions**, Febeliec can at this point already indicate that certain elements referred to here are not clear, such as a.o. the functioning rules (still no approved version available, which in combination with the absence of the final design notes makes it very difficult to estimate the full impact of the proposed Royal Decree), the lack of formal designation of the contractual counterparty, the definition of delivery point, which at least in the context of closed distribution systems does not seem to be correct, the lack of a clear understanding of the service level (due to a lack of approved and complete functioning rules and design notes), the interpretation of maximum price (with a double meaning but again difficult to interpret without any final design notes and/or functioning rules), the impact of any successor to the CIPU contract on the daily program and so on (the gross and net cost of a new entrant will also be discussed later).

On **Chapter 2 and the determination of the reference scenario**, Febeliec can only refer to its previous comment on the absence of any approved European Resource Adequacy Assessment (ERAA) or any

[1] As it is at this point still not clear how the proposed CRM will be financed

additional and related National Resource Adequacy Assessment (NRAA). As also already indicated previously, Febeliec cannot approve the proposed approach with a selection of other available studies, as none of the most recent adequacy assessments in Belgium is compliant with the Clean Energy Package (e.g. the last available adequacy assessment in Belgium, the Strategic Reserve assessment of November 2019 was published after the final text of the Clean Energy Package was available and could thus have been brought in line with it, but this has not been done). In case an alternative study to the ERAA (complemented or not with a NRAA) would be used, for Febeliec such study would still have to be compliant with the approach described in the Electricity Regulation, in particular with respect to the consultation of stakeholders on the methodology as well as on the selection of reference scenarios, in particular for example the treatment of extreme scenarios as well as cross-border implications. The same applies to any potentially selected sensitivities. Last but not least, the proposal of Royal Decree clearly omits any indication on which party would decide on the assessments to be applied in case of absence of ERAA/NRAA methodologies, an aspect that should be clarified, in line with the approach of the ERAA/NRAA (thus the NRA). Febeliec also wants to point out regarding Art.4 §7, indicating that the Minister can deviate from a the proposal of the regulator, which is established after consultation with the stakeholders, that in case such deviation would be applied an extensive motivation is provided with a clear argumentation for each of the modified elements, including an total cost impact estimation on the capacity remuneration mechanism to validate that the least cost criterion of the Belgian Electricity Law is honoured.

Febeliec approves that Art.5 and Art.6 foresee public consultations on proposal, but also wants to refer to its previous comment on Art.4 on motivation of any deviation of the proposal. For Art.6 and taking into account the previous comments, Febeliec observes that in the list clearly is omitted the consultation on the methodology of the adequacy assessment (in particular when the ERAA/NRAA approach is not applied), according to Febeliec again a clear breach with the approach of the Clean Energy Package.

Febeliec also wants to point out that the content of certain articles can lead to ambiguity, for example Art.5 in relation with Art.10 and Art.11 on the correction factor X. It is not clear from the articles nor the context whether the correction factor X refers to a volume or a price correction. Febeliec can only urge that the text of this Royal Decree is unambiguous on all conceptual elements.

With respect to **Chapter 3 and the report of the grid operator**, Febeliec takes note of the reference in Art.7 of the proposed Royal Decree to Art.7 undecies §3 of the Belgian Electricity Law for the security of supply criterion for the reference scenario, especially when taking into account that it might be possible that no harmonised norms would be available on European (1° of Art.7 undecies §3 of the Belgian Electricity Law) or Central-West European (2° of Art.7 undecies §3 of the Belgian Electricity Law) which then leads to 3° of Art.7 undecies §3 of the Belgian Electricity Law, which according to Febeliec is not in line with the approach of the Clean Energy Package, which foresees for the reliability standard and approach based on Cost of New Entry (CONE) and Value of Lost Load (VoLL) and not a predefined LOLE value. The approach of the Clean Energy Package bases the determination of a reliability standard by the regulator on a combination of specific technical parameters that can be determined independently and that will lead to a deterministic outcome that takes into account a clear aspect of proportionality of costs of any potential CRM, in an approach that avoids that the cure (and its cost) would be worse than the disease itself, an approach which Febeliec wholeheartedly can agree to.

For Art.7 §2 Febeliec is incapable of providing a clear interpretation as, as already indicated, no final design notes nor approved functioning rules or other documents are available. Febeliec can thus only reserve its utmost caution to the proposed approach and reserves the right to additional comments whenever such documents would become available.

