22.10.2020

State Aid SA. 54915 (2019/N) – Belgium

Capacity remuneration mechanism

Comments and supplementary information from the Belgian State as a reply to the European Commission's decision of 21.09.2020

1. Introduction and procedural elements

The European Commission has informed the Belgian State with its decision of 21 September 2020 that, having examined the information supplied by the Belgian authorities in the framework of State Aid case SA.54915, it has decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union.

In its decision, the European Commission has requested Belgium to submit its comments and to provide any information as may help the Commission to assess the measure, within one month of the date of receipt of the letter. In the present document the European Commission may find Belgium's comments and supplementary information. The Belgian State furthermore reiterates its availability to answer any further requests or to discuss possible solutions for any doubts the Commission may have.

With respect to the reminder of the European Commission on Article 108(3) of the Treaty on the Functioning of the European Union and Article 14 of Council Regulation (EC) No 659/1999, Belgium confirms that it will respect these articles.

Finally, the European Commission has requested the Belgian authorities to forward a copy of this letter to potential recipients of the aid. Belgium has confirmed the non-confidential character of the letter towards the Commission on 30 September, and the Belgian Federal Public Service Economy, SME's, Self-employed and Energy has published the letter on its website on the same day as the decision was published by the Commission, i.e. on 7 October 2020. Furthermore, stakeholders have been informed of the publication of the decision through the Task Force CRM on 15 October 2020 and have received a copy of the letter following this meeting.

2. The need for a CRM and calibration of the demand curve

In the following section, the Belgian State would like to provide additional context with respect to:

- The need for a CRM:
  - The Belgian State aims to clarify that the need is in any case demonstrated and robustly justified;
  - The need takes into account the legal 3h LoLe-criterion that is currently applicable;
  - The Belgian State wants to further illustrate that the Belgian case is indeed a particular one, given its high interconnection rate and structural import dependency;
- The calibration of the demand curve:
  - Given the particularities of Belgium's situation, it is justified to include events outside of Belgium, as they have a substantial impact on the security of supply;
  - The inclusion of such events is realistic, plausible and well-justified and consequently does not lead to over-procurement;
  - The latest publicly available information is used to determine the reference-scenario.

We hope that via this contribution, the concerns can be alleviated and we look forward to further engage with the European Commission in order to enhance our mutual understanding on these important elements of the Belgian notification file.

2.1 The need for a CRM

This topic is a key element of the Belgian notification as it directly concerns the objective of the Belgian State to safeguard the security of supply of its citizens and enterprises and to avoid adequacy disruptions beyond the applicable reliability standards.

As a first element, the Belgian State would like to recall that numerous studies have been performed by different entities, which all lead to similar conclusions, i.e. major concerns on resource adequacy arise and new capacity will be needed when the full nuclear phase-out will be realized.[1] These studies have been performed by the TSO, by independent experts (EnergyVille, Planbureau) and academics (UGent). The adequacy concerns mainly arise from an unprecedented supply shock linked to the phase-out of nuclear capacities, which nowadays account for more than half of the thermal generation capacity. The studies that also performed an economic assessment reveal that economic conditions on the energy only market will not create sufficient incentives to compensate for this phase-out.

As a general remark with respect to the official resource adequacy studies, we note that European methodologies have recently been adopted by ACER as referred to in Article 23 of the Electricity Regulation. Once elements of these methodologies are implemented at European level, they will also be incorporated in the national adequacy studies. Taking into account the time-horizon of the submitted notification and the implementation plan foreseen up to 2023 for the ERAA, the submitted notification is built upon the already provided studies, taking into account as much as possible the Clean Energy Package provisions.

[1] In addition to the studies listed in the notification file, on September 9th 2020, Energyville, a Research Institute, published a study which concluded that *"the optimal level of investments in new capacity in a full nuclear phase-out would be 3,85GW."* (https://www.energyville.be/nieuws-events/energyville-lanceert-aanvullende-systeemscenarios-voor-elektriciteitsvoorziening)

Secondly, while we recognize that this need was predominantly stressed for the so-called HiLo-scenario, the Belgian State would like to emphasize that this need is also demonstrated in the EU base case**.** The Adequacy and Flexibility study of 2019 moreover studied not only the EU base case and HiLo- scenarios, but also various national sensitivities, each of which resulting in a positive GAP Volume and a structural need for new capacity.[2]

The Belgian State understands from the European Commission's decision that the Commission questions the HiLo-scenario specifically, whereas the EU base case indeed also shows a significant issue with security of supply and warrants the need for an intervention by means of a CRM (cf. recital 196 and 212, referring also to the EU-Base results of Elia's 2019 Adequacy & Flexibility study).

