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**Subject: State Aid SA.104336 (2023/N) – Belgium  
Amendments to the capacity remuneration mechanism**

Excellency,

## 1. PROCEDURE

- (1) On 30 June 2023, further to pre-notification contacts, including conference calls, meetings and a request for information, to which responses were submitted, the Kingdom of Belgium ('Belgium') notified a set of amendments (the 'notified amendments') to the market-wide capacity remuneration mechanism (the 'existing aid scheme' or 'the existing CRM') approved by the Commission decision of 27 August 2021 in State aid case SA.54915 (the 'initial decision')<sup>(1)</sup>. This decision assesses the updated capacity remuneration mechanism ('the CRM' or 'the measure').
- (2) After the notification of the amendments, meetings and conference calls took place on 14 July, 4 August, 10 August and 24 August 2023, and further requests for clarifications were sent on 20 July, 16 August and 30 August 2023, to which

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<sup>(1)</sup> Commission Decision (EU) 2022/639 of 27 August 2021 on the aid scheme SA.54915 – 2020/C (ex 2019/N) Belgium – Capacity remuneration mechanism (notified under document C(2021) 6431) (OJ L 117, 19.04.2022, pp. 40-105). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022D0639>.

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Belgium submitted the responses on 3 August, 9 August, 23 August and 1 September 2023.

- (3) Belgium notified the amendments under Article 108(3) of the Treaty on the Functioning of the European Union ('TFEU').
- (4) By letter dated 11 July 2023, Belgium agreed to exceptionally waive its rights deriving from Article 342 TFEU in conjunction with Article 3 of Regulation 1/1958 <sup>(2)</sup> and to have the present decision notified and adopted in English.

## **2. DESCRIPTION OF THE MEASURE**

### **2.1. Overview and background of the measure**

- (5) In December 2019, Belgium notified the existing CRM, estimating that the phase-out of all its nuclear capacity over the period 2022-2025, together with the decommissioning of thermal generation capacities in Belgium and its neighbouring countries, will cause an electricity generation adequacy problem from 2025 onwards (see recital (6) of the initial decision). The existing CRM is a reliability option, where market participants receive a fixed yearly capacity remuneration, in exchange for availability during periods of system stress. It is a temporary measure to ensure the achievement of the necessary level of resource adequacy in Belgium by remunerating capacity resources for their availability.
- (6) In September 2020, the Commission decided to open a formal investigation procedure into the measure.
- (7) In August 2021, with the initial decision, the Commission decided that the existing CRM was compatible with the internal market. The existing aid scheme was authorised for a maximum period of ten years starting from the date of the granting of aid in the first auction in October 2021.
- (8) On 18 March 2022, the Belgian federal government decided to reassess the nuclear phase-out, by allowing the extension, for a period of ten years, of the operation lifetime of two of the seven nuclear units (Tihange 3 and Doel 4), with a combined nominal power of approximately 2 GW. The decision by Belgium was made in the context of the European response to the Russian war against Ukraine (including the need for EU Member States to reduce their gas consumption and gas dependency), the resulting gas crisis, the increased electrification needs (to enable the energy transition) and the low availability of the French nuclear fleet (due to unforeseen corrosion issues and extensive maintenance to prolong its operation lifetime).
- (9) On 21 July 2022, Belgium announced that it had reached an agreement in principle with Engie-Electrabel, the operator of the two nuclear reactors, establishing the further approach, timing and framework of the negotiations with as purpose the long-term operation of two nuclear plants. Building on this, the Belgian Government and Engie-Electrabel have concluded a Heads of Terms and

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<sup>(2)</sup> Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).

Commencement of LTO ('Long-Term Operation') Studies Agreement on 9 January 2023. An updated Head of Terms with Engie-Electrabel was concluded on 29 June 2023, which included an obligation of means by Engie-Electrabel to continue operating Doel 4 and Tihange 3 as of November 2026, and which defines in more detail some terms and conditions of the transaction. On 21 July 2023, a first set of binding documents were signed in which the Belgian State and the nuclear operator committed to (on a reasonable endeavours basis) the LTO of the two youngest nuclear power plants, Doel 4 and Tihange 3 as from November 2025. No final transaction between the Belgian State and Engie-Electrabel has been closed yet <sup>(3)</sup>. The final transaction is outside the scope of this decision and will be subject to State aid control (if applicable) and other 'conditions precedent' <sup>(4)</sup>.

- (10) From 1 January 2022 onwards, Belgium changed the financing of the public service obligations of which the Belgian Transmission System Operator ('TSO'), Elia, is in charge, which also affects the financing of the CRM (see section 2.10.2 below), and proposed other amendments to the existing CRM, such as stricter CO<sub>2</sub> emission limits for beneficiaries of the aid (see section 2.5.3 below), change in the mechanism of the strike price and indexation rules of the price caps (see section 2.7 below), and change in the eligibility period of investment costs for long-term contracts (see section 2.6 below).
- (11) Belgium confirms that, apart from the amendments described in section 2 of the current decision, there are no other amendments to the existing CRM, except adjustments that are of purely formal or administrative nature. Belgium confirms that the features of the CRM not explicitly referred to in this decision remain as described in the initial decision.
- (12) The aim of the existing CRM is to ensure that there is sufficient capacity to produce electricity and that such production meets the expected demand of electricity. The notified amendments have not changed the aim of the scheme. Through the notified amendments, Belgium intends, amongst others, to increase the environmental-friendliness and cost-efficiency of the CRM.

## 2.2. Legal basis and government arrangements

- (13) The legal basis of the CRM is the Electricity Act of 29 April 1999 on the organisation of the Belgian electricity market ('the Electricity Act'), which has been modified by laws published on 16 May 2019, 19 March 2021, 16 February 2022, 4 March 2022, 7 June 2023 and 14 June 2023 in the Belgian Official Gazette <sup>(5)</sup>.

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<sup>(3)</sup> The final set of transaction documents is expected to be agreed upon by 31 October 2023.

<sup>(4)</sup> A 'condition precedent' refers to a stipulation that defines certain conditions that must either occur or be met by either party to ensure progress or execution of a contract.

<sup>(5)</sup> French and Dutch versions available at respectively:  
[https://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg\\_2.pl?language=fr&nm=1999011160&la=F](https://www.ejustice.just.fgov.be/cgi_loi/change_lg_2.pl?language=fr&nm=1999011160&la=F) and  
[https://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=nl&la=N&cn=1999042942&table\\_n\\_ame=wet](https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=1999042942&table_n_ame=wet).

- (14) As mentioned in recitals (12) and (13) of the initial decision, several implementing provisions were prepared to further elaborate the CRM provisions, such as Royal Decrees, Ministerial Decrees and regulatory approved market rules and contracts. These secondary legislations have their legal basis in the Electricity Act. In particular, the following Royal Decrees and Rules on the Functioning of the Belgian CRM further elaborate the modalities of the CRM:
- (a) the Royal Decree of 28 April 2021 to determine the methodology for the calculation of the capacity to procure and auction parameters in the context of the CRM, as modified by decrees published on 7 July 2021 and 1 February 2022 <sup>(6)</sup>;
  - (b) the Royal Decree of 21 May 2021 on eligibility criteria related to cumulative support and minimal participation threshold <sup>(7)</sup>;
  - (c) the Royal Decree of 4 June 2021 on investment thresholds and eligible costs <sup>(8)</sup>;
  - (d) the draft Royal Decree on the determination of the conditions based on which capacity holders of foreign capacities can participate in the CRM <sup>(9)</sup>;
  - (e) the Royal Decree of 30 May 2021 on control modalities <sup>(10)</sup>; and
  - (f) the Rules on the Functioning of the Belgian CRM, adopted yearly by the Belgian regulator for energy (CREG) and validated by Royal Decree <sup>(11)</sup>.

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- <sup>(6)</sup> French and Dutch versions available at respectively: <https://www.ejustice.just.fgov.be/eli/arrete/2021/04/28/2021041351/justel> and [https://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=nl&la=N&cn=2021042801&table\\_name=wet](https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2021042801&table_name=wet).
- <sup>(7)</sup> French and Dutch versions available at respectively: <https://www.ejustice.just.fgov.be/eli/arrete/2021/05/21/2021041635/justel> and [https://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=nl&la=N&cn=2021052103&table\\_name=wet](https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2021052103&table_name=wet).
- <sup>(8)</sup> French and Dutch versions available at respectively: <https://www.ejustice.just.fgov.be/eli/arrete/2021/06/04/2021042129/justel> and [https://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=nl&la=N&cn=2021060403&table\\_name=wet](https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2021060403&table_name=wet).
- <sup>(9)</sup> French and Dutch (draft) versions available at: [Microsoft Word - ANNEX\\_2020.03.18 Arrêt@tr@ng@re.docx \(fgov.be\)](https://www.fgov.be/eli/arrete/2020/03/18/2020031801/justel).
- <sup>(10)</sup> French and Dutch versions available at respectively: <https://www.ejustice.just.fgov.be/eli/arrete/2021/05/30/2021042010/justel> and [https://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=nl&la=N&cn=2021053008&table\\_name=wet](https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2021053008&table_name=wet).
- <sup>(11)</sup> The Functioning Rules describe in detail the methodologies, rules and principles of the CRM, including the pre-qualification requirements, the auction mechanism (clearing algorithm, auction format, pricing rules, grid feasibility, opt-out treatment) and the functioning of the secondary market. Available at the website of the TSO, Elia: <https://www.elia.be/en/electricity-market-and-system/adequacy/capacity-remuneration-mechanism>.

## 2.3. Generation adequacy in Belgium

### 2.3.1. Reliability standard

- (15) The primary objective of the CRM is to ensure security of supply, as defined in a reliability standard. The reliability standard is mainly expressed as loss of load expectation ('LOLE') and relies on the estimate of the value consumers attach to avoiding disconnections of their electricity supply ('Value of Lost Load' or 'VOLL'), and the expected net cost of new capacity in Belgium ('Cost of New Entry' or 'CONE').
- (16) The previous reliability standard was defined by a two-part LOLE criterion. The first LOLE criterion described the loss of load expectation over the whole distribution of potential years that may occur, whereas the other LOLE criterion defined the loss of load expectation for a 1-in-20-year event (referred to as LOLE 95).
- (17) In accordance with Article 7 undecies paragraph 7 second paragraph of the Electricity Act and recital (28) of the initial decision, Belgium updated the VOLL based on a new survey on the willingness to pay, as well as the CONE value. Belgium submitted that the calculations were in line with the methodology CONE/VOLL/reliability standard methodology approved by the EU Agency for the Cooperation of Energy Regulators ('ACER'). The Royal Decree to update these values and the reliability standard, considering the proposal from CREG and the opinions of Elia and the Federal Public Service ('FPS') Economy, has been published in September 2022 <sup>(12)</sup>. Following this study, Belgium confirmed the previous value of the reliability standard of 3 hours of LOLE (per year). In addition, Belgium had already dropped the LOLE 95 criterion.
- (18) Since the LOLE of the new reliability standard was determined before 15 September 2022, and since for the calculation of the volumes to be procured the reliability standard valid on 15 September in the year preceding the auction is taken into account, the volumes to be procured in the 2023 auction reflect the new reliability standard.

### 2.3.2. Resource adequacy assessment

- (19) In the initial decision, the need for the CRM was based on the National Resource Adequacy Assessment published in June 2021 ('the 2021 NRAA') <sup>(13)</sup>. This study was already based on the European Resource Adequacy Assessment ('ERAA') methodology proposed by the European Network of Transmission System Operators for Electricity ('ENTSO-E') and approved by ACER in October 2020. The ERAA starts from a scenario, which consists of the best estimate for each country and takes the latest ambitions and policy measures into account ('EU-BASE' scenario <sup>(14)</sup>). According to the 2021 NRAA, Belgium would face a

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<sup>(12)</sup> See <https://www.ejustice.just.fgov.be/eli/bsluit/2021/08/31/2021021813/justel>.

<sup>(13)</sup> The 2021 Adequacy and Flexibility study covered the period 2022-2032.

<sup>(14)</sup> The EU-BASE scenario reflects a scenario that considers market-wide capacity mechanisms to continue in countries where such a mechanism is already in place. It further assumes all countries to comply with their reliability standard starting from 2027, or a LOLE of 3 hours if a specific standard is not yet established or known.

structural need for new capacity from 2025 onwards, following the nuclear phase-out (see recital (49) of the initial decision: 2 GW in 2025, gradually increasing to 3.9 GW by 2032). This need assumed a full nuclear phase-out during the period 2022-2025.