With respect to **Chapter 4 and the parameters for the capacity volume to be acquired**, Febeliec observes that it is the regulator who will have to propose these parameters. Febeliec also refers explicitly to its previous comments on Art.7 undecies §3 of the Belgian Electricity Law, in particular 3° Moreover, Febeliec is also surprised that a reference is made to the expected energy not served (EENS) and loss of load expectation (LOLE) for the determination of CONE, while for Febeliec the CONE is the result of looking at the real cost of a new entrant and not a calculated value of what such maximum allowed cost could be (which does in no case lead to the lowest cost for the CRM criterion that is explicitly mentioned in the Belgian Law creating the framework for any possible CRM). Moreover, and as discussed above, Febeliec is also of the opinion that it is the combination of VoLL and CONE that should lead to the reliability standard (as per the Clean Energy Package), and not the other way around, and as such deems the proposed approach not in line wit the Clean Energy Package.

For Art.9, Febeliec would like to see that point A is rewritten in order to avoid any ambiguity on the interpretation of maximum volume contracted at maximum price. The current phrasing does allow for multiple interpretations.

For art.10 (as well as further articles covering the same or similar topics), Febeliec is surprised that the net cost for a new entrant is put equal to the missing money, which is then defined only taking into account some revenues, as well as a much broader range of costs. For the revenues of the energy market, it is unclear if and to what extent are taken into account the revenues of the forward markets (where according to uncontested and recurring annual reports of the regulator more than 80% of the electricity in Belgium is sold), while for the balancing market Febeliec is appalled to see that on the one hand only the revenues from capacity reservations are taken into account (which could also be very high in cases of system tightness, as can be observed in winter 2018-2019, yet which revenues are not reflected in any past adequacy assessments from the grid operator), but not the revenues that BRPs can get from activations, while on the other hand a myriad of costs are taken into account, including opportunity costs for participation to the balancing market (without any further justification or explanation) as well as must-run costs (which are already included in the bids and thus revenues for the reservation of capacity) or in activation revenues (which are not taken into account by this proposal), leading to a very unbalanced approach for the missing money and an overestimation of such missing money, to the detriment of an artificially increased need for a CRM, to the detriment of the cost for consumers and to the detriment of technology neutrality. Febeliec is further also surprised to see that Art.10 §2 excludes explicitly all technologies that do not yet exist in the Belgian control area, which also seems contrary to the technology neutrality advanced by the Clean Energy Package. For Art.10 §6 Febeliec also observes a reference to the complete lifetime of each reference technology, and wonders how this will cope with lifetime extensions and other elements that greatly impact this parameter and that are customarily done for most assets.

For Art.11, Febeliec regrets that it is at this point still not clear how the total electricity consumption in Belgium will be estimated towards the future, let alone the "average electricity consumption in simulated shortage situations" which is to be used as a reference. Febeliec has always had many questions and comments to the used approach but by the lack of any consultation on the methodology it remains an issue. Moreover, because of such lack of consultation and clarity on the methodology, it is also very unclear how the evolution towards smart meters, dynamic pricing contracts and so on that are a key aspect of the Clean Energy Package are taken into account, as it is unimaginable that such major changes would not have any discernible impact in the foreseeable future. On Art.11 §2 3°, Febeliec can only refer to its previous comments on Art.7 undecies §3 3° of the Belgian Electricity Law and the reliability standard to be applied. Moreover, on 5° Febeliec does not understand how the proposed approach could/would be applied, as no methodological approach has been proposed for

this by the FPS, and as such, it is impossible to provide any meaningful comment at this time. It is thus also unclear how this would be combined with Art.11 §5.

For art.10 and art.11, Febeliec also wants to reiterate its comments on Chapter 2 with respect to ambiguity, in particular related to the application of the correction factor X.