With respect to the LOLE hours for different scenarios, we refer to the same Elia study mentioned above, pg 138, figure 4-18, and shown here below, providing these hours:

'GAP VOLUME', 'NOT-VIABLE GAP' AND RESULTING MARKET LOLE AND MARKET EENS [FIGURE 4-18]

		Unit	2025 'EU-BASE'	2025 'EU-HiLo'	2028 'EU-BASE'	2028 "EU-HiLo'	2030 'EU-BASE'	2030 'EU-HiLo'
Adequacy requirement	'GAP volume'	[GW]	6.7	8.2	5.3	6.8	7.5	8.5
In the market	Viable capacity	[GW]	2.6	4	2.9	4	5.8	6.8
	(of which new capacity)	[GW]	0	0	0	0	1.5	2.5
	Remaining market LOLE	[h]	9.4	10.5	6	6.9	6	6.2
	Remaining market LOLE95	[h]	89	84	63	76	43	51
	Remaining market EENS	[GWh]	23	21.3	13.2	14	6.5	6.3
	Remaining market EENS95	[GWh]	212	176	151	177	60	57.7
Out of the market	'Remaining 'not-viable GAP'	[GW]	4.1	4.2	2.4	2.8	1.7	1.7
	(of which new capacity if all existing remains)	[GW]	2.4	3.9	1	2.5	1.7	1.7

Whereas in the EU-HiLo scenario the LOLE hours mount up to 10,5h; **also in the EU base case, the LOLE hours significantly surpass the required level (9,4h LOLE, whereas the legal constraint is set at 3h LOLE under normal conditions)**.

Such values are not available in ENTSO-E's Mid-Term Adequacy Forecast[3], but they are included in the more recent PLEF adequacy report (May 2020). This latter study was carried out for the seven countries cooperating in the Pentalateral Energy Forum: Austria, Belgium, France, Germany, Luxembourg, the Netherlands and Switzerland.[4]

[2] Elia's 2019 Adequacy & Flexibility study, figures 4-2 and 4-3.

[3] Indeed, in the framework of this study, the Belgian TSO submitted information under the assumption that a CRM would be created which would provide incentives for the required capacity to become available and indicated in a separate comment that there is no guarantee that this capacity would become available without CRM. The results from the Elia study mentioned above indeed demonstrate that such capacity will not come to the market without CRM.

[4] https://www.benelux.int/files/4515/8998/1576/PENTAreport_FINAL.pdf

In this report, the "Low Gas"-sensitivity, provides the scenario without the 2,5 GW capacity which was added in the Mid-Term Adequacy Forecast to make the scenario adequate. Following this reasoning, a LOLE of 8,1h is identified for Belgium.

We believe that the PLEF study is highly relevant, as it is the result of a collaboration between TSOs and representatives of the ministries, market parties and regulatory authorities and already includes methodological improvements which stem from the Clean Energy Package. The Ministries have, via a common statement, welcomed this study and its methodological improvements, including the flow-based modelling (not yet included in the MAF) and the deeper look into some critical hours[5]. These improvements are of particular importance for Belgium, given its high and structural dependence of import from neighbouring countries.

We believe that the elements above demonstrate firmly that also in a base case scenario, Belgium is facing serious adequacy concerns, leading to a LOLE more than three times higher than its legal LOLE criterion (which is in line with other European Member States). Needless to say that the Belgian State is fully available to provide any additional information the European Commission would require to resolve the concern entirely.

Aside from the summary and position above, reaffirming the need for intervention by means of a CRM also in the base case scenario, the Belgian State would like to gain a deeper understanding of the Commission's viewpoints on a few related elements. This will help the Belgian State to better understand and, if needed, further answer the Commission's concerns.

