POSITION

Subject: Comments on the public consultation on Royal Decree on Investment Thresholds and Eligibility Criteria

Date: 21 October 2019

Please find hereafter the comments of FEBEG on CREG's public consultation on the draft Royal Decree on Investment Thresholds and Eligibility Criteria in the frame of the Belgian CRM.

Disclaimer

The present position is based solely on the document submitted to consultation. The comments on specific elements are thus based on available information on this specific topic. It should be noted that the comments on the present consultations are linked to elements defined in other documents/consultations which are not yet definitive. Obviously, the availability of all elements in a pre-final stage is required in order to provide a global overview allowing the stakeholders to take a final position on the matter.

Summary

FEBEG considers that the CREG proposal should be reviewed: the thresholds for all the respective capacity categories should not only be lowered, but the methodology to translate the threshold for the 15 year contract to 3 and 8 year contracts should be abandoned as well.

A market study should be carried out in order to propose thresholds, to be approved by Royal Decree, in such a way that the respective thresholds are set technology-neutral while they ensure maximal access to competition and a level playing field between all technologies and between investments in both additional as well as existing capacities.
These objectives can only be reached by significantly lowering the thresholds to bring them in line with market reality and the objectives of the CRM: setting too high thresholds will lead to discrimination between technologies and will not assure the objective of a CRM at the lowest possible cost.

The eligibility of the investment costs needs to be further detailed and clarified to be able to evaluate the height of the investment thresholds. Additional details and clarifications should be integrated in the Royal Decree.

There's also a clear link between the eligibility of the costs and the intermediate price cap: the intermediate price cap should allow the inclusion of all (non-levelized) investment costs that are non-eligible to meet the investment threshold for three year contracts.

Main remarks

Eligible costs should be further clarified in the Royal Decree

FEBEG considers that all capitalized investments leading to a continuation of a power plant should be eligible. Transparency and predictability should be granted by defining an exhaustive list of non-eligible cost or at least a non-exhaustive list of eligible costs in the Royal Decree. Clarity on the eligibility of costs is of upmost importance in order to allow the stakeholders to assess the proposed thresholds which is under the current formulation of article 3 definitely not the case.

There's also a clear link between the eligibility of the costs and the intermediate price cap: the intermediate price cap should allow the inclusion of all (non-levelized) investment costs that are non-eligible to meet the investment threshold for three year contracts.

The article describing the eligible costs is very restrictive while it remains at the same time very unclear which costs are effectively eligible, especially as most details will be provided in the guidelines of CREG that still are to be developed. Due to a lack of clarity on the eligible costs it is impossible to thoroughly evaluate the height of the investment thresholds, as both are interlinked. The question rises if this approach – i.e. all details in the guidelines and almost no information on the eligibility – is compliant with the Electricity Law that stipulates that the 'eligibility criteria' should be determined by Royal Decree.

The investment thresholds are the result of a political decision, in the sense that CREG can propose thresholds that are eventually approved by Royal Decree. To have a consistent and coherent approach, not only the threshold but also the interlinked cost eligibility should be approved by Royal Decree following a proposal of the CREG. Same procedure should indeed be applied for the review and approval of both the eligible costs and the investment thresholds.

It is also very important to further clarify the following concepts explicitly in the Royal Decree:

- 'one-off' versus 'recurrent investments';
- 'initial investments';

In this context, it is important to point out that the Electricity Law doesn't limit eligible costs to 'initial and one-off investments'

Furthermore, FEBEG is of the opinion that the Royal Decree should ensure that all capitalized investments that contribute to the continuation of the operation of a power plant – irrespective the number of running hours of the power plant – are eligible

The abovementioned investments require an economic investment decision without which the power plant will be closed. The objective of the CRM should be to offer comfort on the cost recovery of such investments, by bidding in the missing money, so that the operation of the power plants can be continued.

The description of the eligible costs is too vague: the eligible costs should be further detailed and clarified in the Royal Decree.

The Royal Decree should ensure that all capitalized investments that contribute to the continuation of the operation of a power plant – irrespective the number of running hours of the power plant – are eligible.

There's also a clear link between the eligibility of the costs and the intermediate price cap: the intermediate price cap should allow the inclusion of all (non-levelized) investment costs that are non-eligible to meet the investment threshold for three year contracts.

Investment thresholds are set at a too high level

General evaluation

FEBEG considers it, in order to have a CRM at the lowest possible cost, very important to set investment thresholds that are in line with realistic market prices.

The proposed methodology to set the thresholds raises a lot of questions. Why does the CREG use the 15 year contract as starting point to define the other thresholds? Why does it consider the 700 EUR/kW as valid testing value? How exactly did CREG come to the reduction factor of 20 %? It is also strange that CREG is not using the minimum values of Table 3 to set its thresholds

It should be noted that defining the investment threshold entails high risks of distorting the market and is therefore a very important exercise.