- (20) As mentioned in recital (8) above, Belgium revised the timing of the nuclear phase-out and decided to extend the operation lifetime of two nuclear reactors, with a combined nominal power of approximately 2 GW. The closure of the other nuclear units (totalling a nominal power of approximately 4 GW) remains according to schedule, i.e. the last decommissioning date is 1 December 2025. Therefore, the phase-out of the other nuclear plants still coincides with the first delivery year of the CRM.
- (21) According to Belgium, even if the prolongation of two nuclear reactors partly addresses security of electricity supply, the need for the CRM remains. Belgium argues that the prolongation of the nuclear reactors aims at reducing the dependency on imported fossil fuels and at supplying baseload capacity, whereas the CRM is a market-wide measure that aims at ensuring sufficient capacity to guarantee that production meets demand (including during rare events of high consumption combined with low renewable production). Belgium also reflects the impact of the nuclear prolongation in the quantitative assessment of the need for the CRM (see recital (25)).
- (22) To demonstrate the need for the CRM as of 2025, Elia published an updated national resource adequacy assessment for the period 2024-2034 in June 2023 ('the 2023 NRAA'). According to Belgium, since the most recent ERAA has not been approved by ACER<sup>(15)</sup>, the 2023 NRAA represents the latest and most appropriate view to re-assess the adequacy situation in Belgium, in line with Article 21 of the Electricity Regulation<sup>(16)</sup>. The NRAA is drafted by Elia, in concertation with CREG<sup>(17)</sup>, as foreseen in the Electricity Act.
- (23) Belgium submits that the 2023 NRAA fully complies with the ERAA methodology<sup>(18)</sup>. Although the ERAA methodology and the data from the latest adequacy study from ENTSO-E ('the 2022 ERAA') were used, Belgium submits that the 2023 NRAA goes further than the 2022 ERAA by integrating key functionalities ahead of their planned implementation schedule in the ERAA and by updating hypotheses, to reflect the results of national studies and official announcements published after the collection of the 2022 ERAA data.
- (24) In particular, in line with the commitment in recital (48) of the initial decision, Belgium submits that the 2023 NRAA fully takes into account the rules on dynamic price cap increases following from the methodology on the new single

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<sup>(15)</sup> See ACER decision No 02/2022 of 22 February 2022 on the European resource adequacy assessment for 2021.

<sup>(16)</sup> Regulation (EU) 2019/943 of the European Parliament and Council of 5 June 2019 on the internal market for electricity.

<sup>(17)</sup> This concertation of CREG takes place in the context of a wider working group providing views on inputs, assumptions, scenarios and sensitivities, the methodology, and on the draft report.

<sup>(18)</sup> ACER decision No 24/2020 of 2 October 2020 on the methodology for the European resource adequacy assessment.

day-ahead and intraday coupling harmonised maximum and minimum clearing price methodologies, in line with the applicable ACER decisions on this topic <sup>(19)</sup>. Dynamic price increases are accounted for from the beginning of the simulation period, i.e. from target year 2024 onwards.

(25) Regarding the scenarios and assumptions on which the 2023 NRAA is based, Belgium reflected the following recent developments:

(a) In all scenarios:

- the impact of increased electrification of heating, transport and industry as a result of the implementation of the ‘Fit For 55’ package and the ‘REPower EU’ communication in 2022 (see footnote 28);
- grid infrastructure developments in Europe in line with ENTSO-E’s latest network development plan;
- additional announcements on coal phase outs in other Member States (e.g. Czech Republic, Slovenia, Germany, Croatia, Romania and Spain), which were not modelled in the central scenario of the 2021 NRAA and will have an impact on Belgium; and
- prolonged nuclear units in Belgium as of winter 2026-2027, modelled in a deterministic way through their de-rated contribution (1.7 GW, with an 80% de-rating).

(b) for specific scenarios or sensitivities, events happening abroad and/or affecting imports, such as

- lower nuclear availability in France for the next 5 to 10 years;
- possible delayed deployment of grid infrastructure abroad;
- risks of drought that could lead to low levels of hydroelectric production in Europe; and
- uncertainties regarding a possible gas supply disruption, which could materialise in the coming years.

(26) In particular, considering the very low availability of nuclear power plants in France in early 2022 and forecasts published by French electricity stakeholders, Belgium defines, on top of the EU-BASE scenario, an ‘EU-SAFE’ sensitivity in which four additional French nuclear units are unavailable (on top of the availability profile submitted by the French TSO for the ERAA 2022), for judging the need of the CRM at this stage. EU-SAFE is based on historical data of the (un)availability of the nuclear fleet in France over the past years.

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<sup>(19)</sup> ACER decisions No 01/2023 and 02/2023 of 10 January 2023 on harmonised maximum and minimum clearing price methodologies for the single day-ahead and intraday couplings.

- (27) Since the decision to move the start of the nuclear LTO from 2026 to 2025 was taken after the publication of the 2023 NRAA (see recital (9)), Belgium commits to update the volume to be procured in the Y-1 auction in 2024 for delivery in 2025. The volume update will rely on an assessment, which will reflect this earlier start date of the LTO of the nuclear power plants and the latest market conditions (e.g. regarding the availability of French nuclear power plants).
- (28) Based on EU-BASE and EU-SAFE, Belgium identifies a resource adequacy concern from 2025 to 2034 for the whole Belgian bidding-zone. In particular, for the years 2025 and 2026, the EU-SAFE sensitivity shows a resource adequacy concern taking into account the exceptional low availability of the French nuclear fleet. Therefore, Belgium concludes that the CRM is still needed despite the prolongation of the two nuclear reactors.
- (29) Belgium commits to ensure that the CRM does not go beyond what is necessary to address the resource adequacy concern identified in recital (28), in line with Article 22(1)(c) of the Electricity Regulation, notably by calibrating its auctions so that they reach (but do not go beyond) the reliability standard.
- (30) Belgium commits to continue applying the ERAA methodology for its NRAA, including when amendments and improvements in the ERAA methodology are implemented in the coming years.
- (31) Until 2031, Belgium also commits to publish a new NRAA at least every other year, and to ensure that future NRAAs, as a minimum:
- (a) rely on a robust central reference scenario as per Article 3 of the ERAA methodology, which reflect various potential outcomes (weighted with appropriate probabilities);
  - (b) for the central reference scenario, include consistent assumptions reflecting any relevant policies and developments for Belgium and the entire modelled region, including those related to EU climate goals (such as Fit-for-55 and REPowerEU), in particular:
    - include the latest information about new entries and exits of capacity (and reflecting the commitments signed under past CRM auctions and any other support mechanism for new capacities);
    - update assumptions for demand response ('DR') and storage (including pumped storage) deployment based on the latest available information;
    - consider the development of the economy and updated economic outlook, including its impact on electricity demand;
    - reflect the progress of electrification and its impact on total and peak demand for electricity, taking into consideration also the potential demand management stemming from the digitalisation of the energy sector; and
    - reassess the de-rating factor in face of the expected refurbishment of the nuclear plants and justify the use of the de-rating factor used;



- (c) for the central reference scenario, reflect the progress with respect to implementation of the market reform plan and its impact on market functioning according to Article 3(3) of the ERAA methodology;
  - (d) for the central reference scenario, include a complete economic viability assessment, estimating market entry/exit of all technologies based on their various cost and revenue streams according to Article 6 of the ERAA methodology;
  - (e) ensure consistency between the NRAA and the reliability standard (i.e. regarding all input data, including the cost structure of the various capacity resources); and
  - (f) ensure that the NRAA is carried out in concertation with CREG.
- (32) In line with Article 21(6) of the Electricity Regulation, Belgium commits to sign no new CRM contracts for all delivery periods, for which neither the latest NRAA nor the latest ERAA identify a resource adequacy concern in Belgium.

### 2.3.3. *Market failures and market reforms*

- (33) Section 1.3.3 of the initial decision describes the three main market failures which cause the need for the CRM. In summary, these are (i) the lack of efficient price signals (e.g. energy prices are prevented from increasing up to the value of the VOLL), (ii) risk aversion of investors at times of high volatility of energy prices and regulatory uncertainty, and (iii) suboptimal incentives to invest in additional generation capacity. Belgium has confirmed that these market failures are expected to persist in the near future.
- (34) In line with Article 20 of the Electricity Regulation, on 9 July 2020, Belgium submitted to the Commission a final version of the implementation plan after having received an opinion from the Commission setting out measures to eliminate regulatory distortions or market failures. Section 1.3.4 of the initial decision describes in more detail the content of the implementation plan. In particular, recital (64) of the initial decision states that DR can participate in the wholesale electricity market and in the balancing market, and that Belgium will implement the regional roll-out of smart meters, in order to further improve the integration of DR. In the context of the current notification of the CRM amendments, Belgium has reported on the status of the roll-out of smart meters in the coming years and confirms that the roll-out of smart meters is on track and in line with the timeline described in the initial decision <sup>(20)</sup>.
- (35) Moreover, Belgium submitted that the market in 2023 is even more uncertain than in the previous years, due to the energy crisis faced in 2022, characterised by high and volatile prices on the wholesale and future markets, and an uncertain economic situation in many EU Member States more generally, with inflation and interest rates being revised upwards. Therefore, Belgium argues that the market

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<sup>(20)</sup> The roll-out of smart meters aims at ensuring that at least 66% of consumers have a smart meter by 2029 in both Wallonia and Flanders. A progressive rollout is also considered for Brussels. See recital (64) of the initial decision.

cannot be expected to deliver security of electricity supply in the absence of State intervention.

- (36) According to the Belgian authorities, the measures listed in the implementation plan are impacted neither by the nuclear extension, nor by the other notified amendments, and Belgium commits to continue their implementation. Three monitoring plans have been submitted to the Commission in July 2021, July 2022, and July 2023.

#### **2.4. Beneficiaries**

- (37) The beneficiaries of the CRM have not been altered compared to the initial decision. The CRM is still open to all capacities that can contribute to resource adequacy, both existing and new power generation capacity, storage and DR.
- (38) In exchange for the aid received through the CRM, power generation and storage beneficiaries will offer their availability to start supplying electricity, while DR beneficiaries will offer their availability to reduce their electricity consumption.
- (39) In principle, the CRM is open to all (new and existing) technologies. Some operators may nevertheless not be able to participate, following compliance with the cumulation rules. This might be in particular the case for renewables operators (which receive separate support) and for the two prolonged nuclear power plants, to the extent the final agreement between the Belgian State and Engie-Electrabel prevents cumulation with the CRM. Belgium explained that the final transaction with the nuclear operator, expected at the earliest in spring 2024, will, if materialising, support the economic viability and incentives to efficiently operate the two prolonged nuclear power plants, subject to the LTO agreement (see recital (9)).
- (40) For the reasons mentioned in recital (69) of the initial decision, the minimum participation threshold has been set at 1 MW (after application of the de-rating factor).
- (41) Aggregation of capacity, including from different technologies is still allowed, and enables participation of smaller capacity providers that do not meet the minimum threshold requirement. The aggregation rules are explained in recitals (72) and (73) of the initial decision and have not been altered.
- (42) Participation of cross-border capacity is allowed. The rules are further described in sections 2.6 and 2.9 of the present decision.
- (43) The rules applicable to ‘unproven capacity’<sup>(21)</sup> have not been altered and are described in recitals (74) and (75) of the initial decision. In particular, Belgium explained that the maximum volume of unproven capacity that can apply for the next auction of the CRM is 200 MW.

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<sup>(21)</sup> The category of unproven capacities is open to all technologies and represents less mature projects, which, at the start of the Y-4 pre-qualification process, cannot respect the pre-qualification requirements.

- (44) The de-rating rules <sup>(22)</sup> have not been altered and are described in recitals (76) to (83) of the initial decision.
- (45) Belgium confirms that beneficiaries will not be undertakings subject to an outstanding recovery order following a previous Commission decision declaring aid unlawful and incompatible with the internal market or ‘undertakings in difficulty’ as defined by the Commission Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty <sup>(23)</sup>. Furthermore, Belgium commits to suspend the award and/or payment of any aid under the CRM to an undertaking that is subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market.

## 2.5. Auction process and pricing rules

### 2.5.1. Frequency of the auctions and auction results in 2021 and 2022

- (46) The beneficiaries of the CRM are the capacity providers selected in a competitive bidding process.
- (47) As mentioned in recital (85) of the initial decision, a capacity auction is held every year for delivery in four years’ time in a ‘Y-4 auction’. The first Y-4 auction took place in October 2021. A further year-ahead auction is held in the year immediately prior to the delivery period (‘Y-1 auction’). The first Y-1 auction will take place in 2024.
- (48) In October 2021, Elia organised the first CRM auction to select capacities for the delivery period 2025-2026: 40 offers were selected (out of 44), representing a total de-rated capacity of 4 447.7 MW, of which 1 648.72 MW represents new capacity <sup>(24)</sup>. The selected offers are very diverse in nature: existing units (56%), two new (combined-cycle) gas-fired generation units (36%), DR (7%) and storage (1%). The weighted average price of the selected bids is EUR 31 671.57 per MW per year.
- (49) However, since one of the successful bidders did not have the required environmental permit to operate the plant, a partial re-run of the first CRM auction took place between the non-selected offers, triggered following the ministerial order of 25 March 2022, with results validated by the CREG <sup>(25)</sup>. The capacity contract with the initial combined-cycle gas turbine (CCGT) was terminated and the re-run auction resulted in the award of a contract with another

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<sup>(22)</sup> The de-rating rules take into account that CRM units have differences in terms of availability, i.e. units cannot be expected to be available 100% of the time at 100% of their reference power due to e.g. weather conditions, maintenance cycles, etc. Therefore, a de-rating factor is calculated per technology in order to assess its reliability and its contribution to security of supply.

