

Febeliec reaction to the discussion on the Access Contract and the proposal of FEBEG of 18/01/2017

Within the Elia Belgian Grid Working Group, a discussion has been on-going concerning the annexes 2, 3, 12 and 13 of the aforementioned Access Contract. Elia has provided a first note on proposals for modification during the meetings of the Belgian Grid Working Group, to which FEBEG reacted in a note on 18/01/2017.

With respect to the general discussion on the Access Contract and its annexes discussion, Febeliec would like to make a number of comments. Nevertheless, Febeliec also would like to point out that the general role and usefulness of the Access Contract should at some point be discussed, as the role of the Access Holder has been decreasing over the course of the last few years with amongst others changes to nomination procedures. The usefulness of a separate regulated Access Contract should be investigated, as some or even all of the elements could also be covered via other regulated contracts such as the Connection Contract.

With respect to the discussion at hand and the aforementioned annexes, Febeliec is of the opinion that annexes 2 and 3, with a possible extension of the scope of these annexes if needed and sufficiently argued, are sufficient to cover the needs of the grid users and that the annexes 12 and 13 which cover the irrevocable (!) designation of Access Holder and Access Responsible Party (ARP/BRP) have exceeded their usefulness in the changing energy landscape. Febeliec thus proposes to abolish these two annexes.

With respect to the note of FEBEG of 18/01/2017, Febeliec can agree with some of the comments resulting from the analysis of the Access Contract made by FEBEG. With respect to the analysis made by FEBEG on articles 8.2, 9.1, 9.2, 9.3, 10, 11.1 and 11.2, Febeliec supports the request for more clarity and the removal of any incorrections, ambiguity or contradictions in the stipulations. Febeliec looks forward to concrete text proposals in order to be able to evaluate if a balanced final text taking into account these comments can be composed, validated by the Belgian Grid Working Group and the Elia User's Group and proposed to the Federal Energy Regulator for validation and application.

With respect to the comments and evaluation made by FEBEG in its note on page 5 and following, Febeliec cannot agree with several of the premises of FEBEG, for example related to the (supposedly) non-payment of the energy bill by an end user, which FEBEG considers a valid and sufficient reason for the revocation of the Access Holder (annexe12) or ARP/BRP (annexe13) role by this party and this to be accepted by Elia, without intervention of any legal court and a binding decision by such court. Such situations need to be settled in the appropriate setting and according to the Belgian Law, which also covers the request by FEBEG to find a way to limit the (perceived) risk of the removal of annexes 12 and 13 from the Access Contract, as such appeal procedure is already foreseen. Moreover, and notwithstanding the above, it would be very difficult for Elia to evaluate the validity of the claims made by (both) parties in such conflict and as such would be impossible for Elia to take a final decision. This would also reduce the right to due process for the involved grid user.

With respect to the comments made by FEBEG concerning the designation of Access Holder and ARP/BRP, Febeliec is willing to discuss any potential required modifications to Annexes 2 and 3 in case annexes 12 and 13 would be removed from the access contract. Nevertheless, the above comment remains standing for Febeliec. Moreover, the proposal by FEBEG for defining in annexes 2 and 3 clear circumstances under which conditions the contract could be annulled needs further reflection and clarification, amongst others with respect to the discussion of proof of expiration of the underlying supply contract or designation of access holder (for annex 3) as well as the control and validation hereof by Elia or an independent entity.