FEBEG considers that the investment thresholds should allow the participation of all relevant technologies in the interest of the consumer and avoid discrimination (we also refer to Ireland and UK) and that the thresholds put forward are in the present consultation are inadequate for the reasons listed hereafter.

Threshold for 15-year contract

We believe that the adequacy situation in Belgium for which the capacity mechanism is currently being implemented is an important issue for security of supply and consider that the thresholds for the Belgian capacity categories should take into account that factor. Indeed, with a 15 year contract, the system can rely over a long(er) period on the availability of steerable capacity and furthermore new efficient capacities will be beneficial to the overall energy bill of the consumers. Therefore we believe that the thresholds for 15-year duration in the range of what has been seen in Italy, Ireland and UK are much better suited for Belgium than thresholds considered in Poland which were set at a level to allow coal units to participate to the CRM (we also refer to our comments on §65).

The CRM law does not implement any requirement on the limitation of multi-year contracts. The law foresees the CREG to advice on the thresholds and to favor competition by allowing 3/8/15 year contracts. The law does not want to limit volumes contracted for 15 years. The CREG tends to implement extra limits which are not foreseen in the law.

The currently proposed high threshold limits long term contracts while long term contract are nevertheless necessary to be able to cope with the large investments that are typically needed to build efficient generation capacity.
Due to this high threshold 15 years contracts will be difficult to obtain while banks and project financing will require a 15 years financing period. If these technologies are only eligible for 8 years contract their financing costs will be higher whereas spreading the 'missing money' over a larger

number of years will reduce the height of the bid in the (first) auction and thus the cost of the CRM (in the first year).

Arguing that the costs of these higher bids will be compensated by cheaper future capacities in later years is pure speculation. In fact, the consumer risks to pay twice:

- High initial cost of the CRM due to high bids as a result of the short contract periods or the inclusion of risk premium
- Potential high future cost of CRM as it is unsure that new capacities in later years will be cheaper.

We notice that the CREG seems to agree with the allocation of 15 year contracts for e.g. new CCGT's (see §79), but we think this is a minimum in setting the threshold level, which should allow capital intensive but efficient investments to reach a competitive €/kW and by this spreading the associated CRM cost to an acceptable annual level for the consumer (compared to the case in which only a 8 year contract would be possible).

A risk of setting the threshold for 15 year contracts at such a high level is that investors will be driven to choose for an offer of an expensive equipment supplier just to be able to reach the threshold while it is in the interest of society that the cheapest offer would be selected.

The currently proposed thresholds are evaluated against expected eligible standard (reference) investment cost of the different technologies (see table 3), but as holds for the threshold, this evaluation can only be relevant if the standard investment costs are in line with reality. FEBEG considers the costs of new CCGTs and OCGTs are overestimated, whereas new gas engines are under estimated. We urge the CREG to contact the different OEM's to re-calibrate Table3

Another strange effect that the threshold should handle is that low efficient, smaller installations have more ease to reach a threshold expressed in €/kW. For example, it would be difficult to explain that a H-class CCGT would not be able to reach the 15 year threshold, whereas a E or F-class CCGT would.

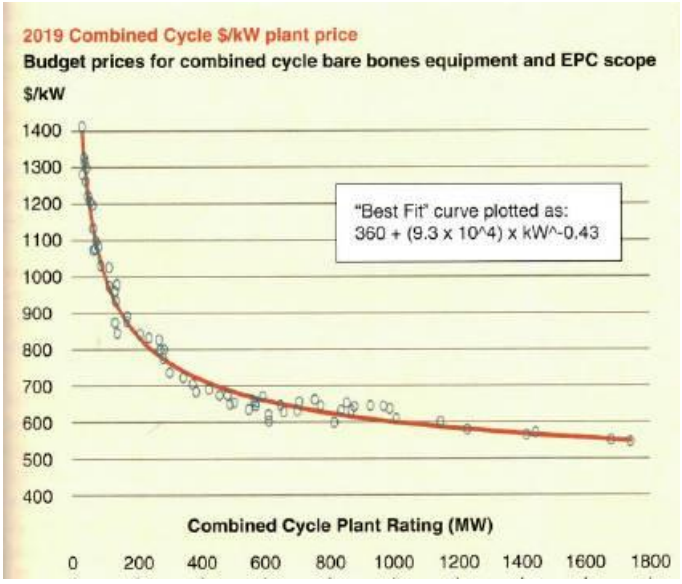


Figure 1: Budget price for combined cycle bare bones equipment and EPC scope (reference Gas Turbine World 2019 GTW Handbook).

