

Febeliec answer to the FPS Economy consultation on the Royal Decree on the determination of the parameters required for the organization of the auctions for the CRM

Febeliec would like to thank the FPS Economy for this consultation on the Royal Decree of April 28th 2021 on the determination of the parameters determining the volume to be acquired, including their calculation method, as well as the other parameters required for the organization of the auctions, as well as the method and conditions for the obtention of an individual derogation on the application of the intermediary price limits in the framework of the CRM.

Febeliec wants to refer to the discussions in the WG Adequacy of Elia, also attended by the FPS Economy, in which the topics in this consultation have been discussed at length. Febeliec insists that the proposal made by Elia is a compromise between different elements and should thus, as also mentioned during the meetings, be considered an integrated proposal by the WG Adequacy.

On the payback obligation for certain types of flexibility, in particular demand side flexibility, Febeliec has during the related discussions continuously pointed at the fact that the payback and penalties can not only largely exceed the revenue generated by the CRM auction but also any amounts earned on the energy markets, leaving these participants doubly exposed as opposed to other sources of flexibility such as generation. Therefore, Febeliec strongly argues in favor of the removal by article 25 §5bis of a payback obligation for certain types of flexibility (e.g. demand side response), as in many cases such flexibility would have to pay back amounts that would not have been earned in the first place, which would expose them to unacceptable risks and would this completely undermine their business cases and erode any appetite for their participation to a CRM auction. As Y-1 auctions for the CRM as well as the single auction for the proposed Low Carbon Tender for winter 2024-2025 are being planned, with an important role for demand side flexibility as indicated by the government and Elia at numerous occasions, it is of the utmost importance to provide clarity on the removal of the payback obligation for demand side flexibility in order to ensure a stable framework that would not enforce payback of unearned income, if these auctions are to attract sufficient participation in order to find the necessary volumes at the lowest possible cost for society, as inscribed in the Electricity Law. Based upon many discussions and signals from market participants, Febeliec can only stress that omission of this removal would lead to unacceptable risks for these potential CRM participants and would greatly reduce the probability of aforementioned auctions to find sufficient volumes at an acceptable cost for society.

Febeliec insists that a modification of the Functioning Rules of the CRM in order to modify the indexation formula for the strike price is not a preferred solution, as it impacts the balances in the CRM regarding a reasonable probability of a payback, which is fundamental in the Belgian CRM setup of reliability options. However, taking into account the exceptional current market conditions and environment as well as the very volatile prices in both the gas and electricity markets, and in light of the aforementioned integrated compromise proposal by the WG Adequacy, Febeliec could accept the modification of the indexation, under the condition that the new formula is not again revised every year and that it is avoided at all costs to make any modifications during any delivery period of the CRM, as this would create a lot of risks and thus additional costs for the system, which would go against the legal lowest cost criterion for the CRM. Furthermore, Febeliec insists that any price formula for indexation should be futureproof and thus symmetrical in the sense that it should also fulfill the requirement of payback probability whenever market circumstances become less exceptional and overall price levels would reduce again.

Last but not least, Febeliec is in principle strongly opposed to any retroactive application of modifications to existing and signed contracts, as this opens the box of Pandora by introducing a new layer of legal, regulatory and contractual uncertainty and potentially even arbitrary decisions. However, taking into account the aforementioned exceptional market circumstances, and as a specific element of the integrated compromise proposal by the WG Adequacy, it could be acceptable to follow such approach only for the already concluded contracts under the aforementioned conditions.