<sup>(23)</sup> Communication from the Commission – Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p. 1).

<sup>(24)</sup> Results of the first CRM auction are available at: [20211031\\_Y-4 Auction report for Delivery Period 2025-2026\\_EN \(1\).pdf](#).

<sup>(25)</sup> Report by the CREG, available at: <https://www.creg.be/sites/default/files/assets/Publications/Decisions/B2372FR.pdf>.

new CCGT with similar capacity<sup>(26)</sup>. Belgium submitted that such *ex post* adjustment to the bidding process will not take place in the future, as they may undermine the efficiency of the process's outcome.

- (50) In October 2022, the second Y-4 auction, to select capacities for the delivery period 2026-2027, did not lead to any contract awarded. This was mainly due to a large 'opt-out-in' volume<sup>(27)</sup>. According to Belgium, this result can be explained by the volatile circumstances of that moment, making it difficult for market participants to make cost and price projections, but also highlighted the need for some auction design improvements.
- (51) At the same time, Belgium also wants to continue accelerating the greening of the CRM, which started already in the Y-4 auction in 2022 (see section 2.5.3).
- (52) All these considerations lead to the notification of the following amendments:
  - (a) change in the CO<sub>2</sub> emission limits (see recital (59));
  - (b) change in the eligibility period for investment costs (see recitals (74) and (75)); and
  - (c) change in the mechanism of the strike price and indexation rules of the price caps (see section 2.7).

#### 2.5.2. *Determination of the auction volume*

- (53) The procedure for determining the auction volume has not been altered and is described in detail in section 1.5.2 of the initial decision (Royal Decree Methodology). The Royal Decree Methodology foresees a detailed procedure to establish the reference scenario and auction parameters (including the auction volume), with many checks and balances.
- (54) In summary, the auction calibration relies on the latest NRAA or ERAA, updated with the latest information to ensure that the analysis is at most 12 months old when setting the auction parameters (including the volume to procure). Elia consults publicly on the updated data and scenarios from NRAA or ERAA, then CREG provides a proposal to the Minister for Energy for auction parameters (including the volume to procure) and FPS Economy provides advice about it. The Minister for Energy then takes a final decision about auction parameters, motivating any deviation from CREG's proposal.
- (55) Belgium explains that the auction parameters will be set according to the principle that the cost of the CRM should be minimised, while ensuring that the reliability standard is fulfilled for every delivery year.

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<sup>(26)</sup> The new (combined-cycle) selected gas-fired generation unit is a project in Seraing (805.3 MW). Results of the re-run auction are available at: [Y-4 Re-Run Auction Report for Delivery Period 2025-2026 \(1\).pdf](#).

<sup>(27)</sup> The opt-out-in volume represents capacities, not willing to participate in the auction ('opt out'), but signalling they expect to contribute to security of supply in the delivery period ('opt out-in'), possibly through participation in the Y-1 auction.

- (56) For every delivery year, following the decision on the auction parameters, Belgium commits to publish (on a public website) the capacity gap under the central reference scenario from the ERAA and/or NRAA and the motivation in case of deviation from CREG's proposal for auction parameters (see recital (54)).
- (57) The third Y-4 auction, for delivery in 2027-2028, will take place in October 2023. The auction volume has been determined according to the procedure described in recital (54) at 6 605 MW, whereby 1 662 MW de-rated capacity of nuclear and 1 658 MW of new de-rated capacity in earlier awarded CRM contracts have been subtracted. The volume procured in future auctions will also reflect the latest forecast (de-rated) availability of nuclear power plants and already awarded CRM contracts for each considered delivery year (see recital (27)).

### 2.5.3. *Pre-qualification phase*

- (58) A mandatory pre-qualification procedure is applicable to all holders of generation and storage capacity above 1 MW (de-rated), with the possibility to opt for a fast-track pre-qualification process and the option to opt-out of the bidding process.
- (59) As mentioned in recital (107) of the initial decision, the pre-qualification requirements include a CO<sub>2</sub> emission limit. Considering, first, the call at EU level for an accelerated reduction of the dependence on fossil fuels<sup>(28)</sup>, and, second, the fact that the CO<sub>2</sub> emission thresholds as mentioned in Article 22(4) of the Electricity Regulation are maximum values and that ACER indicates that Member States can also be more ambitious in supporting carbon dioxide emission reduction targets<sup>(29)</sup>, Belgium amended the emission limit requirements as follows:
- (a) For the Y-4 auction in 2022, regarding generation capacities, only those with maximum 550 g CO<sub>2</sub> emission of fossil fuel origin per kWh of electricity could pre-qualify. Compared to the first Y-4 auction in 2021, the distinction between production capacities with a start date for commercial production before or after 4 July 2019 was removed. A uniform CO<sub>2</sub> emission limit applied in 2022 to all production capacities, independently from their start date of operation.

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<sup>(28)</sup> The Commission launched in May 2022 its REPowerEU Plan, as a response to the global energy market disruption caused by Russia's invasion of Ukraine. The REPowerEU Plan is helping the EU to save energy, produce clean energy, and diversify its energy supplies. The REPower EU Communication is available at: [https://commission.europa.eu/publications/key-documents-repower-eu\\_en](https://commission.europa.eu/publications/key-documents-repower-eu_en).

<sup>(29)</sup> Opinion No 22/2019 of the European Union Agency for the Cooperation of Energy Regulators of 17 December 2019 on the calculation of the values of CO<sub>2</sub> emission limits referred to in the first subparagraph of Article 22(4) of Regulation (EU) 2019/943 of 5 June 2019 on the internal market for electricity (recast). Available at: [https://www.acer.europa.eu/Official\\_documents/Acts\\_of\\_the\\_Agency/Opinions/Opinions/ACER%20Opinion%2022-2019%20on%20the%20calculation%20values%20of%20CO2%20emission%20limits.pdf](https://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Opinions/Opinions/ACER%20Opinion%2022-2019%20on%20the%20calculation%20values%20of%20CO2%20emission%20limits.pdf).

- (b) As from the next Y-4 auction in 2023, following an in-depth study and a public consultation <sup>(30)</sup>, the following CO<sub>2</sub> emission requirements apply to new contracts:
- generation capacity that started commercial production on or after 4 July 2019 and that emits more than 550 g of CO<sub>2</sub> of fossil fuel origin per kWh of electricity cannot participate in the CRM;
  - generation capacity that started commercial production before 4 July 2019 and that either emits more than 306 kg CO<sub>2</sub> of fossil fuel origin on average per year per installed kWe or more than 600 g of CO<sub>2</sub> of fossil fuel origin per kWh of electricity, shall not be committed to receive payments or commitments for future payments under the CRM.
- (c) The CO<sub>2</sub> emissions will be calculated following the technical guidance issued by ACER pursuant to Article 22(4) of the Electricity Regulation.
- (d) The amendments in place as of the Y-4 auction in 2023, are the first step of a trajectory to reduce the CO<sub>2</sub> thresholds and are valid for a period of 5 years (i.e. delivery periods 2027-28 until 2031-2032). The effectiveness of the emissions reduction trajectory will be monitored and adapted if needed.
- (60) Belgium explained that the updated CO<sub>2</sub> emission requirements will not increase the overall CO<sub>2</sub> emissions during the lifetime of the CRM, compared with using the CO<sub>2</sub> emission thresholds mentioned in Article 22(4) of the Electricity Regulation.
- (61) Belgium states that it will continue investigating how the CO<sub>2</sub> emission limits can gradually be further reduced, to accelerate the energy transition and reduce the dependence on fossil fuels. Belgium commits that any update of the CO<sub>2</sub> emission limits will not increase overall CO<sub>2</sub> emissions (as described in the previous recital) <sup>(31)</sup>.
- (62) As mentioned in recital (109) of the initial decision, Belgium required parties wishing to apply for pre-qualification for new installations (for a 15-year capacity contract) fired with fossil fuels to recognise that obtaining a capacity contract does not exempt them from current and future legislation and objectives established by the European Union and/or Belgium to reduce greenhouse gas emissions. In addition, they had to acknowledge that obtaining a capacity contract commits them to contribute to policy preparation to achieve these objectives. To this end, they needed to attach a written declaration in which they undertook to, firstly, study the technical and economic feasibility of reducing greenhouse gas emissions, secondly, establish an emission reduction plan indicating how the unit

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<sup>(30)</sup> The FPS Economy conducted a public consultation in June 2022 regarding different trajectories to gradually reduce the CO<sub>2</sub> emission thresholds, available at: <https://economie.fgov.be/sites/default/files/Files/Energy/Consultation-proposition-trajectoire-de-reduction-limites-CO2-des-2023.pdf>.

<sup>(31)</sup> Those potential future amendments are not covered by the present decision and Belgium will notify them to the Commission where applicable.

in question will contribute to the transition to carbon neutrality in 2050, with interim objectives for the years 2035 and 2045, and thirdly, achieve zero or negative emissions by 2050.

- (63) After the first auction, Belgium extended this 'sustainability clause' to all multi-year contracts (i.e. also to capacity contracts of maximum 3 and 8 years). Finally, for all auctions taking place in 2024 or afterwards, Belgium commits to require an additional interim target for 2030, to understand how the investments carried out under long-term capacity contracts contribute to achieving 2030 climate targets.
- (64) The other pre-qualification requirements, as mentioned in recitals (108) and (110) of the initial decision, remain unchanged.

#### 2.5.4. *Other auction design features*

- (65) Belgium submitted that, to enable effective competition, the auction parameters are published six months ahead of the deadline for submitting applications.
- (66) The first CRM auction was successful and showed that the volume related to the CRM is a binding constraint, because not all bidders received aid (see recital (48)). Given that the CRM remains open to all technologies and capacity providers (see section 2.4), and given that the current amendments seek to further improve the participation rate and daily operation of the auctions, Belgium argues that future auctions are expected to be competitive and that the expected number of bidders will be high enough to ensure effective competition.
- (67) In case future CRM auctions are undersubscribed, Belgium commits to correct the design of the CRM in order to restore effective competition in the subsequent bidding processes.
- (68) As described in recitals (111) to (116) of the initial decision, the CRM auctions are sealed bid auctions, where bidders anonymously submit bids, and the market is subsequently cleared in one single round.
- (69) As mentioned in recital (114) of the initial decision, the pricing rule is currently pay-as-bid, whereby successful capacity providers receive their bidding price as capacity remuneration. However, as mentioned in recital (116) of the initial decision, Belgium foresaw a procedure allowing to change to the pay-as-clear pricing rule when it is shown that it is beneficial to do so. Belgium explained that there is currently a procedure foreseen in the Electricity Act (Art 7 undecies paragraph 10), which provides for an evaluation by Elia every two years. So far, Belgium has not yet deemed it appropriate to switch from pay-as-bid to pay-as-clear (despite the intention Belgium initially had to switch to pay-as-clear from the 2023 Y-4 auction onwards, as described in recital (492) of the initial decision), so the pay-as-bid pricing rule remains.
- (70) To avoid overcompensation for units that require little or no investments, an intermediate price cap applies for the one-year contract category. As described in recital (118) of the initial decision, this implies that these units will not be allowed to bid at a price higher than the intermediate price cap (including under the pay-as-clear pricing rule). The rules regarding the application of the intermediate price cap, as described in recitals (117) to (131) of the initial decision, remain unchanged.

- (71) Finally, the auction clearing rules, which determine which combination of bids will be selected, also remain unchanged. As described in recital (133) of the initial decision, in case multiple clearing solutions are equivalent in terms of maximizing economic surplus, the solution with the lowest CO<sub>2</sub> emissions is selected. If two solutions are equivalent both in terms of maximising economic surplus and weighted average CO<sub>2</sub> emissions, the solution with the lowest weighted average contract duration is selected to limit the lock-in over several years. Grid constraints are also considered in selecting the optimal clearing solution (see recital (134) of the initial decision).