Threshold for 8 and 3-year contract

The combination of excluding investments from eligibility and the high investments thresholds for 8 and 3 years contract, will make it difficult to apply for a contract duration of 3 and 8 years.
As a result -for example- lifetime extensions will be very risky without a clear view on cost recovery: will the existing unit be able to win several consecutive auctions to be able to recover the investment cost of the lifetime extension? The proposal risks, hence, to push existing units out of the market meaning that new – more expensive – capacity will need to be attracted over time to replace these capacities.

With respect to the threshold for these contracts, FEBEG is of the opinion that existing capacities that do an important investment to be able to keep capacity in the market should be able to have a contract above the standard contract of 1 year. FEBEG understands that the lawmaker indeed foresaw a contract duration of 3 and 8 years for another type of investment, in essence to allow as well for important investments in existing capacity.

CREG should review its proposal: the thresholds should not only be lowered, but the methodology to transfer the threshold for the 15 year contract to 3 and 8 year contracts should be abandoned as well.

Instead, CREG should perform a market study in order to propose thresholds in such a way that the respective thresholds are set technology-neutral while they ensure maximal access to competition and level playing field between all technologies and between investments in both additional as well as existing capacities.

It should be possible to combine capacities in one investment file

'Capacity' is defined as 'power linked to a delivery point'. This means, for example, that a CCGT with a delivery point for the gas turbine and a delivery point for the steam turbine will not be considered as one capacity. As result, two investments files need to be submitted. This would create several issues. How to split certain CAPEX (buildings, IT, …) over the different investment files? What happens if the two investment files are granted a different contract duration?
Notwithstanding the fact that separate rules for aggregation – that are not questioned – are needed, it should also be possible to link up capacities (gas turbine and steam turbine) in one investment file/offer (for a CCGT), like Elia allows to combine/link CMU's into one bid.

Detailed comments

Comments regarding the legal frame

FEBEG considers that some important elements of the legal frame is missing in this sections.
We refer to the Annex for further details.

Comments on the articles

General note:

For each article we first comment on the specific text of the Royale Decree (RD) (section 3 of the CREG document) before commenting the explanation put forward by the CREG in section 2 of its document.
The comments on the different articles below should be read together with the main remarks above as for the sake of avoiding repetition these are not repeated in the comments on the articles below.

Article 1

RD §4 4°: the Royal Decree lacks a definition for on power station with three access points (GT, ST 1 and ST2)
The definition of 'eligible costs' refers to 'new or existing units' Should this not be 'new and existing capacities', as 'capacity' is a defined concept?

Article 2

Some elements should be further clarified such as:
§22. Technische levensduur: FEBEG is not in favor of using this concept as the determining factor is the investment level. Some technologies may indeed have a lifetime that is in principle limited, but this should not be used to increase the investment thresholds.
We believe it is the responsibility of the capacity provider to determine whether he can be present for 15 years with an investment.
E.g. regarding batteries, the capacity provider could decide to replace defect batteries during its contract duration. Or concerned technologies will choose a shorter duration as the availability penalties will imply a too high risk.
It seems unfair and contrary to technology neutrality to exclude batteries or other technologies upfront from certain contract durations.

Article 3

RD §1 "tussen de datum van publicatie van de resultaten van de veiling en de dag voorafgaand aan de eerste dag van da capaciteitsleveringsperiode"" –.it should be clearly mentioned that all works ordered in this period should be eligible. Additionally there is a difference between FR & NL ('dépenses commandées' versus 'uitgaven die plaatsvinden')
In the CRM law there is no limitation to the eligibility of initial and one off investments. This argument cannot be used to exclude investments in large overhauls

RD§2: The description of the eligible costs is too vague: the eligible costs should be further detailed and clarified in the Royal Decree. The Royal Decree should ensure that all capitalized investments that contribute to the continuation of the operation of a power plant – irrespective the number of running hours of the power plant – are eligible. If not, transparency and predictability should be granted by defining an exhaustive list of non-eligible list or at least a non-exhaustive list of eligible costs in the Royal Decree

§28.
Limitation to "physical elements" seems restrictive. If some non-physical cost elements (e.g. studies, communication) can be proven to be essential to the delivery of additional capacity, then they should be eligible as well.
Netaansluitingen: grid connections can be very different, also several variants are possible and proposed by Elia. How to know which cost to take into account? For Fluxys the real costs are not born by the client, only a bank guarantee is requested, which is no physical element
What can exactly be considered as 'grid connection' cost?

§30. What about "electrolysers" to produce hydrogen, they can be seen as long term (seasonal) storage.

