

## Febeliec answer to the Elia consultation on the LCT Functioning Rules

Febeliec would like to thank Elia for this consultation on the Functioning Rules of the Low Carbon Tender (LCT).

Febeliec wants to refer to its numerous comments on the shortcomings and issues with the Belgian CRM, which are also reflected in the Functioning Rules for the LCT as these are based on the Functioning Rules for the CRM. Febeliec wants to explicitly refer to the comments it has made on the Functioning Rules for the CRM in the recent consultation on version 3 as well as to the comments it made at the end of 2022 in the consultation on the design note concerning the LCT, insofar many comments have not been taken into account.

On the context and regulatory framework of the LCT, Febeliec would like most strongly to reiterate its concerns, as it has already done during previous consultations and meetings where this tender was discussed. In case there is a real and important risk for Belgian system adequacy for the winter 2024-2025, Febeliec considers the framework too restrictive, as the tender is not technology-neutral (nor allows direct foreign participation) and could thus jeopardize system security by excluding volumes and technologies that could alleviate these concerns and even lead to not being able to contract sufficient volumes. Febeliec in this context refers to art. 6.3.3.1.2, number 335, which already covers such situation of insufficient volumes yet does not describe how the lack of required volumes will be covered. Moreover, by explicitly excluding technologies, it is not ensured that the outcome of the tender will lead to the lowest possible costs for the system and consumers as all available (yet not sufficient) volumes will have to be contracted at any cost and thus could lead to very high costs. Last but definitely not least, Febeliec also wonders about the legal framework, which is currently lacking (and which creates issues with this consultation as all reference to a legislative framework are only placeholders and as such it is impossible to judge whether the as of yet non-existing legal framework will resolve all outstanding issues) as well as the approval of this subsidy scheme by the relevant authorities, which does not seem to have been granted at this moment and where Febeliec has doubts (a.o. referring to the lack of technology-neutrality and foreign participation). Febeliec can only hope that Elia's assumption of the necessarily legal and regulatory changes being completely and timely provided will prove correct and in line with Elia's assumptions for the development of the Functioning Rules (and other related documents such as the contract) for the LCT.

Specifically also on the LCT, Febeliec wants to reiterate that the CRM/LCT is a year-long product (with a.o. implications for maintenance periods, availability monitoring and secondary markets), while the tender is supposed to "ensure security of supply during Winter 2024-2025" which does not require availability over an entire year and could alleviate important concerns from demand facilities and thus demand side response which have been voiced over the years vis-à-vis the CRM.

On the link with the design of the capacity remuneration mechanism (CRM), Febeliec regrets that this also means that all flaws of this mechanism will also be introduced into this tender. Febeliec has over time provided ample examples of a wide range of issues with the CRM and will in this context refer to all the relevant consultation answer and not repeat all specific points. Nevertheless, and specifically for the LCT Functioning Rules, Febeliec was very surprised to see that for multi-year contracts that might be granted in the auction, after the first delivery year those LCT contracts would automatically revolve into CRM contracts, while (even fundamental) differences might exist between the legal framework and context of the LCT and the CRM, leading potentially to incompatibilities. Febeliec remains concerned on the alignment of the LCT "as much as possible" with the CRM framework except where it might in the end deviate. Febeliec understands that Elia wishes to harmonize as much as possible the Functioning Rules and Contracts of the CRM and LCT, but this leads in many cases to some confusion, as terminology is sometimes confusing (e.g. CRM Candidate or Actor also being used for an LCT participant who is not participating to the CRM) and as for the LCT one has to re-read the CRM Functioning Rules with Section 18 at hand to try to see to which extent the LCT Functioning Rules differ from those of the CRM (no dedicated integrated LCT Functioning Rules version is available), which could lead to confusion or even wrong interpretations.

Febeliec appreciates the efforts done by Elia and the other involved parties to ensure that as much as possible "new" demand side response can be identified and allowed to participate (a.o. beyond the DSR which some parties are already currently delivering), yet Febeliec remains very worried about the lacking complete definition of "new" concerning all different asset classes (for which Febeliec also wants to refer to the comments made on this topic during the WG