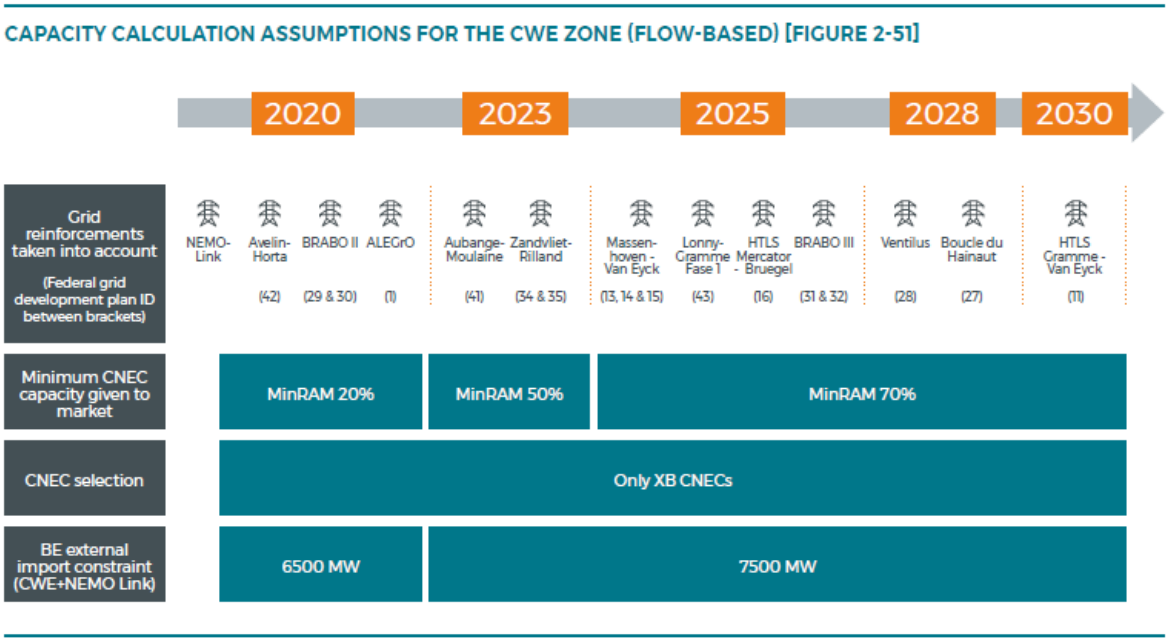
Firstly, it seems that the European Commission considers one of the scenarios used by Belgium to demonstrate the need and/or calculate the volume to be unrealistic (cf. recital 219). However, from a Belgian perspective, when looking at the track record of the last decennium in terms of nuclear availability (by RTE) and the forecasts put forward by EDF in the near future, such scenarios are not unrealistic, but unfortunately very plausible. Not only have they already materialized in the past, but also in the future the risk remains present as identified recently in the scenarios and sensitivities implemented in the "Bilan Prévisionnel 2019".

As a second element, according to the Electricity Regulation, national resource adequacy assessments may take into account additional sensitivities on the particularities of national electricity demand and supply. This is not further detailed in the Electricity Regulation. The Belgian State considers that for Belgium, exactly the high import dependency is such a relevant particularity of national electricity supply. Not only in terms of market functioning, but also in terms of energy being imported and import dependency during tight moments, the Belgian electricity supply cannot be considered without a particular focus on import**.** Indeed, negative evolutions in surrounding markets compared to the base case and out of control of the Belgian authorities, create uncertainties as to whether the capacity on which Belgium 'relies' from neighbouring countries will actually be available. We believe this particular element about the Belgian electricity supply is exactly within the scope of Article 24.1 of the Electricity Regulation. If this would not be the case, the Belgian State would be confronted with a paradox in which on the one hand, Belgium, more than many countries and in line with European ambitions, has

[5] https://www.benelux.int/files/6215/8998/1621/Common_statement_ministries.pdf

invested significantly in interconnection capacity[6] (see also figure below), making Belgium more exposed to events and evolutions in surrounding markets, and on the other hand, Belgium would not be able to account for this specific context when aiming to guarantee its security of supply.

The Belgian State currently already has an electricity interconnectivity level of about 24% with an expectation to rise towards 33% by 2030. The significant investments made on interconnections are summarized in the figure below (figure 2-51 of Elia's adequacy and flexibility study, top line):



This figure also shows the assumptions taken for import to Belgium. With the planned infrastructure works, by the end of 2020, Belgium's import constraint will be 6500 MW (i.e. 6500 MW capacity will be put at disposal for market actors for import to Belgium). This will be even further increased to 7500MW by 2023. Knowing that Belgium's peak load is around 13-14GW (figure 2-16 of the same study), this means that more than half of the country's peak load can be covered by imports (if the energy is available abroad).

[6] Beginning of 2019 the first interconnection (1000MW) with the UK was taken into service (NEMO-link), in November 2020 the first interconnection (1000MW) with Germany will be into service (Allegro), furthermore existing interconnection capacity with the Netherlands (Brabo & Zandvliet-Rilland & Massenhove-Van Eyck) and France (Aubange-Moulain, Lonny-Gramme) are being optimized. For the further future, several additional interconnection projects are being investigated. All of this is listed in the TSO's approved Federal Development plan.

2.2 The calibration of the demand curve

Aside from the need for intervention (discussed in the previous section), we would like to provide additional context regarding the questions raised on the calibration of the demand curve (this section).

First of all, the Belgian state would like to highlight that the choice that was made by the Belgian authorities for the CRM volume calibration (reference scenario) for the first auction is the result of a vast stakeholder interaction.

The position of the Belgian State is based on the choice by the Minister to follow the Federal Public Service Economy's ("FPS") advice on the matter. This advice considers a reduced French nuclear availability that is less severe than what the TSO has been recommending (and also less severe than the dimensioning scenario that has been used for the past years to dimension the size of the strategic reserve). We believe that the FPS' sensitivity is not an unrealistic scenario, but a reference scenario that reflects a realistic and plausible reality as indicated by France itself (and used by France in their own adequacy assessment). This is further demonstrated in this section.