§31. This seems too restrictive, this alinea is implying that any player willing to bid at the auction will have no cost before the auction. That is not true for new projects, as project developers will have significant development costs (studies, construction tenders, permits…) so that the project is fully permitted and technical feasibility assessed before going to the auction, as the risk of not being ready for delivery period is high if the developer waits for the auction results before launching the permitting phase of the project.
Eligibility of these costs should be based on whether a cost is capitalized in accounting.
Investments done between the year before pre-qualification submission (15/06) should therefore be eligible

§32. 'Initial investment' is not clearly defined.
Is it every cost made for the first time is 'initial'? Cost linked to the 'original' investment in existing capacity'? Does this includes or excludes commissioning phase? We consider that Commissioning should be eligible costs.
Note: the Electricity Law doesn't limit eligible costs to 'initial' and 'one-off investments'

§37. (RD Art3.§3) Conditions of the eligible costs should be defined in a Royal Decree and not in a guideline from the CREG.

Article 4

RD The text in the draft law could be misinterpreted with the text in explanatory section as "totale geïnstalleerde vermogen dat de capaciteit na de beoogde investering kan aanbieden aan de markt." could be interpreted as derated capacity as this is what is considered as provided to the marker..
Remove 'can offer in the market'. The objective of this condition is not clear.

Article 5

§44: CMU: also in the framework of the investment files it is extremely important to know what a CMU exactly is and on which level the CREG is expecting investment files.
For example a CCGT with a delivery point for the gas turbine and a delivery point for the steam turbine will not be considered as one capacity. As result, two investments files need to be submitted. This would create several issues. How to split certain CAPEX (buildings, IT, …) over the different investment files? What happens if the two investment files are granted a different contract duration?
It should also be possible to link up capacities (gas turbine and steam turbine) in one investment file/offer (for a CCGT), like Elia allows to combine/link CMU's into one bid.

§48 We would like to request some clarification on how an aggregated capacity with a capacity category longer than other capacities in the aggregated CMU will be treated after the initial (shorter) contract duration: e.g. if a capacity in the 15 years capacity category first fulfils an 8 years contract with other capacities, can it afterwards participate in the auction for a 7 years contract? Or should it subsequently participate for 3 -3 - 1 year contracts?

Article 6

§55.
Next to the risk of over-remuneration (which is addressed via the pay-back obligation), long term capacity remuneration also create risks of under-remuneration that the producer is taking regarding energy markets uncertainty (energy revenues greatly decreasing compared to forecasts, meaning capacity premium does not cover missing money anymore). It is then fair to say that bidders at the auction (producers) are indeed taking more risk than buyer (Belgian state) since the risk on market uncertainty is not symmetrical.
Last bullet: is this an issue or a non-issue? Stopping the CRM has no relation with the contracts.

§56 As mentioned in our main remarks: the thresholds are globally set at a high level – this could exclude a fair competition between players proposing the same technology. In practice, the market could need e.g. a CCGT, but the threshold should be below the minimum estimates available for the eligible CAPEX of a generic project so as to foster a real competition between players (esp. without refraining them not to compete to fall in a category with lower duration and to avoid manufacturers net-backing their offers on the thresholds).
The CRM law does not implement any requirement on the limitation of multi year contracts. The law foresees the CREG to advice on the thresholds and to favor competition by alllowing 3/8/15 year contracts. The law does not want to limit volumes contracted for 15 years. The CREG tends to implement extra limits which are not foreseen in the law.

§57. Even if small investments need a limited number of years for return, establishing a business plan on successive 1-year capacity premiums while the level of capacity need is unknown year-on-year sounds very risky and any rational investor would most likely not invest in such conditions.