## 2.6. Contract duration

- (72) As described in recital (136) of the initial decision, the CRM offers a range of different contract lengths (maximum 1, 3, 8 or 15 years), hereby striking a balance between the need to secure long-term funding for capacity units with high investment costs and the risk of lock-in.
- (73) The investment thresholds as of which a capacity unit can have access to a longer-term contract are described in Table 8 of the initial decision. The eligible costs to determine in which investment category the capacity unit falls, were previously established as: *‘initial and non-recurrent investment expenditure, which is ordered from the date of publication of the auction results in which the bid for that capacity is retained and carried out at the latest on the day preceding the first day of the capacity provision period, necessary for the construction and/or the provision of the essential physical technical elements of capacity, and for the purpose of offering to the Belgian market additional capacity, as of the first delivery period covered by the capacity contract’* (see recital (137) of the initial decision).
- (74) Belgium however changed the eligibility period of investment costs for long-term contracts. While according to the previous rule described in recital (73), only investment costs incurred between the CRM auction and the start of the delivery period were eligible, i.e. considered for the determination of the contract length, which implies costs incurred over maximum 1 year in case of Y-1 auctions, Belgium argues that a longer lead time is needed in the next two years. In particular, feedback from market participants showed that a lead time of 1 year is insufficient and risky for the development of new battery projects under Y-1 auctions. First, the time necessary to commission most battery projects under development has recently increased above 12 months (due to longer internal approval processes, supply chain issues and delays in grid connection). Second, the current market context, with limited availability of raw materials and certain parts (especially transformers), makes it even more difficult to realise storage projects in less than 12 months<sup>(32)</sup>.
- (75) Consequently, for the Y-1 auctions covering the delivery periods for which the Y-4 auction already took place (i.e. for the Y-1 auctions for delivery in 2025-2026

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<sup>(32)</sup> Belgium refers to an informal survey amongst battery developers, indicating that a current lead time of at least 16 months between the final CAPEX offer (‘Notice to Proceed’) and the end of commissioning should be considered (capex representing up to 75% of total investment costs). Moreover, other project costs are made even more than 16 months in advance, such as buying the land, fixed connection costs, studies and permitting.



and 2026-2027), Belgium suggests adjusting eligible investment costs as follows. For these Y-1 auctions, Belgium accepts as eligible investment costs, costs incurred up to one year before the publication of the results of the Y-1 auction (or two years before start of the delivery period). According to Belgium, this amendment is likely to make storage projects (and also other technologies that suffer from longer commissioning lead times) more interested in taking part in these Y-1 auctions. Applicants must send their notification to the CREG, including a list of the main components of the investment ordered during the year preceding the date of publication of the auction results. The notification will state that the applicants consider the participation in the CRM as a condition for the investment decisions taken.

- (76) Belgium submits that market participants have already been widely informed about the change in the eligibility period for investment costs. Since this is an additional criterion for the eligibility of investment costs with a view to classifying capacity in the capacity categories, the CREG has adapted the text of the guidelines on the eligibility of investment costs<sup>(33)</sup>, put them out to public consultation and published them on the CREG website. Belgium submits that the legal framework has been validated<sup>(34)</sup>, and that a communication informing on the need for a notification has been published on the websites of the FPS Economy, Elia and the CREG, so that the market is informed of the updated rules.
- (77) As mentioned in recital (138) of the initial decision, Belgium committed to review and update these thresholds in case new evidence were to show a need for it, and at least every 3 years.
- (78) For year 2023, the CREG has put into public consultation various modifications to the royal decree concerning the investment thresholds. Those modifications include the increase of the investment threshold for all multi-year contracts by 30 %. However, participants to the public consultation observed that this change would obstruct the level-playing-field between existing and new capacities. Consequently, it was decided to keep the investment thresholds as mentioned in Table 8 of the initial decision, and to conduct a new study in the autumn of 2023. If this new study demonstrates the need to change the investment thresholds,

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<sup>(33)</sup> The text of the guidelines reads as follows: §44: ‘*The date of signature of a contract may be earlier than the date of publication of the results of the auction results, provided that the contract contains a suspensive/resolutive condition if the capacity is not selected during this specific auction and provided that the project start-up order (notification to proceed) is no earlier than the date of publication of the auction results. This rule does not apply when the conditions set out in paragraph 45 are met.*’ §45: ‘*Subject to Article 3, §1 of the Royal Decree of 4 June 2021 being amended in accordance with the proposal 25165 of the CREG, for the auctions relating to the supply periods 2025/2026 and 2026/2027, investments ordered up to one year before the date of publication of the results of the publication of the results of the auction for which the capacity is selected. In this case, the date of signature of a contract may be prior to the year preceding the date of publication of the results of the auction, provided that the project start-up order (notification to proceed) is no earlier than one year before the date of publication of the results of the auction.*’

<sup>(34)</sup> Royal Decree of 4 July 2023, amending the royal decree of 4 June 2021 setting the investment thresholds, the eligibility criteria for investment costs and the classification procedure. Available in French and Dutch on the website <https://www.ejustice.just.fgov.be/>.

changes will be implemented to ensure non-discrimination between different technologies <sup>(35)</sup>.

- (79) Under the current CRM rules, foreign capacities have only access to one-year contracts. The Belgian authorities committed to review the possibility for foreign capacities to access multi-year contracts. As mentioned in recital (144) of the initial decision, the first review would have to be carried out by 15 January 2023 and thereafter every two years. The completed review revealed no demand to extend the contract length.
- (80) Belgium confirms that Elia has evaluated the cross-border design of the CRM and its implementation by spring 2023 together with neighbouring TSOs. Following the TSO discussions and considering that foreign TSOs act as point of contact for foreign stakeholders, there is currently no demand to extend the contract length to foreign capacity contracts. Moreover, since the implementation of cross-border participation is still ongoing (see section 2.9), Belgium argues that no experience has been gained yet regarding the participation in the pre-auction (given that no such pre-auction has taken place yet), nor regarding the willingness of market participants to obtain such multi-year contracts. Belgium commits to re-evaluate this design element of the CRM once some experience has been gained in running cross-border auctions. Belgium commits to carry out a first re-evaluation by 15 January 2027, to be continued every two years thereafter <sup>(36)</sup>.

## **2.7. Design of CRM auction**

### *2.7.1. Strike price and payback obligation*

- (81) As described in recital (146) of the initial decision, the Belgian CRM works based on reliability options: the contractual counterparty buys the capacity from the capacity providers in the form of reliability options. The capacity providers that are selected in the auction sell the reliability options to the central buyer and receive a fixed capacity remuneration in return. Whenever the reference price (day-ahead wholesale market price, see recital (148) of the initial decision) exceeds a pre-defined level, the so-called strike price, the capacity provider must pay back (to the central buyer) the difference between the reference price and the strike price towards the central buyer, calculated on the contracted capacity volumes. For a given delivery period, the total payback obligation is capped to the weighted yearly CRM contract value.
- (82) Revenues for the capacity provider on the energy-only market are capped at the strike price due to the payback obligation, and capacity providers are ensured a fixed and certain capacity remuneration in return. In addition, capacity providers that are not available at times of scarcity receive an unavailability penalty, as explained in recital (92) below. In summary, the payback obligation above the strike price limits the potential for windfall profits, and the penalty in case of non-availability incentivises capacity units to be available during scarcity periods.

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<sup>(35)</sup> Those potential future amendments are not covered by the present decision and Belgium will notify them to the Commission where applicable.

<sup>(36)</sup> Those potential future amendments are not covered by the present decision and Belgium will notify them to the Commission where applicable.

- (83) As mentioned in recitals (163) and (164) of the initial decision, Belgium also foresees a stop-loss mechanism on both the payback obligation (linked to the reliability options) and the penalties for unavailability. Such stop-loss mechanism implies that the capacity provider under the CRM will never have to repay an amount exceeding the value of its annual capacity remuneration.
- (84) Therefore, the main principles of the working of the CRM auction, as described in sections 1.7 and 1.8 of the initial decision, have not changed. However, some details in the implementation have been amended, in particular the indexation mechanism of the strike price and other price caps.
- (85) The previous auction design was based on a single strike price fixed per delivery period and per auction as set in a Royal Decree, described in recitals (150) and (151) of the initial decision. The single strike price was complemented with its possible substitution by a Declared Market Price ('DMP') for units without a daily schedule, which are subject to higher activation costs.
- (86) Belgium argues that the high increase in energy prices and price volatility observed in 2022, as well as the lack of participation in the Y-4 auction of 2022, indicate the need for adjusting the strike price, in particular the indexation mechanism.
- (87) Belgium submits that an analysis by Elia demonstrated that prices in 2022 would have triggered almost 3 000 hours of payback obligation (more than 30% of the time), with – in case of no change in the indexation mechanism – a strike price starting at 300 EUR per MWh. Belgium argues that such a frequency of payback events is not in line with the first objective of the payback obligation, being the avoidance of windfall profits, and concludes that the indexation mechanism of the strike price requires some adaptations.
- (88) Therefore, Belgium considers it necessary to introduce a more dynamic setting of the strike price, supported by the feedback from market participants as provided in the several Working Groups Adequacy organised by Elia <sup>(37)</sup>, and by the reactions of market participants in several public consultations <sup>(38)</sup>. In the amended strike price setting, the indexation mechanism of the strike price is adapted dynamically to capture recent market trends during the delivery period, i.e. the strike price will be set ex-post, combining:
- (a) a variable component, reflecting the (unweighted) monthly average day-ahead prices; and
  - (b) a fixed component, describing the price differentials that separates usual prices from prices reflecting an adequacy crisis. Elia sets the fixed component based on the distribution of day-ahead prices over the last few

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<sup>(37)</sup> The reports of all working groups are available at: <https://www.elia.be/fr/users-group/adequacy-working-group/meetings>.

<sup>(38)</sup> See e.g. Elia's 'Formal public consultation on the CRM Functioning Rules', available at: <https://www.elia.be/en/public-consultation/20221125-formal-public-consultation-on-the-crm-functioning-rules>. FPS Economy's public consultation on the Royal Decree on Methodology, available at: <https://economie.fgov.be/sites/default/files/Files/Energy/rapport-consultation-ar-methodologie.pdf>.

years. The fixed component will initially be set at EUR 234 per MWh for the Y-4 auction linked with delivery year 2027-2028.

- (89) According to Belgium, besides improving the participation in the auctions, especially in the context of high market volatility, the amendment in the strike price presents the following advantages:
- (a) technology neutrality: the strike price reflects the wider evolution of baseload electricity prices, and is only triggered during an adequacy crisis and through its indexation represents a price level above which exceptional profits are captured;
  - (b) avoidance of windfall profits: the strike price still ensures the possibility to capture inframarginal rents; and
  - (c) proportionality: the strike price increases and decreases, depending on day-ahead prices.
- (90) Similarly, in response to the current environment of higher-than-expected inflation and to anticipate potential future inflation, Belgium also introduced an indexation rule for the maximum price (see recital (47) of the initial decision) and the intermediate price cap (see recital (70) above). Belgium explains that inflation will be assessed on the basis of the growth rate of the consumer price index (CPI) forecast by the Federal Planning Bureau CPI-Inflation forecasts and in its Economic Outlook.

#### 2.7.2. *Availability monitoring and penalties*

- (91) The CRM rules with respect to pre-delivery control (described in recitals (165) to (167) of the initial decision), availability monitoring (described in recitals (168) to (176) of the initial decision), testing (described in recitals (177) to (181) of the initial decision), and penalties (described in recitals (182) to (186) of the initial decision), have not been altered substantially.
- (92) As mentioned in recital (182) of the initial decision, missing capacity, i.e. a positive difference between obligated and available capacity, during an AMT hour<sup>(39)</sup> is liable to an unavailability penalty. The unavailability penalty is based on the weighted yearly CRM contract value. The total unavailability penalties over a delivery period are capped to the weighted yearly CRM contract value. Belgium explains that, although these unavailability penalties may thus be below the VOLL<sup>(40)</sup>, a capacity provider which is unavailable may face large payments up to twice its yearly CRM contract revenues (from unavailability penalties and reliability option paybacks, see recital (81)). An unavailable capacity provider would also lose potential profits from wholesale electricity markets (especially

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<sup>(39)</sup> Availability Monitoring Trigger (AMT) identifies the moments relevant from an adequacy point of view and during which the TSO will monitor the availability of capacity units.

<sup>(40)</sup> Assuming a three-hour LOLE (as defined for the reliability standard) and a VOLL of approximately EUR 13 000 per MWh for household consumers, VOLL-based penalties would be on the order of EUR 39 000 per MW per year whereas average yearly contract values from the latest CRM auction amount to approximately EUR 20 000 per MW per year (for units subject to the intermediate price cap) or EUR 37 000 EUR per MW per year (units not subject to the intermediate price cap).

during system stress hours). Therefore, Belgium considers that capacity providers face strong incentives to fulfil their availability obligations.

## **2.8. Secondary market**

- (93) As mentioned in recitals (187) and (188) of the initial decision, Belgium committed to introduce a secondary market at least one year before the start of the first delivery period.
- (94) Belgium confirmed that the secondary market went live in the first half of 2023. Belgium explained that the secondary market enables market participants to freely trade obligations related to the CRM. To avoid gaming, Belgium explained that, when the selling and buying entities are subject to different payback obligations (e.g. when only one of these entities is entitled to declare a DMP), the payback obligation applies based on the characteristics of the buying entity.