On **Chapter 5 on reduction factors**, Febeliec can only refer to its previous comments about the lack of final design notes and/or functioning rules, the lack of a clear approach in case ERAA/NRAA would not be available (including the lack of consultation of the methodology in such case) as well as the lack on clarity about who would have to approve any such approach, taking into account the Clean Energy Package. Febeliec thus at this point cannot provide any real comments and reserves itself the right to come back on this point whenever a.o. any of the above elements would become more clear. On Art.13, Febeliec a.o. would also like to understand how this would be applied for cross-border participation, what would be done for technologies that are not listed (e.g. geothermal energy, nuclear fusion, exothermal chemical processes, …) while also again referring to its comments on the lack of clarity regarding which party would have to determine and decide these elements. For Art.14 and based upon the scarce content, it is very unclear for Febeliec how cross-border capacity would be treated, while it also remains very unclear how for example direct current lines would be integrated or how the impact of the Clean energy Package on cross-border capacity made available to the markets (70%-rule, with derogations and/or action plans to be concluded by 01/01/2026) are to be taken into account (in combination with the absence of any public consultation on the methodology). Febeliec also reiterates its comment on the lack of clarity on which party would decide on the approach to be taken.

On **Chapter 6 and the intermediate maximum price**, Febeliec can only refer to its previous comments about the lack of final design notes and/or functioning rules, as well as the lack on clarity about who would have to approve any such approach, taking into account the Clean Energy Package. Febeliec also refers to its previous comments on CONE and missing money and the probability of grossly overestimating missing money. Febeliec is also surprised that the grid operator and regulator appoint an independent expert (Art.17), but that it is only the grid operator (Art.18) who evaluates the cost elements and he revenue elements (Art.19) and that it remains very unclear who in the end will take the formal decision. For Art.19, Febeliec refers to its previous comments on the components treated for determination of missing money, and adds that for example §1 2° does not add much clarity on (net?) balancing revenues (are this only revenues from reservation of capacity, taking into account which costs, what with the revenues from activation, …), §2 (are also forward market revenues taken into account?), while Febeliec strongly opposes the use of only P50 revenues (which grossly underestimate the real revenues in times of scarcity!). Febeliec is also appalled that the proposed approach, despite many opposing comments from a.o. Febeliec but also other stakeholders, including in particular the regulator, on this approach are not at all taken into account. The approach based on P50 revenues implies that suppliers are considered very risk averse in estimating revenues (and in combination with the comment on forward markets apparently also do not hedge at all or are extremely bad at forward selling their electricity, below full costs levels), but that at the same time BRPs are absolute risk takers and do not cover themselves for any potential shortages, in which case due to limited available flexibility prices would skyrocket, exposing them to very high imbalance costs. On §3, Febeliec refers to its previous comments on this topic and also wants to caution towards only using historical values, as winter 2018-2019 has proven that these can be a gross underestimate of real revenues in cases where scarcity increases (while the Belgian system in winter 2018-2019 still had at any moment in time several GWs of excess flexibility, as can be observed in ex-post reports of the regulator, thus showing that the revenues of this 2018-2019 winter do not even cover a real scarcity situation).

On **Chapter 7 and the reference and strike price**, Febeliec can only refer to its previous comments about the lack of final design notes and/or functioning rules, making it impossible to provide any meaningful analysis. Febeliec regrets that, while the FPS cites the "*strict planning in the context of the state aid notification and the implementation of the CRM*" as a justification for the very short timeframe of this consultation, itself nor the grid operator seem to be able to provide final design notes, while already having introduced in a state aid notification to the European Commission in December 2019. Febeliec can only wonder on what basis that notification has been conducted if no final design is available or what other motives could exist in case a final design was used to the dissemination of such final design, especially if apparently there is such an urgent need. The concept of indexation of the strike price is an example of one of the elements where the lack of final design notes is clear as this concept was introduced by the grid operator after the consultations and up until now no final texts have been provided, although this has presumably been included in the documents notified to the European Commission, thus not allowing to provide a meaningful discussion on the proposed approach. Febeliec can thus only refer to its numerous comments on the topics treated in chapter 7 during the meetings of the Task Force CRM, although it remains very unclear if and how any of these comments were taken into account. Febeliec thus yet again reserves the right to come back on this chapter whenever these documents would become available.

With respect to **Chapter 8 and final dispositions**, Febeliec is surprised hat, as mentioned above, no final design notes nor functioning rules (nor any other final documents, including those delivered in December 2019 to the European Commission) are made available, it is foreseen in Art.26 that can be deviated from the (unknown) standard approach , which according to Febeliec is **unacceptable** and opens the door to arbitrariness, moreover that it is unclear in such case who would have the final decision.