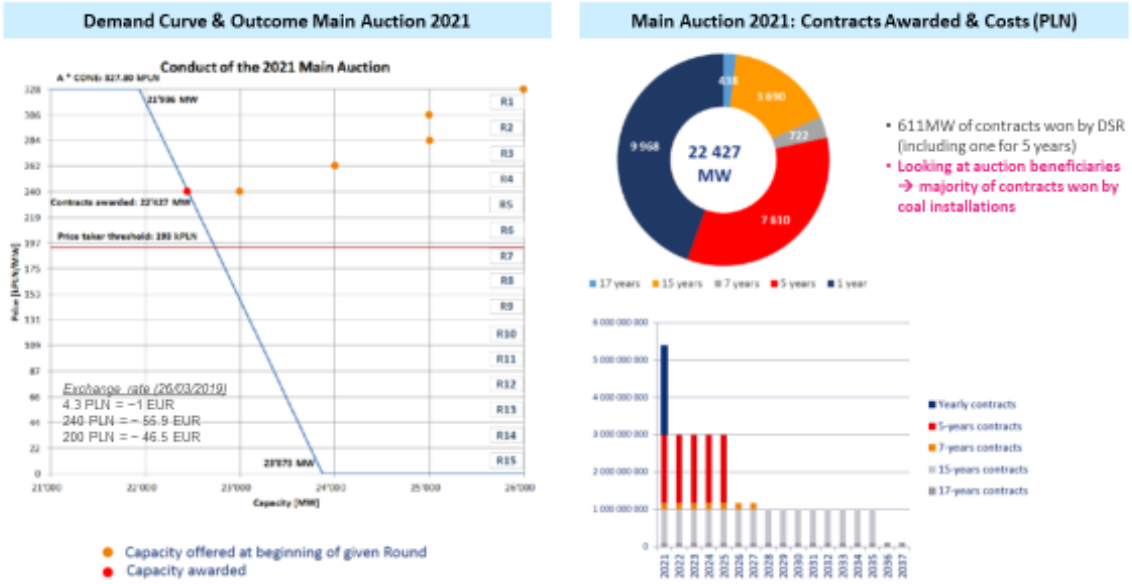
§63. FEBEG considers that the approach put forward is not adequate. A too high threshold would be fixed that some technologies will be discriminated over others. Cfr the thresholds fixed in Ireland and the UK who are based on the least capital intensive technologies. Furthermore this could lead to a situation were less efficient technologies would qualify over more efficient technologies. Cfr F and HL turbines for CCGT and OCGT.

§64. Additional info on Poland to add, otherwise this could be misleading: Poland still wanted coal units in the race and tailored its thresholds to this (see also next comment).

§65. It is not because the tested thresholds for 15 y contracts are 170€, 250€ and 600€, that CREG should stick to one of them. Following different elements of the analysis, specific BE values could be chosen.
It is in fact worth reminding that the outcome of the capacity auctions in Poland lead to 15-year contracts awarded to coal units. Clearly, coal units are ruled out in Belgium and it would not make sense to define the CAPEX thresholds based on the Polish numbers.

CREG is short in explaining what would be the differences between the new entrants in Italy and UK and the new entrant in Belgium as well as why the investment thresholds would be twice the numbers proposed in these countries. CREG should perform a more in depth analysis, as has been done as well in/by these countries, their regulators as well as the validation by DG COMP.

Source: Presentation "Capacity Market in Poland Key elements of model introduced. Results of Main Auctions for 2021-23 delivery periods" by Paweł Mądry, PGE S.A.



The Polish authorities wanted to benefit from the grandfathering clause in the electricity regulation and to avoid exposing CRM-contracted units to emission performance standards.

§67
The WACC that should be considered is also related to the risk associated with the project; different kind of projects may have different levels of risk, and length of capacity premium compared to lifetime of the asset will have an impact on risk. So, it might be useful to assess WACC not on a global way, but separately for each durations and expected lifetime of assets that should participate to each of those durations.

§70. Netto CONE: this is used as reference but not yet further clarified/agreed. It is in fact surprising that CREG is having a discussion on the thresholds for investments while the study on the (net) Cost of New Entry is in progress.
Given that the thresholds are defined using the eligible CAPEX, which are representing a fraction of the total CAPEX, and that in the worst case this new capacity might not earn any inframarginal rent, the net CONE should include a margin to account for these elements.

§71
As highlighted by the various documents quoted by CREG, the contract duration should be in line with the (project) expected financing horizon of the technology associated with the threshold. Otherwise, it could create a distortion in favor of existing operators

What is not shown on Tableau 2 is the following fact. Assume that a capacity provider could invest in an asset with an eligible CAPEX of 400 EUR/kW. If this capacity provider was eligible for a 15 year contract, the corresponding annuity would be 45 EUR/kW/year. However, if this capacity provider was eligible for a 8 year contract, the corresponding annuity would be 68 EUR/kW/year, which is an increase of 50% compared to the 15-year annuity. By construction, the total cost for the system is equivalent – the same unit with the same CAPEX would be built.
The main difference between the two durations is that the yearly annuity (and therefore the yearly cost for society) is substantially lower in the case of a 15 year contract while the contribution to security of supply is ensured on a substantially longer period.

The consumer's interest (wrt costs and security of supply) is therefore to ensure that new assets having an expected economic lifetime beyond 15 years (like CCGT) could enter the capacity market with a 15 years contract.

Verification of the pertinence of the proposed thresholds
§74. The figures in the table are coming from the Elia study on Adequacy and some CREG estimates, but according to FEBEG the figures are not in line with actual average investment costs today.
We note that the range between min. and max. CAPEX for different technologies varies greatly, from ~20% (pump storage) to 500% (market response).