In addition to the practical details provided below, the Belgian State would like to also here highlight its particular situation in terms of interconnectedness and import dependency. Although a reference to Article 24 of the Electricity Regulation is probably less evident here as this specifically concerns the NRAA rather than the calibration of a demand curve, the Belgian State would argue that in any case, its high interconnection rate and import dependency constitute a particularity of national electricity supply.

Finally, before providing more details on the choice of the scenario, we would like to recall that the inclusion of an extra unavailability of the French nuclear capacity is the only sensitivity taken into consideration, even though the Belgian States sees various other risks in the neighbouring countries. Indeed, such other events (for example lower import capacity put at disposal of the market parties, non-realisation of expected additional capacity, accelerated coal phase-out etc.) were not considered in the reference scenario, while those risks have as such not vanished. The remainder of this note looks further into the justification why the selected sensitivity for the first auction is justified, realistic and plausible and in line with the base case scenario as used by France and its TSO. Should other events be more plausible in the future, these should equally (or alternatively) be possible to be considered by the Belgian State.

A vast governance process preceded the determination of the scenario

The selection of the reference-scenario is governed by Article 4 of the Royal Decree proposal dedicated to the methodology to define the reference scenario for each auction. For each auction, the reference scenario is built based on the three steps described below and submitted to a public consultation:

1) Selection of scenarios/sensitivities from the latest ERAA and NRAA. This selection must contain at least the central scenario from the European study.
    - ⇨ The scenario from MAF 2019[7] was selected (this is the latest European study available which was also consulted at European level).
2) Update of data and assumptions from the most relevant available sources
    - ⇨ The updates from PLEF 2020 GAA[8] were included (most recent update (after MAF2019) for the CWE region).
3) Selection of additional sensitivities that can have an impact on the Belgian security of supply.
    - ⇨ The equivalent of two nuclear units in France were removed, based on what was done in the PLEF study to be in line with the historical/expected observations of the nuclear fleet in France, which are not included in 1) and 2) but which are used by the French TSO in the National resource and adequacy assessment ("Bilan Prévisionnel 2019"[9]).

The sensitivity selection comes from a sensitivity also performed in PLEF GAA 2020 to reflect the expected and historical unavailability of the nuclear fleet

In PLEF 2020 GAA, a "Low nuclear sensitivity" is presented to mimic the base scenario taken by the French TSO for their adequacy assessments (see Figure 1). This sensitivity considers 1700 MW of nuclear capacities as additional unavailabilities. This amount aims to copy the approach modelled in the latest French National resource adequacy assessment ("Bilan Provisionel" or BP 2018[10] and BP 2019).

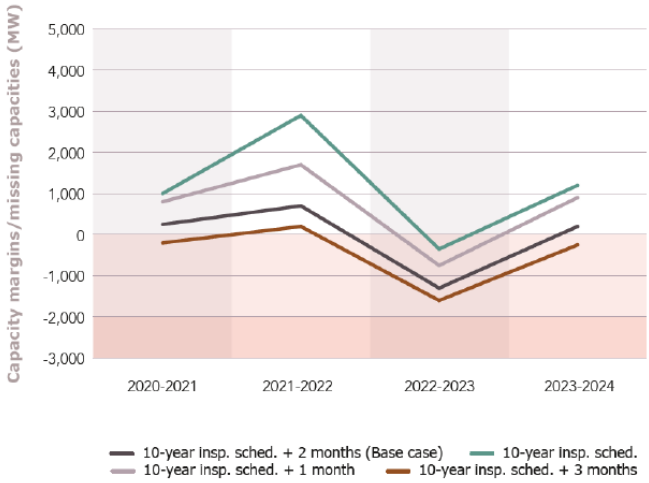


Figure 1: Margins in the base case and in other scenarios of ten-yearly inspections (Figure 18 from PLEF GAA 2020)

The French TSO has highlighted that "the availability of the nuclear reactors is a key factor in terms of security of supply, especially as the program to extend the lifespan of reactors beyond 40 years is just about to start."

[7] https://www.entsoe.eu/outlooks/midterm/main-findings-of-maf-2019/
[8] https://www.elia.be/en/news/press-releases/2020/05/20200520_third-regional-generation-adequacy-assessment-report
[9] https://assets.rte-france.com/prod/public/2020-06/bp2019_synthegse_12_1_0.pdf
[10] https://assets.rte-france.com/prod/public/2020-06/bp2018_variantes.pdf

The Bilan Provisionel 2019 base case from RTE (French NRAA) is the best source for data and assumptions to calibrate the Belgian CRM

The base case from the BP 2019 includes an average 2-month extension of the ten-yearly inspections. This is shown on Figure 2, which includes the latest information from RTE, as submitted to public consultation of the BP2020[11].