## **2.9. Cross-border participation**

- (95) Direct cross-border participation is mandatory under Article 26 of the Electricity Regulation. In line with this Article, Belgium commits to enable cross-border participation from at least the Member States with a direct network connection to the Belgian electricity transmission network.
- (96) Belgium confirmed that a cross-border Royal Decree project has been proposed to the Belgian Council of State for analysis in 2021. The Belgian administration is currently studying the framework for the organisation of a cross-border auction in 2024 based on the Council of State advice. Belgium commits that the Royal Decree will be in force on time to allow for cross-border participation as of the next Y-1 auction (in 2024).
- (97) TSO-TSO agreements between Elia and the neighbouring national TSOs have been finalised. CREG also approved the agreements. The TSO-TSO agreements will ask the commitment of the foreign TSOs for a timely implementation of cross-border participation ahead of the Y-1 auction for delivery in 2025.
- (98) Belgium confirms that all arrangements will be in place and cross-border participation will be organised as from the Y-1 auction in 2024.

## **2.10. Budget and financing**

### *2.10.1. Budget*

- (99) The precise cost of the measure will be determined by the outcome of the CRM auctions and will depend on the bids of the different capacities participating in the CRM.
- (100) The Belgian authorities estimate that the total cost of the measure for the 10-year duration of the CRM would amount to approximately EUR 3.91 billion (nominal value, taking into account the cost of longer-term contracts). The CRM would

cost approximately EUR 245 million per year over the period 2025-2040 <sup>(41)</sup>, in nominal terms <sup>(42)</sup>.

### *2.10.2. Amendment of the financing mechanism*

- (101) In Belgium, Elia is assigned certain public service obligations ('PSOs'). These PSOs include the CRM. In the past, Elia financed these PSOs through different surcharges, paid by electricity consumers through the electricity bill.
- (102) Since 1 January 2022, following a broader reform of the Electricity Act of 29 April 1999 on the organisation of the Belgian electricity market ('the Electricity Act'), the PSOs are no longer financed through surcharges on the electricity bill, but through special excise duties on electricity. The special excise duties are fixed on a EUR/MWh basis (no matter when electricity is consumed) and different categories of consumers have different tariffs.
- (103) The Electricity Act (Article 21 quinquies) also foresees other fallback sources of financing, e.g., financing through revenues from special excise duties on diesel, coal, coke and lignite, and financing through the corporate income tax as a last resort.
- (104) Consequently, the financing mechanism of the CRM has also been altered in the context of this broader reform. The CRM is now financed through the special excise duty on electricity consumed instead of through a surcharge on electricity network tariffs.
- (105) The costs of the CRM are legally defined and concern the costs associated with the CRM after deduction of any revenues generated under the CRM and without prejudice to the rules on allocation of specific revenues referred to in Article 26(9) of the Electricity Regulation.
- (106) The level of the excise duty on electricity has been defined at a level that allows that the income generated each year largely covers the costs linked to the CRM. Belgium estimates the yearly income from the excise duties on electricity at EUR 1 to 1.4 billion. Given that the yearly cost of the CRM is estimated at EUR 245 million (see recital (100) above), the excise duties on electricity will be enough to cover the cost of the CRM, so that electricity users will effectively finance the CRM through the electricity excise duty.
- (107) Belgium explained that the volume procured under the CRM is calibrated based on consumption during simulated scarcity moments (as opposed to overall yearly consumption, on which the electricity excise duty applies). However, Belgium explains that, currently, most consumers are equipped with basic electricity meters, which do not allow to meter separately their consumption during the hours when the CRM is needed most (vs. hours without any security of supply issue). Therefore, as a temporary approach, the electricity excise duty (and

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<sup>(41)</sup> Long-term CRM contracts expire after the 10-year period for which the CRM was approved under the initial decision. The costs were estimated before the decision to extend the lifetime of two nuclear reactors.

<sup>(42)</sup> This estimate is in line with the budget estimate provided in the initial decision, which pointed to a cost between EUR 238 and 253 million per year (see recital (206) of the initial decision).

therefore the financing of the CRM) is based on total yearly consumption. Belgium explains that the way consumers finance the CRM will gradually be refined. Keeping in mind the timeline for the rollout of smart meters described in Belgium's implementation plan, Belgium commits to review the CRM funding mechanism for all consumers by 2030 at the latest<sup>(43)</sup>, to ensure that the contribution paid by consumers is based on their consumption during the hours which trigger the need for the CRM.

### **2.11. Duration of the CRM**

- (108) Belgium has requested an approval for the CRM for the maximum allowed period of 10 years, starting from the date of the first auction in 2021, i.e. until the end of October 2031, which is identical to the duration mentioned in recital (217) of the initial decision. Belgium commits not to sign new CRM contracts under this decision after its expiration.
- (109) The commitment in recital (218) of the initial decision, whereby Belgium will not organise new CRM auctions, in case no new capacity agreement has been concluded for three consecutive years, remains.

### **2.12. Cumulation**

- (110) As mentioned in recital (205) of the initial decision, capacity that already benefits from operating aid is excluded from the pre-qualification phase. Capacities that benefit from such aid may participate in the pre-qualification phase under the condition that they renounce to this operating aid in case they are awarded a capacity contract. Furthermore, when submitting an application for the pre-qualification phase, capacities commit not to apply for other operating aid during the period while they have a capacity contract.
- (111) The rules on cumulation are relevant in the context of the nuclear extension. To the extent the final agreement between the Belgian State and Engie-Electrabel prevents cumulation with the CRM (subject to the conclusion of this final transaction), the prolonged nuclear power plants will or will not be eligible for the CRM. If nuclear is ineligible, the prolonged nuclear capacity will still be taken into account when determining the need for the CRM and the volume to be procured (see section 2.3.2 above).

### **2.13. Transparency**

- (112) Belgium submits that it will ensure compliance with the transparency requirements laid down in points 58 to 61 of the Guidelines on State aid for climate, environmental protection and energy 2022 ('CEEAG')<sup>(44)</sup>. The relevant data of the measure will be published on a national website that will link to the Commission transparency register.

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<sup>(43)</sup> i.e. once enough smart meters have been rolled out, considering Belgium's implementation plan.

<sup>(44)</sup> Communication from the Commission – Guidelines on State aid for climate, environmental protection and energy 2022 (OJ C 80, 18.2.2022, p. 1).

## 2.14. Evaluation and monitoring

- (113) As stated in recital (162) of the initial decision, the Belgian authorities committed to carry out a first technical and economic analysis, which will examine the bids and the results of the auctions, with a particular focus on the effect of the payback obligation. Belgium carried out the analysis and its results were submitted for public consultation.
- (114) As part of the current notification, Belgium also committed to carry out and publish an *ex post* evaluation and submitted an evaluation plan, describing how an independent entity will verify whether the assumptions underlying the scheme have been achieved, in particular, the necessity and effectiveness of the CRM.
- (115) The evaluation plan will assess:
- (a) the direct and indirect effects of the CRM, on the goals of the CRM (for instance by estimating the impact of the change in CO<sub>2</sub> limits on the environmentally-friendliness of the CRM) and on the electricity markets (for instance by investigating the effect on electricity prices in Belgium);
  - (b) the proportionality and appropriateness of the aid (for instance by measuring the volume procured under and the cost of the CRM and estimating the profitability of the different technologies participating in the CRM); and
  - (c) particular design elements of the CRM, such as the effectiveness of the split between auctions, the impact of the secondary market and cross-border participation.
- (116) The evaluation will lead to the following deliverables:
- (a) an interim report, which will be published and delivered to the Commission by 30 June 2027. Belgium explains that it is necessary to wait until the end of 2026, to ensure that data collected covers the whole process of the scheme (from auctions to delivery). The interim report will specify the key questions and the methodological approach for the final report; and
  - (b) a final report, which will be delivered to the Commission by 30 June 2030. The final report will include an impact evaluation of the scheme until the end of 2029. Belgium committed to publish a public version of this report.
- (117) Belgium committed to consider the results of the evaluation for the design of any subsequent aid measure with a similar objective.
- (118) Belgium also committed to monitor annually the determination of the auction parameters (including auction volume, see recital (56)).



### 3. ASSESSMENT OF THE MEASURE

#### 3.1. Existence of State aid

- (119) Article 107(1) TFEU states that ‘*any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods, shall, in so far as it affects trade between Member States, be incompatible with the common market*’.
- (120) In order to conclude whether State aid is present in this case, the Commission must assess whether all cumulative criteria of Article 107(1) TFEU are met for the measure under assessment.

##### 3.1.1. Imputability to the State and financing through State resources

- (121) For measures to be qualified as State aid within the meaning of Article 107(1) TFEU, they have to (a) be imputable to the State and (b) involve State resources. The latter condition means that the aid must be granted directly by the State or by a public or private body designated or established by the State <sup>(45)</sup>.
- (122) The Commission notes that the financing of the CRM has changed since 1 January 2022, i.e. the CRM is no longer financed through a surcharge upon electricity consumption, as assessed in the initial decision (see section 4.1.1. of the initial decision), but through excise duties on electricity (see section 2.10.2).
- (123) Excise duties on electricity are collected by the State and constitute State resources. Therefore, despite a new financing method, the existing aid scheme continues to be financed from State resources.

##### 3.1.2. Economic advantage conferred on certain undertakings or the production of certain goods (selective advantage)

- (124) An advantage, within the meaning of Article 107(1) TFEU, is any economic benefit, which an undertaking would not have obtained under normal market conditions, i.e. in the absence of State intervention <sup>(46)</sup>.
- (125) The notified amendments do not affect the conclusion that the CRM confers an economic advantage on certain undertakings or on the production of certain goods. The Commission therefore refers to the respective assessment in recitals (337) and (338) of the initial decision and concludes that the CRM confers a selective economic advantage.

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<sup>(45)</sup> Case 76/78, *Steinike & Weinlig v Germany*, [1977] ECR 595, EU:C:1977:52, paragraph 21; Case C-379/98, *PreussenElektra*, [2001] ECR I-2099, EU:C:2001:160, paragraph 58; Case C-706/17 *Achema* [2019], EU:C:2019:407, paragraph 47 and following.

<sup>(46)</sup> Judgment of the Court of Justice of 11 July 1996, *SFEI and Others*, C-39/94, EU:C:1996:285, paragraph 60; Judgment of the Court of Justice of 29 April 1999, *Spain v Commission*, C-342/96, EU:C:1999:210, paragraph 41.

### 3.1.3. *Distortion of competition and trade within the Union*

- (126) In line with recital (339) of the initial decision, the CRM risks distorting competition and affecting trade within the internal market. Electricity generation as well as electricity wholesale and retail markets are activities open to competition throughout the Union<sup>(47)</sup>. Therefore, any advantage from State resources to any undertaking in that sector has the potential to affect intra Union trade and to distort competition.

### 3.1.4. *Conclusion on the assessment under Article 107(1) TFEU*

- (127) For the reasons mentioned in sections 3.1.1, 3.1.2 and 3.1.3, the CRM constitutes State aid within the meaning of Article 107(1) TFEU. The Commission notes that Belgium does not dispute the State aid character of the measure.

## 3.2. **Compatibility of the aid**

- (128) The Commission has assessed the compatibility of the CRM on the basis of Article 107(3), point (c), TFEU. The CRM aims at promoting economic activities in a manner that ensures the security of electricity supply in Belgium (see recital (15)). The supported activities fall within the scope of the CEEAG. More specifically, they fall under the category of aid for the security of electricity supply (see point 16(i) CEEAG).
- (129) The Commission has therefore assessed the CRM as support for the beneficiaries of the CRM under the general compatibility provisions in Section 3 CEEAG, as well as the specific compatibility criteria for aid for the security of electricity supply in Section 4.8 CEEAG.

### 3.2.1. *Positive condition: the aid must facilitate the development of an economic activity*

#### 3.2.1.1. Contribution to the development of an economic activity

- (130) Article 107(3), point (c), TFEU provides that the Commission may declare compatible ‘*aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest*’. Therefore, compatible aid under that provision of the Treaty must contribute to the development of certain economic activities<sup>(48)</sup>. In accordance with this, points 23 and 328 CEEAG state that, when notifying aid, Member States must identify the economic activities that will be facilitated or developed as a result of the aid and how the development of those activities is supported, directly and indirectly.
- (131) The Commission notes that the CRM directly supports the development of economic activities in the electricity sector by providing aid to electricity capacity

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<sup>(47)</sup> See the Electricity Regulation and Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (OJ L 158, 14.6.2019, p. 125).