The threshold are crucial in the Business Plans and should be based on strong elements to reflect the reality as much as possible. (Gas engines seem to be under estimated, CCGT are overestimated, OCGT are also overestimated)

It also exclude cheap technology and neglects brownfield advantages.

Furthermore, it would also be interesting to get a view on the range of CO2 emission factors of the different technologies suggested by CREG. Indeed, some technologies might not be eligible.
An additional question is whether "generation-driven" demand response would be allowed to participate in the capacity auction.

§76. With respect to the lifetime estimate we refer to §22 above.

§79.

700€/kw
One might have seen that there is a big gap between the threshold fixed in Poland and the thresholds fixed in Ireland and the UK. The reasoning behind the high threshold fixed in Poland is quite logic while the Polish government wanted to implicitly promote coal fired units due to the local feedstock. Nevertheless the Polish government states that they will guarantee CCGT to be able to qualify for a 15 years contract it is theoretically impossible to reach 700 €/KW with the latest HL turbines. To the contrary the thresholds fixed in Ireland and UK (300, 200 €/kw) are more in line with the least capital intensive investment technology (OCGT) and allow the most efficient HL turbines with larger installed capacity to qualify for a 15 years contract. These high efficient CCGT with an efficiency of 63-64 % will contribute twice, reduce cost of CRM but reduce as well electricity cost in the EOM and will be situated best in EU merit order.

Brownfield advantages
Table 3 should reflect as well possible brownfield advantages. A sensitivity analyses should be made on the threshold definition as brownfield advantages and optimized procurement would lead to exclusion while reducing the cost for society. - this is an example to have indeed enough margin on the thresholds.

Project financing
The CREG assumes that investors would accept an 8 years contract while banks and project financing may require a 15 years financing period.

Technology lifetime
We refer to §22.

3-8 years threshold
The methodology to transfer the threshold for the 15 year contract to 3 and 8 year contracts should be abandoned. Instead, CREG should perform a market study in order to propose thresholds in such a

way that the respective thresholds are set technology-neutral while they ensure maximal access to competition and level playing field between all technologies and between investments in both additional as well as existing capacities.

§80. The provision in the second paragraph would then mean that the CREG would be in a position to change a fundamental parameter in the capacity auction, without any consultation or notification to DG COMP. In addition, it should be clear that a modification could lead to an increase or a decrease, depending on the investment costs and the tension on the related markets. Some stability / visibility is needed in the system to ensure that the capacity market provides visibility to investors. One should avoid regulatory foreclosure of the capacity market !

Article 7

RD §2 Two might be too low. Cost of extra FTE is much lower than possible gain on total cost of CRM system.

§83. The investment file has to be submitted at the latest on 15.06. Will CREG allow the possibility to start submitting the file as from 1.04 as well, in line with the Elia proposal to start the first prequalification on 1.04?

§85. Investment file: a standard template should be made available asap. Will CREG publish a list of the "certified companies" that shall assess the investment respects costs eligibility criteria? Shouldn't the costs linked to all the prequalification process / document d'investissement be eligible? Why has information to be given on non-eligible costs?

§86. What is the definition of "same capacity" by CREG? Capacity with the same technology and same localization? Capacity with the same number of MW?

Article 8

RD references to days should be made explicit to "Calendar days"
Does the formulation imply that a lawyer is required by law ?

§87. 10 days to complete the file: are this calendar days? When the file is complete CREG should inform the capacity holder, a simple "it's complete" is sufficient. If implicit approval is assumed (no reaction = it is complete) then this should be mentioned explicitly in the Royal Decree

Article 9

§90. The RD text mentions 10 days it should be corrected to 10 calendar days

Article 10

RD: Deadlines needs to be fixed by when Elia has to send at the latest the decision on pre-qualification on order to test procedure.

Cf. remark on §83: Prequalification could be as from April 1st (see proposal Elia): this mean the check by CREG should also be able to start early.

§93. The proposed RD does not mention any ultimate deadline by which Elia has to submit the final decision on pre-qualification. We consider that such deadline is needed to avoid any confusion.

Article 11

Timings are too short and procedure does not provide in sufficient time for appeal

RD references to days should be made explicit to "Calendar days"

§98. When the proposal of the candidate is approved by CREG, CREG should inform the capacity holder. A simple "it's ok" is sufficient.
Even though the CRM law states that "De commissie deelt haar beslissing uiterlijk 15 dagen voor de start van de veiling mee": this seems very late in the process. We ask to have a view on the outcome before. We propose CREG has 15 days to after the decision by Elia on the prequalification file to finalize the examination of the investment file, after which the CREG sends its draft decision or its final decision to the requestor.