RTE therefore integrates in its model a probabilistic outage extension from 0 to 6 months with a 2-months average extension. As the model differs from the one used in the PLEF, RTE defined equivalent assumptions in PLEF in order to better reflect the specificities of the French electricity market, in line with its national study.

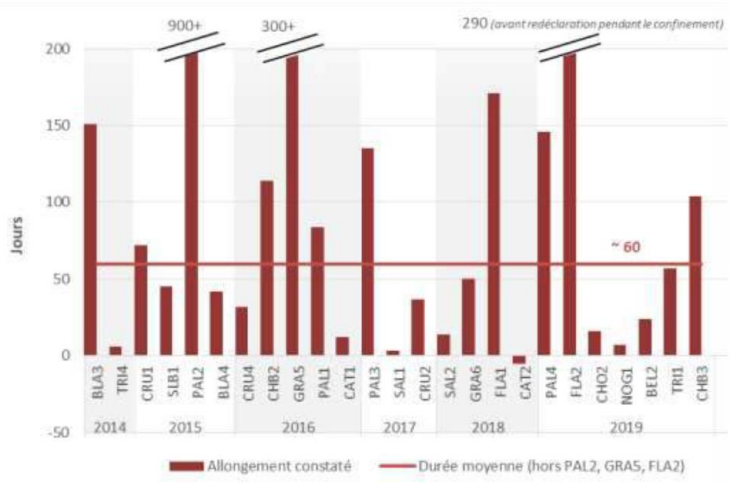


Figure 2: BP2020 (public consultation document from RTE, p.52) – Extension observed of ten-yearly inspection

For the base case of the Bilan Previsionnel 2020, RTE plans to maintain its current assumptions and even proposed in the BP2020 public consultation document to update them in order to take additionally into account:

- the atypical ten-yearly inspections which last more than one year (as observed recently on Paluel 2, Gravelines 5 and Flamanville 2); and
- an extension of the other planned outage duration ("arrêt pour simple rechargement" and "visite partielle") by two weeks.

Therefore, the sensitivity selected for the Belgian CRM corresponds to the data and assumptions from the French NRAA base case. It should therefore equally be assumed as the most appropriate base case for Belgium, as this update is in line with the data and assumptions from the most relevant available sources (Article 3, §3 of the proposed Royal Decree). It is therefore not to be qualified as a "HiLo-case" but as a plausible base scenario.

[11] https://www.concerte.fr/system/files/concertation/2020-06-26_BP2020-consultation-complet-vdefcomp.pdf

EDF also increased its planned outage duration

As the outages' duration planned by the nuclear power plant unit operator (EDF) were exceeded most of the time, the latest forecast from EDF henceforth includes longer outage durations. This is shown on Figure 3, where an increase of the blue column can be observed. However, the updated outage durations are still exceeded (orange column).

Figure 3.9 Durées initiales planifiées par l'exploitant et allongements constatés au 1er novembre 2019

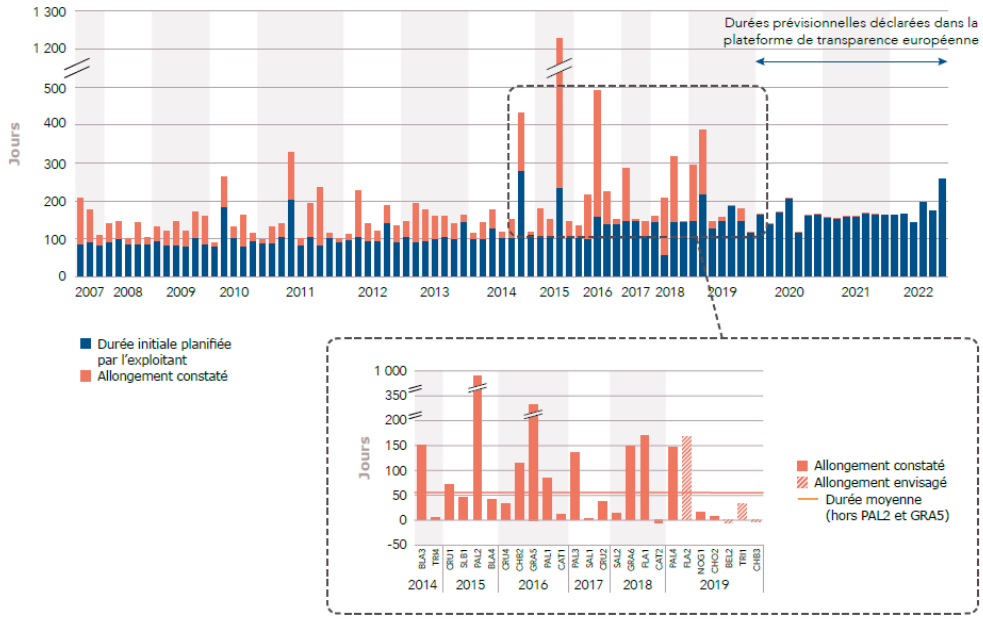


Figure 3: BP 2019 (Figure 9) – Observation of the ten-yearly inspection duration as planned and as realized

The MAF 2019 is too optimistic in terms of nuclear availability as it does not consider the elements presented above from the French 'Bilan Prévisionnel'.