<sup>(48)</sup> See judgment of the Court of Justice of 22 September 2020, *Austria v Commission*, case C-594/18 P, EU:C:2020:742 (hereinafter referred to as the ‘*Hinkley judgment*’), paragraph 19.

providers to ensure security of electricity supply (see recital (37)). As an indirect effect, the Commission notes that the security of electricity supply supported by the CRM can be expected to stimulate economic activity more generally, since a secure electricity supply provides benefits to various economic activities that rely on electricity as an input. Therefore, the CRM contributes to the development of economic activities in the electricity sector and other related sectors, directly and indirectly.

- (132) The Commission therefore considers that the measure facilitates the development of certain economic activities as required by Article 107(3), point (c), TFEU and points 23 and 328 CEEAG.

#### 3.2.1.2. Incentive effect

- (133) State aid can only be considered to facilitate an economic activity if it has an incentive effect. An incentive effect occurs when the aid induces the beneficiary to change its behaviour towards the development of an economic activity pursued by the aid, and if this change in behaviour would not otherwise occur without the aid<sup>(49)</sup>.
- (134) Point 329 CEEAG provides that the rules on incentive effect in points 29, 30, 31 and 32 CEEAG apply.
- (135) The Commission notes that the participants in the CRM auctions are both existing and new power generation units, as well as existing and new DR and storage units (see recital (37)). The offer submitted by each of those units in the competitive bidding process represents an ‘aid application’ within the meaning of point 30 CEEAG. Power generation and storage units will offer their availability to start supplying electricity, while DR units will offer their availability to reduce their electricity consumption. These are the activities that the units commit to undertake in exchange for the aid received from the measure, in line with the contract they conclude with Elia (see recital (38)).
- (136) Under the rules of the existing CRM, these activities could not start and no cost would be considered before the successful units were granted aid and CRM contracts were signed, in line with the requirements of point 29 CEEAG.
- (137) However, as mentioned in recital (75), Belgium amended the eligibility period for investment costs for the Y-1 auctions in 2024 and 2025 (for delivery in 2025-2026 and 2026-2027 respectively), covering the delivery periods for which the Y-4 auction already took place in 2021 and 2022, so that costs up to 1 year before the CRM auction can also be considered for the award of long-term contracts during these auctions. As mentioned in recital (76), Belgium has published a notice on the websites of the FPS Economy and the CREG (see footnotes 33 and 34 regarding the content of the notice and the reference to the website respectively), informing market participants of the increased eligibility period for proving investment costs. The market participants must have informed the granting authority prior to the start of works that the CRM was considered as a condition for the investment decisions taken. Hereby the requirements of point

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<sup>(49)</sup> See in that sense Section 3.1.2 CEEAG.

31(b) CEEAG are met and the incentive effect is fulfilled, even if in some cases (e.g. storage projects), the works may have started before the aid application.

- (138) Finally, point 32 CEEAG provides that aid granted merely to cover the cost of adapting to Union standards has, in principle, no incentive effect. The Commission notes that participants in a capacity mechanism shall incorporate certain requirements regarding CO<sub>2</sub> emission limits, as stipulated in Article 22(4) of the Electricity Regulation. As mentioned in recital (15), the main objective of the CRM is to ensure security of electricity supply in Belgium, by providing a fixed capacity remuneration to market participants who commit to be available during scarcity periods. The restrictions on the CO<sub>2</sub> emission limits are merely meant to make the CRM more environmentally-friendly and, as mentioned in recital (165), do not infringe Article 22(4) of the Electricity Regulation. Therefore, the support provided through the CRM does not merely aim at covering the costs of complying with these CO<sub>2</sub> emission limits.
- (139) The Commission therefore considers that the measure has an incentive effect.

#### 3.2.1.3. No breach of any relevant provision of Union law

- (140) State aid measures that entail, by themselves, by the conditions attached to them or by their financing method a non-severable violation of relevant Union law cannot be declared compatible with the internal market<sup>(50)</sup>.

##### 3.2.1.3.1. Compliance with the Electricity Regulation

- (141) Articles 20 to 27 of the Electricity Regulation stipulate general principles and design requirements for capacity mechanisms.
- (142) According to Article 20(1) of the Electricity Regulation, Member States shall monitor resource adequacy within their territory on the basis of the ERAA referred to in Article 23. For complementing the ERAA, Member States may also carry out an NRAA pursuant to Article 24.
- (143) As regards compliance of the CRM with Article 20 of the Electricity Regulation, the Commission refers to the respective assessment set out in recitals (364) to (371) of the initial decision:
- (a) According to Article 20(1) of the Electricity Regulation, Member States shall monitor resource adequacy within their territory on the basis of the ERAA or a NRAA. The Commission notes that ENTSO-E has not yet complied with its obligation under Article 23 of the Electricity Regulation to deliver an ERAA (see recital (22)). Accordingly, in the exceptional current circumstance, the resource adequacy concern in Belgium has been identified solely on the basis of a NRAA<sup>(51)</sup>. In particular, as mentioned in recital (28), the 2023 NRAA identifies a resource adequacy concern for Belgium from 2025 onwards.

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<sup>(50)</sup> CEEAG point 33, and *Hinkley* judgment, paragraph 44 and the references cited.

<sup>(51)</sup> In principle, under the regulatory framework and in accordance with Article 21(4) of the Electricity Regulation, with an approved ERAA by ACER, the adequacy concern should be demonstrated by both the ERAA and the NRAA, or in the absence of a NRAA, the ERAA.

- (b) Article 20(2) of the Electricity Regulation requires that, before introducing capacity mechanisms, Member States identify any regulatory distortions or market failures that have caused or contributed to the resource adequacy concern. As described in section 2.3.3, Belgium developed and published an implementation plan setting out measures to eliminate regulatory distortions or market failures on the Belgian electricity market.
- (c) Pursuant to Article 20(5) of the Electricity Regulation, the Commission adopted on 30 April 2020 an opinion on Belgium’s implementation plan. In its opinion, the Commission found that Belgium should further improve the working of its balancing markets by amending its scarcity pricing scheme, and that Belgium should continue the rollout of smart meters. These measures were undertaken (see respectively recital (62) of the initial decision and recital (107) of the present decision) and considered sufficient to eliminate the regulatory distortions or market failures that were identified in Belgium’s implementation plan.
- (144) As regards compliance with Article 21 of the Electricity Regulation, the Commission observes that paragraph 6 of the said Article states that where a Member State applies a capacity mechanism, it shall review that capacity mechanism and ensure that no new contracts are concluded under that mechanism where both the European resource adequacy assessment (‘ERAA’) and the national resource adequacy assessment (‘NRAA’) or, in the absence of a NRAA, the ERAA have not identified a resource adequacy concern.
- (145) As mentioned in recital (22), the latest ERAA published by ENTSO-E in November 2021, which identified a resource adequacy concern in Belgium from 2025, has not been approved by ACER due to divergences from the ERAA methodology, compromising its accuracy and reliability, and cannot be used to identify a resource adequacy concern in Belgium.
- (146) As stated in recital (28), Belgium argues that, despite the lifetime extension of two nuclear reactors, there is still a resource adequacy concern from 2025 until 2034 as confirmed by the 2023 NRAA, with reference to the reliability standard described in section 2.3.1.
- (147) The volume of the CRM auctions is determined through the procedure described in section 2.5.2. As explained in recital (54), Belgium determines the volume relying on a proposal from CREG and advice from FPS economy. CREG may also provide and publish its opinion on the NRAAs<sup>(52)</sup>.
- (148) As explained in recital (32), Belgium commits not to sign any new CRM contract for any delivery period, for which neither the latest NRAA nor the latest ERAA would have identified a resource adequacy concern in Belgium.
- (149) Therefore, and following the same reasoning as set out in recitals (373) to (383) of the initial decision, the Commission considers that the notified amendments comply with Article 21 of the Electricity Regulation.

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<sup>(52)</sup> See e.g. CREG’s opinion on the 2021 NRAA. Available at: <https://www.creg.be/nl/publicaties/nota-z2263>.

- (150) Concerning compliance with Article 22 of the Electricity Regulation, Article 22(1) defines specific design features that any capacity mechanism shall meet (<sup>53</sup>).
- (151) Article 22(1), points (a) and (b) of the Electricity Regulation are met since the CRM has a limited duration (see section 2.11) and is open to cross-border trade (see section 2.9).
- (152) Article 22(1), point (c) provides that a capacity mechanism shall not go beyond what is necessary to address adequacy concerns. As described in recital (28), Belgium commits to ensure that the CRM does not go beyond what is necessary to address the resource adequacy concern identified.
- (153) The Commission also observes that the reliability standard determines how much capacity is auctioned in the capacity market and that the new reliability standard, calculated according to the methodology for calculating the VOLL, the CONE and the reliability standard, does not deviate from the old reliability standard (see section 2.3.1).
- (154) In addition, as stated in recital (57), the volume procured under each delivery period of the CRM will reflect the forecast (de-rated) availability of the prolonged nuclear power plants during this delivery period.
- (155) The Commission therefore concludes, on the basis of the information at its disposal, that the CRM, as amended, does not go beyond what is necessary to address the resource adequacy concern.
- (156) Article 22(1), points (d), (f) and (g) of the Electricity Regulation are met since the CRM grants aid based on a competitive bidding process, following a pre-qualification phase and setting out the criteria in advance (see section 2.5).
- (157) Article 22(1), points (e) and (i) of the Electricity Regulation are met since incentives are provided for capacity providers to be available in times of expected system stress, and penalties apply in case of unavailability (see section 2.7.2).
- (158) Article 22(1), point (h) of the Electricity Regulation states that a capacity mechanism shall be open to all resources that are capable of providing the required technical performance, including energy storage and demand-side management.
- (159) As mentioned in recital (37), the CRM is open to all existing and new generators (including nuclear capacities subject to cumulation rules, see section 2.12), DR and storage operators. Also, the CRM is open to cross-border capacity.

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<sup>53</sup>) According to that Article, a capacity mechanism shall: (a) be temporary, (b) not create undue market distortions and not limit cross-zonal trade, (c) not go beyond what is necessary to address the adequacy concerns, (d) select capacity providers by means of a transparent, non-discriminatory and competitive process, (e) provide incentives for capacity providers to be available in times of expected system stress, (f) ensure that the remuneration is determined through the competitive process; (g) set out the technical conditions for the participation of capacity providers in advance of the selection process, (h) be open to participation by all resources that are capable of providing the required technical performance, including energy storage and demand-side management, and (i) apply appropriate penalties to capacity providers that are not available in times of system stress.

- (160) According to Article 22(3) of the Electricity Regulation, capacity mechanisms shall in addition to the requirement in Article 22(1): (a) be constructed so as to ensure that the price paid for availability automatically tends to zero when the level of capacity supplied is expected to be adequate to meet the level of capacity demanded, (b) remunerate the participating resources only for their availability and (c) ensure that capacity obligations are transferable between eligible capacity providers:
- (a) The CRM is a market-wide, technology-neutral capacity mechanism, under which all eligible capacity providers compete in a single capacity auction to discover the lowest sustainable price at which the necessary capacity can be supplied. The competitive nature of the auction should drive prices to zero if there is sufficient supply to meet demand.
  - (b) The capacity fee paid to capacity providers with a reliability option consists of a fixed payment for maintaining the contracted capacity available for any periods of scarcity (see recital (5)). It thus remunerates the availability of the capacity and does not include remuneration for electricity the capacity providers will offer on the market.
  - (c) Belgium will put in place a secondary market to provide the capacity providers with a mechanism to improve their risk management under the CRM (see section 2.8). In case of transactions on the secondary market, a full transfer of obligations will be ensured.
- (161) The Commission therefore concludes that the requirements laid down in Article 22(3) of the Electricity Regulation are met.
- (162) Article 22(4) of the Electricity Regulation sets out the requirements related to CO<sub>2</sub> emission limits.
- (163) The CO<sub>2</sub> emission limits in recital (59), which refer to generation capacity that started commercial production on or after 4 July 2019, are in line with the CO<sub>2</sub> emission limits mentioned in Article 22(4)(a) of the Electricity Regulation. The revised CO<sub>2</sub> emission limits in recital (59), referring to generation capacity that started commercial production before 4 July 2019, are stricter than the CO<sub>2</sub> emission limits required by the Electricity Regulation. In particular, any existing generation capacity which emits more than 306 kg CO<sub>2</sub> of fossil fuel origin on average per year per installed kW<sub>e</sub> shall not be committed or receive payments under the CRM, thus ensuring compliance with Article 22(4)(b) of the Electricity Regulation.
- (164) The Commission observes that nothing in the Electricity Regulation precludes Member States from setting more stringent CO<sub>2</sub> emission limits than the ones prescribed by the Electricity Regulation. In addition, ACER indicated that Member States can also be more ambitious in supporting carbon dioxide emission reduction targets (see recital (59)) Finally, the revised CO<sub>2</sub> emission limits will not lead to increased CO<sub>2</sub> emissions (see recitals (60) and (61)).
- (165) The Commission consequently concludes that the new CO<sub>2</sub> emission limits notified by Belgium do not infringe Article 22(4) of the Electricity Regulation.