Article 12

RD §1: It is unclear which information is referred to nor how far this article can reach.

Article 13

§104. "closure" file: standard template should be made available asap

§105. The formulation of §105 is not correct while the RD is correct.

§106. FEBEG understands the reasoning but the CREG does not take into account that invoice will never be send withing4 months. This takes much more time as the final commissioning might lead to disputes, extra invoices and credit notes. This might easily take 12 months and more. A timing of 4 month is not in line with the reality. RD §2 4° should be amended accordingly.
Is there an appeal procedure foreseen in case of dispute on the closing of the investment file?

§108. In coherence with comment on §85, it would make sense that costs associated with the "investment closing" (audit, certification…) be added to eligible costs.
CREG mentioned during the Workshop that the all ordered investments would be taken into account. One could consider to take the ordered cost into account.

Article 14

The proposed action seems indeed radical to us, and CREG should have the obligation to assess each situation individually and not switch the contract to 1-year capacity on a mandatory basis. - Reclassification to other contract duration is disproportionate for a delay

§111.
"Een dergelijke sanctie is dan wel radicaal, maar niet disproportioneel. Het verlies van het "meerjaren"-contract belet de capaciteitshouder immers niet om voor de toekomst een vergoeding te bekomen voor de capaciteit die hij aan de markt kan aanbieden, aangezien hij jaarlijks aan de veilingen zal kunnen deelnemen; hij verliest gewoon de zekerheid die het meerjarencontract hem bood." . FEBEG consider that this argument does not hold with the intermediate price cap.
Such a decision is also particularly radical when an investment file can never be timely submitted if invoice are not yet in and thus complete investment cannot be timely justified.

Article 17

§117.

- Arrangements should be made for both indirect and direct foreign capacities to ensure a level playing field between Belgian and foreign capacities,
- 3rd bullet: the CREG can upfront request to have a look at a limited list of documents related to the motivation of the invested capital. This should not give the CREG the right to request whatsoever.

Article 18

§119. The application of the 5% margin cannot be an arbitrary decision of the CREG (RD Art 18 first paragraph). There is a 5 % margin or there is no margin. A better solution could be to decrease the thresholds with such a margin to avoid any interpretation. We also wonder if the CREG will be alone to judge alone. Is there no role for SPF/FOD?

The investor could perhaps manage to negotiate reductions– reimbursement by equipment supplier – in case of performance issues, etc. These could easily amount to 15 or 20 % of the contract value. It should be clarified how this will be taken into account.

CREG considers the consequences very light of a change in category whereas this would have a major impact for the CRM candidate. We stress again the importance of the correct setting of the thresholds to limit unintendedly (in the contrary, in an effort to reduce costs) not reaching the threshold.

§121. Same remark as in §111.

§123. This should not be applicable to costs for which the producer / developer has no "grip" on. A certified organism approved by CREG may be able to assess which additional costs could have been predicted by the producer / developer and which costs may not.

Article 19

A separate Royal Decree will determine all aspects of cross border participation: it should be removed.

Article 20

RD §1 3° & 4° – these provisions are disproportionate and should be limited in scope.

Annex

Comments with reference to legal elements put forward

§11: The following extract from the State Aid Guidelines ("EEAG 2014") were only partially reproduced by CREG, while the underlined text is relevant as well in the discussion

> *(232) The measure should be designed in a way so as to make it possible for any capacity which can effectively contribute to addressing the generation adequacy problem to participate in the measure, in particular, taking into account the following factors:*
>
> *a. the participation of generators using different technologies and of operators offering measures with equivalent technical performance, for example, demand side management, interconnectors and storage. Without prejudice to the paragraph (228), restriction on participation can only be justified on the basis of insufficient technical performance required to address the generation adequacy problem. Moreover, the generation adequacy measure should be open to potential aggregation of both demand and supply;*
>
> *b. the participation of operators from other Member States where such participation is physically possible in particular in the regional context, that is to say, where the capacity can be physically provided to the Member State implementing the measure and the obligations set out in the measure can be enforced (97);*
>
> *c. participation of a sufficient number of generators to establish a competitive price for the capacity;*
>
> ***d. avoidance of negative effects on the internal market, for example due to export restrictions, wholesale price caps, bidding restrictions or other measures undermining the operation of market coupling, including intra-day and balancing markets.***
>
> *(233) The measure should:*
>
> *a. not reduce incentives to invest in interconnection capacity;*
>
> *b. not undermine market coupling, including balancing markets;*
>
> ***c. not undermine investment decisions on generation which preceded the measure or decisions by operators regarding the balancing or ancillary services market;***
>
> *d. not unduly strengthen market dominance;*
>
> *e. give preference to low-carbon generators in case of equivalent technical and economic parameters.*

In particular, 233c is interesting with respect to intermediate price cap and the treatment of life-time extensions and re-powerings of existing units.