The MAF 2019 assumed a planned outage trajectory based on an 8-weeks outage duration. This model is however no longer in line with the latest observation from the French NRAA as it does not yet take into account:

- the ten-yearly inspection duration extension as currently proposed by the nuclear producers;
- the extension of ten-yearly inspection duration with 2 months as performed as base case in the framework of the Bilan Previsionnel 2019;
- the other outage duration extensions, as proposed as base case in the public consultation of the Bilan Previsionnel 2020;
- the atypical ten-yearly inspections, as proposed as base case in the public consultation of the Bilan Previsionnel 2020;
- the potential delay in Flamanville commissioning as proposed as sensitivity in the public consultation of the Bilan Previsionnel 2020;
- the potential additional decommissioning of one or two nuclear power plants in 2025 and 2026 in line with the trajectory proposed in the PPE (Planification Pluriannuelle de

l'Energie) as proposed as sensitivity in the public consultation of the Bilan Previsionnel 2020.

Belgium is highly interconnected and is sensitive to the assumptions from other countries

As elaborated above, the Belgian State is convinced that the security of supply is fundamentally impacted by the situation in its neighboring countries, due to the import dependency of Belgium and events that are out-of-control of the Belgian authorities. Integrating a sensitivity for the French nuclear availability is considered a realistic and robust option. The reference scenario does not include any other uncertainties abroad that can have an impact on the Belgian security of supply (p.e. accelerated coal-phase out, delays in commission of grid infrastructure or new capacity, etc.). Should one of these other uncertainties become more plausible in the future, these should equally (or alternatively) be possible to be considered by the Belgian State.

3. Investment Thresholds

The Belgian state proposes to calculate the CAPEX thresholds based on the installed capacity instead of the de-rated capacity with the aim to attribute an appropriate contract duration to the CMUs (awarding multi-year contracts to CMUs that contribute more to security of supply), in line with the common objective of the CRM. In case the de-rated capacity offered by the CMU instead of the installed capacity would be taken into account for the investment threshold calculation, capacities with a high de-rating factor (contributing less to the security of supply) will reach the investment threshold for multi-year contracts easier, which would result in providing them an advantage compared to others, while delivering the same service.

The above is illustrated by the following example, including two installations (A and B) with the same installed capacity (20 MW) and with a similar investment cost. Installation A has a de-rated capacity of 15 MW, installation B has a de-rated capacity of only 5 MW. Although contribution to security of supply of installation B is significantly lower, it would reach the threshold to receive a multi-year contract easier (based on its de-rated capacity) than installation A. According to the Belgian State, it would be contrary to the market principles to use the duration of the capacity contract to eliminate the competitive disadvantage of certain capacities linked to their limited availability during periods of tension on the electrical system in the context of a capacity auction. The Belgian State would be interested to know the European Commission's viewpoint on this example in order to better understand the concern.

Additionally, as far as the Belgian State is aware, market parties have not provided any feedback against this proposal to determine the capacity category in function of the installed capacity instead of the de-rated capacity during the public consultation phase.

Notwithstanding the above, the Belgian State understands the Commission's remark on the entry barrier that might be created for capacities with a less favorable derating factor, such as renewable energy sources, in case the intermediate price cap would prevent them to bid at their true costs, while not being able to apply for multi-year contracts. The Belgian State acknowledges that in case the currently notified mechanism would be prone to such consequences, changes may need to be considered. However, changes to the mechanism should not be lightly considered and should still

foresee the necessary checks and balances ensuring that by facilitating some cases the door is not opened towards other undesired consequences.