- (166) Therefore, and following the same assessment as in recitals (385) to (410) of the initial decision, the Commission concludes that the notified amendments comply with Article 22 of the Electricity Regulation.
- (167) Regarding compliance with Article 24 of the Electricity Regulation, the Commission refers to the reasoning set out in recitals (411) to (424) of the initial decision, which is updated by the following considerations:
- (a) The 2023 NRAA is based on an appropriate central reference scenario, the EU-BASE scenario, in accordance with Article 24(1) of the Electricity Regulation. At this stage, as explained in recital (26), the EU-SAFE sensitivity is also an appropriate sensitivity, in accordance with Article 24(1) of the Electricity Regulation.
  - (b) According to Article 24(1)(a) of the Electricity Regulation, Member States may include in their adequacy assessment sensitivities that are linked to the particularities of national electricity demand and supply. The Commission observes that the 2023 NRAA includes sensitivities about the unavailability of the French nuclear capacity which are in line with the data used by the French TSO in the French NRAA (see recitals (6) to (8) of the present decision and a similar reasoning in recitals (287) to (289) of the initial decision). Therefore, the Commission considers that the use of additional sensitivities in NRAAs relating to foreign electricity supply is not precluded by Article 24(1)(a) of the Electricity Regulation.
  - (c) Since no ERAA has been approved by ACER due to divergences from the ERAA methodology, Article 24(3) of the Electricity Regulation is not applicable (see recital (22)) <sup>(54)</sup>.
  - (d) Finally, the 2023 NRAA has fully implemented the rules on dynamic price cap increases (see recital (415) of the initial decision and recital (24) of the present decision).
- (168) For the reasons mentioned in recital (167), the Commission concludes that the measure complies with Article 24 of the Electricity Regulation.
- (169) With respect to compliance with Article 25 of the Electricity Regulation, in line with the commitment described in recital (28) of the initial decision, Belgium updated the VOLL based on a new survey regarding willingness to pay. The new reliability standard, which was set following a proposal by CREG, does not deviate from the old reliability standard, i.e. is set at 3h LOLE (see recital (17)).
- (170) As to compliance with Article 26 of the Electricity Regulation, the Commission refers to the respective assessment in recitals (438) to (443) of the initial decision. In summary, the CRM is open to cross-border participation in a way that enables effective participation in line with the ACER decision setting out technical specifications for cross-border participation in capacity mechanisms.

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<sup>(54)</sup> This is without prejudice to the application of Article 21(5) and Article 24(3) of the Electricity Regulation, once the ERAA is approved by ACER.



#### 3.2.1.3.2. Compliance with Articles 30 and 110 of the TFEU

- (171) Despite the new financing mechanism, which is based on excise duties on electricity (see recitals (104) to (106)), the CRM remains open to at least foreign capacity located in a Member State that has a direct network connection with Belgium (see recital (95)).
- (172) Given the openness of the measure to cross-border capacity, the Commission concludes that the new financing mechanism does not introduce any restrictions that infringe Article 30 or Article 110 TFEU.

#### 3.2.1.3.3. Compliance with other provisions of Union law

- (173) The Commission has no indication that the measure would be in breach of any other relevant provision of Union law.

#### 3.2.1.3.4. Conclusion

- (174) Therefore, the Commission considers that the measure does not infringe relevant Union law, and that the requirements of point 33 CEEAG are fulfilled.

#### 3.2.1.4. Conclusion on the assessment of the positive condition

- (175) The Commission therefore concludes that the measure fulfils the first (positive) condition of the compatibility assessment, i.e. that the aid facilitates the development of an economic activity pursuant to the requirements set out in Section 3.1 and Sections 4.8.1, 4.8.2 and 4.8.3 CEEAG.

#### 3.2.2. *Negative condition: the aid cannot unduly affect trading conditions to an extent contrary to the common interest*

##### 3.2.2.1. The market affected by the aid measure

- (176) The market affected by the CRM is the market for electricity production, DR and storage in Belgium and in neighbouring Member States.

##### 3.2.2.2. The positive effects of the aid measure

- (177) As indicated in section 3.2.1.1, the measure directly supports the development of economic activity in the electricity sector by providing aid to the beneficiaries of the measure to ensure security of electricity supply. Furthermore, as an indirect effect, the security of electricity supply supported by the measure can be expected to stimulate the economic activity more generally, since a secure electricity supply provides benefits to various economic activities that rely on electricity as an input.

##### 3.2.2.3. The need for State intervention

- (178) Point 330 CEEAG provides that Section 3.2.1.1 CEEAG does not apply to measures for the security of electricity supply. Therefore, the Commission will assess the necessity of the measure taking into account the provisions included in points 331 to 339 CEEAG.

- (179) According to point 331 CEEAG, the nature and causes of the security of electricity supply problem, and therefore of the need for State aid to ensure security of electricity supply, must be properly analysed and quantified, including when and where the problem is expected to arise with reference where applicable to the reliability standard as defined in Article 25 of the Electricity Regulation.
- (180) As stated in recitals (22) to (28), the continued need for the CRM relies on the reliability standard described in recital (17), in line with the requirements of the Electricity Regulation (as explained in section 3.2.1.3.1).
- (181) According to point 332 CEEAG, were applicable, the identification of a security of supply problem should be consistent with the latest available analysis carried out by ENTSO-E in accordance with the internal energy market legislation, notably, for measures targeting resource adequacy, the ERAA.
- (182) In this respect, the Commission observes that, as mentioned in recital (22), no ERAA has yet been approved by ACER. Therefore, the ERAA is not applicable to the CRM in the present case and the need for the CRM is based on the national resource adequacy assessment. Were an ERAA to be approved in the future, in line with Article 24(3) of the Electricity Regulation, Belgium committed to rely on either the ERAA or on the most recent NRAA, complying with the ACER methodology, to determine if an adequacy gap exists that justifies the existence of a CRM for the duration of this decision.
- (183) In line with point 333 CEEAG, Belgium relies on a national resource adequacy assessment to demonstrate the necessity of the CRM, in line with Article 24 of the Electricity Regulation (see recital (167)). CREG reviewed the 2023 NRAA of the CRM (see recital (22)), and will review future NRAAs (see recital (31)(f)).
- (184) In line with article 11(1)(f) of Regulation (EU) 2019/941, the Belgian Risk preparedness plan identifies the contribution of its CRM as a market-based measure in coping with electricity crises. Hence, the CRM complies with point 334 CEEAG.
- (185) According to point 335 CEEAG, Member States proposing to introduce several measures targeting security of electricity supply must clearly explain how they interact with one another in ensuring the overall cost effectiveness of the combined measures for ensuring security of supply. As mentioned in recital (9), Belgium considers another measure to prolong the lifetime of two nuclear power plants. As mentioned in recital (21), the (potential) prolongation of the nuclear power plants does not primarily aim at ensuring resource adequacy but is rather intended to address other risks to security of supply. Finally, as mentioned in recitals (27), (28) and (57), the assessment of the need for the CRM and the calculation of the auction volume reflects the prolongation of these nuclear power plants. Therefore, and subject to State aid control (which is outside the scope of this decision) if applicable for the measure targeting the prolongation of these nuclear power plants, the Commission considers that the CRM, in the context of the prolongation of the nuclear power plants, ensures overall cost-effectiveness.
- (186) As regards compliance of the CRM with points 336 and 337 CEEAG, which require the identification of regulatory or market failures and existing measures which tackle these market failures, the Commission refers to the market reforms described in section 2.3.3 above, which provides a description of the existing

market failures and their remaining relevance, as well as the Belgian implementation plan.

- (187) As regards compliance of the CRM with point 338, and following the same reasoning as recitals (447) to (455) of the initial decision, the Commission acknowledges that, despite a high level of interconnection capacity and planned market reforms, such as the introduction of a shortage pricing function for balancing in Belgium, a resource adequacy concern remains in Belgium (see recital (28)). Furthermore, Belgium submitted that in the aftermath of the energy crisis, it is more difficult to expect the market to deliver security of supply in the absence of State aid for the reasons mentioned in recital (35). Therefore, the Commission considers that Belgium has demonstrated why the market cannot yet deliver the adequate capacity in the absence of intervention.
- (188) As regards compliance of the CRM with point 339 CEEAG, which requires the Commission to take account of various assessments to be provided by the Member State, relating to the impact of variable generation, DR participation, interconnection and any other element causing or exacerbating the generation adequacy problem, the Commission refers to recitals (452) to (457) of the initial decision:
- (a) Belgium had an electricity interconnectivity level of about 24% in 2021, which is expected to rise towards 33% by 2030.
  - (b) Belgium facilitated the development of so-called energy-limited technologies, e.g. via the possibility to participate to the ancillary service markets or facilitated through a transfer of energy mechanism. This has led to high shares of DR participating in the 2021 auction (see recital (48)).
  - (c) The Belgian authorities have committed to several market reforms, notably with a view to strengthening balancing markets, facilitating DR and increasing interconnection capacity (see recital (453) of the initial decision and recital (34) of the present decision).
  - (d) The 2023 NRAA integrates all the ongoing and planned market developments and the most recent projected policy targets as integrated or referred to in the implementation plan (see recitals (22) to (26)).
- (189) Therefore, the Commission considers that the CRM, as amended, is necessary to support the targeted economic activity in a manner that increases security of supply.

#### 3.2.2.4. The appropriateness of the aid

- (190) Point 340 CEEAG provides that Section 3.2.1.2 CEEAG does not apply to measures for the security of electricity supply. Therefore, the Commission will assess the appropriateness of the measure taking into account the provisions included in points 341 to 342 CEEAG.
- (191) Point 341 CEEAG requires that Member States should primarily consider alternative ways of achieving security of electricity supply, in particular more efficient electricity market design that can alleviate the market failures that

undermine security of electricity supply. For instance, improving the functioning of electricity imbalance settlement, better integrating variable generation, incentivising and integrating DR and storage, enabling efficient price signals, removing barriers to cross-border trade, and improving infrastructure, including interconnection. Aid may be found appropriate for security of supply measures where, despite appropriate and proportionate improvements to market design and investments in network assets, whether already implemented or planned, a security of supply concern remains.

- (192) In this regard, the Commission refers to the market reforms described in section 2.3.3.
- (193) In addition, according to Belgium, the volatile and uncertain market conditions induced by the energy crisis of 2022 are expected to negatively affect the investment signals for the market players (see recital (35)). Finally, the Commission acknowledges that, despite these market reforms and the (potential) prolongation of the lifetime of two nuclear reactors, a resource adequacy concern remains from 2025 onwards (see recital (28)).
- (194) The Commission therefore considers that the CRM is an appropriate instrument to support the targeted economic activity in a manner that increases security of electricity supply.

#### 3.2.2.5. Eligibility

- (195) The Commission will assess the eligibility of the participation in the measure taking into account the provisions included in points 343 to 346 CEEAG.
- (196) Point 343 CEEAG requires that the measure should be open to all beneficiaries or projects technically capable of contributing efficiently to the achievement of the security of supply objective. This includes generation, storage and DR, as well as the aggregation of small units of these forms of capacity into larger blocks.
- (197) With respect to the openness of the CRM, the Commission notes that the CRM is open to all capacities that can contribute to resource adequacy, both existing and new power generation capacity, storage and DR (see recitals (37) and (135) of the present decision, as well as recitals (469) to (487) of the initial decision).
- (198) Point 344 CEEAG provides that limitations on participation in security of supply measures that aim to ensure those measures do not undermine environmental protection are deemed appropriate. Point 345 CEEAG further specifies that Member States are encouraged to introduce additional criteria or features in their security of supply measures to promote the participation of greener technologies (or reduce the participation of polluting technologies) necessary to support the delivery of the Union's environmental protection objectives. Such additional criteria or features must be objective, transparent and non-discriminatory in relation to clearly identified environmental protection objectives and must not result in the overcompensation of beneficiaries.
- (199) The Commission observes that Belgium introduced more stringent CO<sub>2</sub> emission limits applicable from the 2022 Y-4 auction, reducing the participation of polluting technologies. The new CO<sub>2</sub> emission limits will apply to all generation technologies (see recital (59)). Lower CO<sub>2</sub> emission limits are a non-

discriminatory way to exclude the most polluting generation technologies from the CRM, thus reducing their CO<sub>2</sub> emissions. As submitted by Belgium, the lower CO<sub>2</sub> emission limits have an indirect effect on the economic viability of the most polluting capacities and accelerate their phase-out. As a result, the CRM respects technological neutrality, while contributing to the decarbonisation objective. Belgium also confirms that the more stringent CO<sub>2</sub> emission limits will not increase CO<sub>2</sub> emissions over the lifetime of the CRM (compared with using the CO<sub>2</sub> emission requirements from Article 22(4) of the Electricity Regulation, see recital (60)). The Commission further notes that the CRM remuneration is obtained through a competitive bidding process, open to all technologies (that respect the CO<sub>2</sub> emission limits), and that the units participating in the CRM auctions have to fulfil certain pre-qualification requirements (as explained in section 2.5.3).