§12-§13: Strangely enough, CREG does not refer to the sector inquiry on capacity mechanisms made by DG COMP and published late 2016 while it contains an exhaustive discussion of 28 capacity mechanisms in 11 countries.

> *(303) This moreover illustrates that the length of the contracts concluded under the capacity mechanisms is equally essential to determine the competition between new and existing capacity. In principle, a longer contract duration provides additional coverage against uncertainty on future revenues. Long contracts can therefore reduce the rate of return required by the promoters of new investment projects and facilitate external project financing. These*

considerations must however be balanced against the benefits of shorter contracts, which allow for the reflection of rapidly evolving market conditions and avoid locking-in certain technologies.

§15: It is interesting to put the extract concerning the Tempus case in the context of the full decision. In addition
https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-11/cp180178en.pdf
http://curia.europa.eu/juris/document/document.jsf;jsessionid=708CF6961999763F2324357BFA4F4F37?text=&docid=207792&pageIndex=0&doclang=FR&mode=req&dir=&occ=first&part=1&cid=1677800

(177) En deuxième lieu, il ressort de la décision attaquée que le fait que des contrats de capacité d'une durée supérieure à un an sont offerts à certains fournisseurs de capacité est justifié par leurs dépenses en capital élevées et par leurs difficultés de financement.
(178) Ainsi, selon la décision attaquée, le fait que des contrats de capacité de plus longue durée sont offerts pour les nouveaux entrants est justifié par la promotion de l'arrivée sur le marché de nouveaux opérateurs concurrentiels. Accorder aux nouveaux entrants un contrat à long terme leur permettrait d'obtenir un financement à moindre coût pour leur investissement. Cela permettrait d'atténuer les barrières à l'entrée pour les entreprises indépendantes qui ne peuvent pas financer leur investissement dans de nouvelles capacités au moyen de revenus provenant d'autres centrales de leur portefeuille. *En encourageant la concurrence sur le marché de capacité, les contrats à plus long terme pourraient donc réduire les coûts supportés par les consommateurs sur les marchés de l'énergie et de capacité. L'offre de contrats à plus long terme devrait également réduire le risque que des participants ayant des coûts d'investissement ou de rénovation très élevés ne cherchent à récupérer l'intégralité de leurs coûts sur un contrat d'une seule année (considérant 59 de la décision attaquée).*
(179) Il ressort donc de la décision attaquée que l'offre de contrats de capacité de plus longue durée vise à mettre en œuvre les objectifs technologiquement neutres, rappelés au point 173 ci-dessus, consistant à garantir la sécurité de l'approvisionnement en électricité en incitant des investissements suffisants dans les capacités. De plus, bien que la décision attaquée insiste sur le besoin d'encourager de nouvelles entrées sur le marché, force est de constater que le fait d'offrir des contrats de capacité d'une durée supérieure à un an poursuit un but plus large dans la mesure où les opérateurs rénovant des centrales existantes sont également éligibles à obtenir des contrats de capacité d'une durée maximale de trois ans. Il s'ensuit que le fait d'offrir des contrats de capacité d'une plus longue durée a pour principale raison d'être de pallier les difficultés de financement de certains opérateurs en raison de l'importance de leurs dépenses en capital, en leur garantissant un revenu sur plusieurs années et de leur donner les moyens de faire une offre concurrentielle lors des enchères, en leur permettant de récupérer leurs coûts sur plusieurs années.
(180) Il convient donc de constater que le critère décisif retenu par la mesure en cause pour déterminer les opérateurs éligibles à obtenir des contrats de capacité d'une durée supérieure à un an est le niveau de dépenses en capital et les difficultés de financement qui pourraient empêcher ces opérateurs de participer au marché de capacité.
(181) Dès lors que des contrats à plus long terme étaient jugés nécessaires pour créer des conditions de concurrence équitables, il était nécessaire d'examiner quelle était la durée nécessaire pour permettre à chaque catégorie de fournisseur de capacité de participer pleinement au marché de capacité, au regard de leurs dépenses d'investissement et de leurs difficultés de financement, afin de respecter l'obligation de fournir des incitations adéquates à tous les opérateurs. Il incombait donc à la Commission de vérifier si le fait de réserver les contrats de capacité d'une durée supérieure à un an à certaines technologies présentait un caractère discriminatoire et était contraire à l'objectif de mettre en place un marché de capacité neutre sur le plan technologique, ce qui irait à l'encontre des exigences des lignes directrices.