4. Congestions Rents

According to Belgium, the distribution and the use of the rents resulting from the allocation of cross-border tickets to the Belgian CRM follow entirely the rules as set out by the Electricity Regulation, in particular Art. 26.9, stating:

"9. Where capacity mechanisms allow for cross-border participation in two neighbouring Member States, any revenues arising through the allocation referred to in paragraph 8 shall accrue to the transmission system operators concerned and shall be shared between them in accordance with the methodology referred in point (b) of paragraph 11 of this Article or in accordance with a common methodology approved by both relevant regulatory authorities. If the neighbouring Member State does not apply a capacity mechanism or applies a capacity mechanism which is not open to cross-border participation, the share of revenues shall be approved by the competent national authority of the Member State in which the capacity mechanism is implemented after having sought the opinion of the regulatory authorities of the neighbouring Member States. Transmission system operators shall use such revenues for the purposes set out in Article 19(2). "

Firstly, the decision-taking of the distribution of the revenues between the TSOs is put in the hands of the NRA(s). It makes a distinction between (1) cases where the neighboring Member State also has a capacity mechanism which is open for cross-border participation and (2) cases where no capacity mechanism is in place or a capacity mechanism is in place without being open for cross-border participation. In the latter situation the Belgian NRA has the decision power after having sought the opinion of the neighbouring NRA, while in the former case the Belgian NRA has to decide jointly with the neighbouring NRA. The ACER approved methodology, which is today not yet available, can be followed particularly in cases with neighbouring capacity mechanisms that are both open for cross-border participation, but still the Electricity Regulation does leave the possibility for the concerned NRAs to jointly opt for an alternative methodology.

Secondly, on the use of these revenues by each TSO, the last sentence of art. 26.9 of the Electricity Regulation refers to art. 19.2 of the same Regulation. This latter paragraph states:

"2. The following objectives shall have priority with the respect to the allocation of any revenues resulting from the allocation of cross-zonal capacity:

(a) guaranteeing the actual availability of the allocated capacity including firmness compensation; or

(b) maintaining or increasing cross-zonal capacities through optimisation of the usage of existing interconnectors by means of coordinated remedial actions, where applicable, or covering costs resulting from network investments that are relevant to reduce interconnector congestion."

As stipulated in the Art. 19.2 the objectives for the use of the revenues are clearly defined and seem to fully correspond with the aim of avoiding negative effects on competition and trade.

In addition, it is important to specify that the use of congestion revenues by the Belgian transmission system operator is governed by the tariff methodology which provides that:

> "*Art. 9*
>
> *The total income covers the costs necessary for the continuation of the regulated activities, with the exception of costs that have been rejected in whole or in part by the Belgian Federal Commission for Electricity and Gas Regulation (CREG) on the grounds of their unreasonableness, in application of the criteria referred to in section 5.4.*
>
> *Art 10*
>
> *The costs referred to in the previous article shall consist in particular, but not exclusively, of the following elements:*
>
> *9) […] the costs or cost reductions resulting from interconnection operations, including in particular:*
>
> - *income from congestion rents;[…]"*

These provisions of the tariff methodology will be applied to the income from congestion rents arising from the CRM. Therefore, from a Belgium perspective, it appears that entirely applying the rules as foreseen by the Electricity Regulation both in terms of their content as in terms of the roles and responsibilities should meet the concerns put forward by the European Commission. In case that would be insufficiently the case, the Belgian State would like to learn from the European Commission a more detailed viewpoint on how the Belgian State could meet both the requirements from the Electricity Regulation and the EEAG guidelines in an alternative way.

Finally, it is to be noted that when revenues are shared with neighboring TSOs, their use of these revenues are also fully governed by the same stipulations of the Electricity Regulation. This clearly goes beyond the competence of the Belgian authorities or the Belgian NRA and caution is needed not to result in a disproportionate situation by foreseeing a different freedom of interpretation and consequent application of the rules for different member states while the considered revenues originate from the same source.

5. Intermediate Price Cap

While the European Commission considers the intermediate price cap as useful tool to avoid windfall profits and they seem to accept the overall principles of the intermediate price cap as notified by the Belgian State, in its implementation a number of concerns have been put forward for which the European Commission points towards potential adaptations. In particular two concerns have been identified.

Firstly, there could be a risk that existing capacity bidding their true cost, could be overly limited by the intermediate price cap resulting in their de facto exclusion from the CRM and potentially triggering their exit from the electricity market. The Belgian State acknowledges that in case the currently notified mechanism could be prone to such consequences, changes (such as foreseeing a mechanism of granting derogations) may need to be considered. However, the Belgian State would be interested by the precise nature of the feedback the European Commission has received during its preliminary examination in order to better grasp the issue and assess itself the need and options for a potential change. Indeed, changes to the mechanism should not be lightly considered and should still foresee

the necessary checks and balances ensuring that by facilitating some cases the door is not opened towards other undesired consequences.

Secondly, the European Commission identified a concern on foreign indirect capacity being subject to the intermediate price cap while not having the opportunity to apply for multi-year contracts. To the extent this would indeed hamper competition and trade, the Belgian State could understand the problem. The limitation towards one-year contracts seems however justified as it cannot be guaranteed that there will remain sufficient cross-border tickets for a specific border over the span of a multi-year contract. If then the general application of the intermediate price cap to those foreign indirect capacities results in participants being discouraged to participate, changes to the notified design may indeed needed to be considered (such as foreseeing a mechanism of granting derogations). However, changes to the mechanism should not be lightly considered and should still foresee the necessary checks and balances ensuring that by facilitating some cases the door is not opened towards other undesired consequences. The Belgian State wishes to investigate this further, in particular the question on whether the risk of actually limiting participation is realistic and if so, how the mechanism could be altered.