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*Febeliec represents industrial energy consumers in Belgium. It strives for competitive prices for electricity and natural gas for industrial activities in Belgium, and for an increased security of energy supply. Febeliec has as members 5 business associations (Chemistry and life sciences, Glass, pulp & paper and cardboard, Mining, Textiles and wood processing, Brick) and 39 companies (Air Liquide, Air Products, Aluminium Duffel, Aperam, ArcelorMittal, Arlanxeo Belgium, Aurubis Belgium, BASF Antwerpen, Bayer Agriculture, Beaulieu International Group, Borealis, Brussels Airport Company, Covestro, Dow Belgium, Etex, Evonik Antwerpen, Glaxosmithkline Biologicals, Google, Ineos, Infrabel, Inovyn Belgium, Janssen Pharmaceutica, Kaneka Belgium, Kronos, Lanxess, Nippon Gases Belgium, Nippon Shokubai Europe, NLMK Belgium, Nyrstar Belgium, Oleon, Pfizer, Proxiums, Sol, Solvay, Tessenderlo Group, Thy-Marcinelle, Total Petrochemicals & Refining, UCB Pharma, Umicore, Unilin, Vynova and Yara). Together they represent over 80% of industrial electricity and natural gas consumption in Belgium and some 230.000 industrial jobs.*

Adequacy meeting). As already mentioned, Febeliec is very strongly concerned that if an important security of supply issue were to be found for winter 2024-2025, the framework could be too restrictive and exclude very important volumes of flexibility, which would drive up the overall cost and maybe even in itself jeopardize system security. In any case, Febeliec continues to find it extremely worrisome that at this point a complete and exhaustive definition of “new” or “low carbon” are not yet available. As stated above, Febeliec nevertheless appreciates the additional clarifications and degrees of freedom that were added for additional DSR and insists that a continuous effort is maintained to remove as much as possible all remaining barriers for participation, including a.o. more flexible approaches towards metering, testing, monitoring and volume determination. Febeliec refers in this context a.o. towards the periods taking into account for the baselines and the determination of volumes (e.g. related to outages, maintenance, shutdowns for sanitary reasons or on government or system operators requests, preventive shutdowns to avoid potentially important damages from unplanned curtailments, etcetera). Febeliec also in the context of monitoring and testing towards existing activations of assets (e.g. in the balancing context).

Concerning the payback obligation, Febeliec cannot validate the proposed Functioning Rules by Elia as it is unclear how indexation would be applied, while also the discussion on retroactivity is not yet concluded, nor the discussion on the removal of a strike price for DSR (which is still not removed from the Functioning Rules). Febeliec wants to refer to its comments on this topic during the meetings of the WG Adequacy and related consultations and wonders to what extent the price cap for participation of demand side response will be removed, as it is a major barrier for participation of DSR to the LCT, and could thus jeopardize finding sufficient volumes for the tender. Febeliec insists that legal and regulatory clarity, as well as translation thereof in the Functioning Rules and the Contract is of the utmost importance.

Concerning Prequalification, Febeliec notices that the FPS Economy will no longer make a decision but only give an advice concerning compliance of a CMU with the CO2 emissions cap, which leads to questions about governance as it is unclear who will make the final decision on this topic (the Functioning Rules only cover the absence of an advice as a rejection, yet does not clearly indicate who will make a positive decision, based on the advice of the FPS Economy).

Concerning the secondary market, Febeliec wants to refer to its comments on this topic above and keeps wondering how the LCT tender and CRM will be seamlessly integrated to avoid perverse effects in the secondary market. Febeliec furthermore continues to have grave concerns concerning the liquidity of the secondary market for the LCT tender, especially also in combination with the issues concerning overall liquidity for this tender because of a too strict framework for participation. Furthermore, it is unclear to Febeliec which will be the impact of the existing DSR in the LCT on volumes of those CMUs in the secondary market as well as for participation in the CRM (primary market) auctions. Febeliec would like Elia to clarify this aspect.

Concerning the CRM Disputes Committee, Febeliec most strongly wants to refer to its comments in previous consultations and still finds it unacceptable that an ad hoc chairman can be appointed by the two parties to the dispute to settle their dispute, without the guarantee that the chairman will not resolve their dispute at the detriment of costs for consumers. Febeliec finds it unacceptable that the overall cost element is still not taken into account in the settlement of disputes and continues to fundamentally oppose this section of the CRM Functioning Rules.

For DSO-connected units, Febeliec takes note of the reference for Flanders towards (only) the technical regulation for the local transmission grid, but wonders how this will be covered for the distribution grids.

Febeliec does not agree with the fact that in the event a DSO does not communicate to Elia within the required time period (e.g. for nominal reference power or declared nominal reference power, final existing DSM) the concerned CMU will be provisionally rejected by Elia, as this lies beyond the scope of influence of that CMU. Febeliec insists that a different mechanism is put in place in order to ensure that slow or lacking response by DSOs do not lead to the exclusion of capacities, even if this would imply penalties for DSOs.

On existing DSM, Febeliec refers to its comments above, but also would like to oppose the stipulation that a CRM candidate can only contest a provisional existing DSM only once per delivery period and per notification, as it does not see why this limitation is needed.