Annex: clarification on a few descriptive elements

In the descriptive part of the measure, the Belgian State sees a few elements which it would like to further clarify for the sake of completeness:

- "(10) *Furthermore, Belgium explained that if by 15 September 2020 the new methodology indicated in recital (9) above has become applicable, a new reliability standard will be calculated and used for the determination of the capacity to be purchased in the first auction (see section 2.3.2 below). […]*"

→ As communicated in earlier answers, not only should the methodology be applicable, it should also have been implemented by 15 September 2020, which is not necessarily the same:

"However, today the ACER approved methodology on the reliability standard (and VOLL & CONE) is not yet available and a ***certain time will still be needed to implement and apply the methodology as soon as it is available****. On the other hand the calculations for the first auction need to get started and need to be fixed at some point.*

Therefore, a cut-off date has been defined: the calculations will be carried out on the basis of the ***reliability criterion in force on the 15th of September*** *of the year preceding the auction."*

Nevertheless, given that the ACER methodologies have been adopted on 2nd October 2020, the result remains the same for the first auction.

- *"(50) Each year, the amount of capacity required to meet the reliability standard in a particular future delivery year (i.e. the target volume) will be determined based on data and parameters provided by Elia. […]"*

→ We would like to add some clarifications to this sentence to avoid any misunderstanding on the fact that it is not the TSO who determines the amount of capacity. The procedure to fix the demand curve (including the amount of capacity required) and the auction parameters is described in the draft Royal Decree to determine the methodology for the capacity calculation and auction parameters in the context of the capacity remuneration mechanism. It provides that the demand curve is determined by the Minister, based on a proposal provided by the regulator. The regulator makes this proposal taking into account data provided by the TSO, but also this data is calculated by the TSO on the basis of a scenario and intermediate values that have been proposed by the regulator and have been determined by the Minister.

- *"(51) The scenario mentioned in recital (50) takes, as a starting point, the scenarios and sensibilities from the latest European resource adequacy assessment (ERAA)45 or the National resource adequacy assessment (NRAA)46. These are updated with the most recent data available and the next step foresees that also sensitivities can be updated, while additional ones can also be defined, which might not have been taken into account in the ERAA or the NRAA. According to the final*

draft Royal Decree, these sensitivities can refer to events within or outside Belgium's borders which impact Belgium's security of supply. Based on the Belgian Ministry's report on the public consultation about the Royal Decree, one of the additional sensitivity can be the EU-HiLo scenario[47]."

And footnote 47:

« [47] https://economie.fgov.be/sites/default/files/Files/Energy/AR-methode-de-calcul-volume-decapacite-parametres-encheres-mecanisme-de-remuneration-de-capacite-Annexe-1-Rapport-deconsultation.pdf; notably: "La DG Énergie constate que globalement, CBS soutient la méthode alternative telle que proposée par la DG Énergie. En particulier, CBS apprécie également que la possibilité soit prévue pour que des sensibilités HiLo puissent être prises en compte et que des volumes de balancing soient intégrés », and « le paragraphe 4 de l'article 4 déroge des propositions précédentes d'Elia, en ce sens que la possibilité subsiste de tenir compte d'évènements HiLo, mais qu'il s'agit à présent d'une possibilité parmi d'autres. Elia peut se retrouver dans cette approche plus ouverte ». ["DG Energy notes that, overall, CBS supports the alternative method proposed by DG Energy. In particular, CBS appreciates the possibility of taking into account HiLo sensitivities and that balancing volumes are integrated", and "Article 4 (4) derogates from earlier proposals from Elia, in the sense that the possibility remains to take account of HiLo events, but is now one of several options. Elia supports this approach, which it find more open."]"

→ We would like to clarify that this section refers to paragraphs of a stakeholder consultation report drafted by the FPS Economy, where two stakeholders (CBS and Elia) are cited and paraphrased. However, this should not be interpreted as the position of the Belgian State or an affirmation of the statements made by CBS and Elia. On the contrary, as argued above, the Belgian State does not intend to use a HiLo-scenario for the volume and parameters calculation.

- *(207) Participation of foreign capacity located in neighbouring countries will be allowed <u>from the first auction onwards</u> (see recital (151)).*

→ Recital (151) correctly reflects the proposed planning, ie the Belgium will allow for foreign participation "from the first delivery", pointing to the preferred option (first Y-4 auction) and the back-up solution for indirect participation. Hence we would like to clarify that also in recital (207), "first delivery" is intended rather than "first auction".