- (200) Therefore, the Commission concludes that the new CO<sub>2</sub> emission limits do not undermine environmental protection, do not result in overcompensation of the beneficiaries, and are thus in line with points 344 and 345 CEEAG.
- (201) Regarding compliance with point 346 CEEAG, which provides that, where technically feasible, measures for security of electricity supply must be open to direct cross-border participation of capacity providers located in another Member State, the Commission notes that Belgium confirms that all arrangements will be in place so that cross-border participation will be organised as from auction Y-1 in 2024 (see section 2.9 of the present decision). The Commission therefore concludes that the CRM is open to cross-border participation of capacity providers located in other Member States, in line with the requirement of point 346 CEEAG.
- (202) Therefore, the Commission considers that the eligibility criteria for the CRM are justified.

#### 3.2.2.6. Public consultation

- (203) Point 348 CEEAG requires Member States to consult publicly on the competition impacts and proportionality of the proposed measures, prior to the notification of the aid. As mentioned in, for instance, recitals (13), (69), (88) to (137), (156) and (162) of the initial decision, the Belgian CRM has been subject to several extensive public consultations. Market participants have also been consulted on the notified amendments (see recitals (59), (76), (78), (88) and (113)).

#### 3.2.2.7. The proportionality of the aid, including cumulation

- (204) Point 352 CEEAG provides that the Commission will take into account points 49, 50, 51, 52, 53, and 55, in addition to points 353, 354, 355, 356 and 357 CEEAG in its assessment of the proportionality of a security of supply measure. Moreover, as explained in point 17 CEEAG, points 56 and 57 CEEAG apply with respect to the assessment of cumulation of aid.

##### 3.2.2.7.1. Proportionality

- (205) Point 49 CEEAG states that when the aid amounts are determined through a competitive bidding process, the result of that process will provide a reliable estimate of the minimum aid required so that detailed assessments of the net extra

costs necessary for carrying out the investment will not be required. Point 49 CEEAG sets out the conditions under which aid allocated through a competitive bidding process can be considered proportionate<sup>(55)</sup>, while point 50 CEEAG explains that the selection criteria used for ranking bids should put the contribution to the main objectives of the measure in relation with the aid amount requested by the applicant.

- (206) The Commission notes that the aid under the CRM is allocated through a competitive bidding process that is open to all eligible participants (see section 2.5 and recital (491) of the initial decision). The access to longer-term contracts has been temporarily expanded to ensure wide participation (see section 2.6). There are no exceptions to the competitive bidding process. The selection criteria are defined *ex ante*, sufficiently in advance, in a transparent and non-discriminatory way (see section 2.5.3). The volume related to the bidding process is a binding constraint in that it can be expected that not all bidders will receive aid, the expected number of bidders is sufficient to ensure effective competition (see recitals (48) and (66)). The CRM also includes safeguards against undersubscription (see recital (67)). Finally, *ex post* adjustments to the bidding process outcome are avoided (see recital (49)). The CRM is therefore a market-wide, technology-neutral capacity mechanism, under which all eligible capacity providers compete in a single capacity auction to discover the lowest price at which the necessary capacity can be supplied.
- (207) Moreover, under the CRM, as described in recital (132) of the initial decision, bids are selected based primarily on the price criterion (as aid per unit of available capacity) in line with point 50 CEEAG. As explained in recital (133) of the initial decision and recital (71) of the present decision, only when more auction equilibria are possible, additional (sustainability) criteria will come in to define the outcome of the auction.
- (208) As mentioned in section 2.7.1, Belgium amended the setting of the strike price, so that the indexation mechanism of the strike price is adapted dynamically to capture recent market trends during the delivery period (see recitals (86) to (88)), as well as the indexation mechanism of the maximum price and intermediate price cap (see recital (90)). Since these amendments intend to better reflect and take account of future market trends (while staying technology neutral) as well as able to capture windfall profits, the Commission considers that these amendments are proportionate.
- (209) Since the aid allocated through the CRM is based on a competitive bidding process, points 51, 52, 53 and 55 CEEAG do not apply.

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<sup>(55)</sup> Namely: a) The bidding process is open, clear, transparent and non-discriminatory, based on objective criteria, defined *ex ante* in accordance with the objective of the measure and minimising the risk of strategic bidding; b) The criteria are published sufficiently far in advance of the deadline for submitting applications to enable effective competition; c) The budget or volume related to the bidding process is a binding constraint in that it can be expected that not all bidders will receive aid, the expected number of bidders is sufficient to ensure effective competition, and the design of undersubscribed bidding processes during the implementation of a scheme is corrected to restore effective competition in the subsequent bidding processes or, failing that, as soon as appropriate; and d) *Ex post* adjustments to the bidding process outcome are avoided as they may undermine the efficiency of the process's outcome.

- (210) According to point 353 CEEAG, demand in security of supply measures should be set based on the reliability standard or cost benefit analysis referred to in point 331, and based on the analysis under points 332, 333 and 334 of the resources needed to ensure an adequate level of security of supply. The analysis used to set the level of demand must be at most 12 months old at the point in time when the demand level is set.
- (211) As stated in recitals (53) and (54), the volume to be procured under the CRM is determined according to the procedure described in section 1.5.2 of the initial decision. Belgium confirmed that the analysis used to set the volume for every delivery period will be no older than 12 months at the point in time when the volume is set.
- (212) As provided by point 354 CEEAG, the lead-time between the granting of the aid and the deadline by when projects must be delivered should allow effective competition between the various eligible projects.
- (213) As explained in recital (483) of the initial decision, the split of the auctions into two periods (Y-4 and Y-1) allows all technologies, with a longer or a shorter lead time, to participate in the CRM. In addition, according to Belgium, the general purpose of organising Y-4 auctions is to allow for the development of technologies that typically have a lead time longer than 1 year. Finally, temporarily allowing costs incurred up to one year before the Y-1 auction to be considered to define the contract duration further opens the auctions to diverse technologies (such as storage, see recital (75)).
- (214) Point 355 CEEAG does not apply since the aid allocation and determination of the aid level occurs through a competitive bidding process (see section 2.5 for more details on the CRM auctions).
- (215) According to point 356 CEEAG, the beneficiaries of security of supply measures should have efficient incentives to contribute to security of supply during the delivery period. These incentives should in general be related to the VOLL.
- (216) As explained in recitals (182) to (186) of the initial decision and in recital (92) of the present decision, the CRM provides strong incentives for capacity providers to be available at times of expected system stress. In particular, the payback obligation (which indirectly relates to electricity imbalance settlement prices) and unavailability penalties mean that, where a beneficiary is not available, they would face significant negative payments (up to their yearly contract value).
- (217) The Commission therefore considers that the payback and unavailability penalty systems safeguard against unavailability during the delivery period and provide efficient incentives to ensure availability and hereby contribute to security of supply during the delivery period, as required under point 356 CEEAG.
- (218) Point 357 CEEAG does not apply to the CRM, because the CRM does not use competitive certificates/supplier obligations.
- (219) The Commission therefore considers that aid granted under the CRM is proportionate.

#### 3.2.2.7.2. Cumulation

- (220) Point 56 CEEAG explains that when aid under one measure is cumulated with aid under other measures, Member States must specify the method used to ensure that the total amount of aid for a project or an activity does not lead to overcompensation or exceed the maximum aid amount allowed under the CEEAG.
- (221) Under the CRM, capacity that already benefits from operating aid is excluded from the pre-qualification phase, so that cumulation with other operating aid is not possible. Capacities that benefit from such aid can participate in the pre-qualification phase under the condition that they renounce to the previously granted operating aid in case they are awarded with a capacity mechanism contract (see recital (205) of the initial decision and recital (110) of the present decision).
- (222) Therefore, the Commission considers that the CRM complies with point 56 CEEAG.

#### 3.2.2.8. Transparency of the aid

- (223) The Commission notes that Belgium will ensure compliance with the transparency requirements laid down in points 58 to 61 CEEAG. The relevant data of the measure will be published on a national website that will link to the Commission's transparency register (see recital (112)).

#### 3.2.2.9. Avoidance of undue negative effects of the aid on competition and trade

- (224) The Commission will assess whether and how the aid granted under the CRM avoids undue negative effects on competition and trade, and weigh up the positive effects of the CRM against its negative effects on competition and trade in light of points 70 and 359 to 370 CEEAG.
- (225) Point 70 CEEAG explains that the Commission will approve measures under the CEEAG for a maximum period of 10 years. As stated in recital (108), Belgium requests an approval of the measure for a period of 10 years, therefore the requirement in point 70 CEEAG is respected.
- (226) Point 359 CEEAG requires that the aid must be designed to maintain the efficient functioning of markets and preserve efficient operating incentives and price signals. Furthermore, point 360 CEEAG explains that incentives must not be provided for generation of energy that would displace less polluting forms of energy. Point 361 CEEAG clarifies that the requirements in points 359 and 360 CEEAG will generally be met when a measure pays for capacity (EUR per megawatt (MW)) rather than for electricity output (EUR/MWh). Where there is a payment per MWh, additional attention is needed to ensure adverse market effects are avoided, and less polluting generation sources are not displaced.
- (227) According to points 359 and 360 CEEAG, the aid must be designed to maintain the efficient functioning of markets and preserve efficient operating incentives and price signals and incentives must not be provided for generation of energy that would displace less polluting forms of energy.



- (228) As stated in point 361 CEEAG, the requirements in points 359 and 360 will generally be met when a measure pays for capacity (EUR per megawatt (MW)) rather than for electricity output (EUR/MWh).
- (229) Under the existing aid scheme, the most cost-efficient capacity holders are awarded a capacity remuneration based on the level of capacity that is kept available (expressed in EUR/MW/year) during the delivery period and is independent from the volume of electricity that is actually produced (expressed in MWh). Therefore, the aid does not increase in function of the production levels and sale of electricity (in MWh) and the CRM thus does not incentivise the capacity providers to generate electricity at suboptimal levels.
- (230) In line with point 362 CEEAG, the CRM must meet any applicable design conditions in Article 22 of the Electricity regulation. As described in recitals (385) to (410) of the initial decision and recitals (150) to (166) of the present decision, the CRM meets these design conditions.
- (231) Points 363 and 364 CEEAG do not apply to the CRM, because the CRM does not amount to a strategic reserve or to a network congestion measure.
- (232) For compliance with points 365 and 366 CEEAG, the Commission follows the same assessment as in recitals (404) to (406) and (523) to (528) of the initial decision. Furthermore, the Commission considers that the competitive bidding process (see section 2.5) will ensure that the price paid for availability automatically tends to zero when the level of capacity supplied is expected to be adequate to meet the level of capacity demanded.
- (233) In addition, regarding the assessment of the secondary market in recital (406) of the initial decision, the secondary market to provide the capacity providers with a mechanism to improve their risk management under the CRM, went live in the first half of 2023 (see recital (94)).
- (234) According to point 367 CEEAG, to avoid undermining incentives for DR and exacerbating the market failures that lead to the need for security of supply measures, and to ensure the security of supply intervention is as limited in size as possible, the costs of a security of supply measure should be borne by the market participants who contribute to the need for the measure.
- (235) The Commission observes that the new financing system of the CRM is based on excise duties on electricity. While the Electricity Act allows the CRM to be funded from revenues collected through other excise duties or even corporate taxes, Belgium clarified that no alternative funding will cover the costs of the CRM and that the cost of the CRM is far below the expected revenues from the excise duties on electricity. These excise duties should thus be sufficient to cover the cost of the CRM. Therefore, the cost of the CRM is borne by electricity consumers.
- (236) As mentioned in recital (107), due to technical limitations related to electricity meters, consumers currently finance the CRM based on their total electricity consumption. To further finetune the CRM funding mechanism, Belgium commits to review it for all consumers by 2030 at the latest, when the majority of

consumers should have a smart meter to better measure their contribution to the need for the CRM <sup>(56)</sup>. Therefore, the CRM complies with point 367 CEEAG.

- (237) Regarding compliance of the CRM with points 368 and 369 CEEAG, the Commission observes that under the existing aid scheme, new installations fired with fossil fuel applying for 15-year contracts were subject to the sustainability commitments specified in recital (109) of the initial decision. As notified by Belgium, all new multi-year contracts will be subject to these sustainability commitments, including an interim target for 2030 and requirement for carbon neutrality (or negative CO<sub>2</sub> emissions) by 2050.
- (238) In addition, the new CO<sub>2</sub> emission limits applicable from the upcoming Y-4 auction reduce CO<sub>2</sub> emissions, therefore contributing to achieving the Union's 2030 climate target and 2050 climate neutrality target.
- (239) As to compliance of the CRM with point 370 CEEAG, the Commission follows the same reasoning as in recital (529) of the initial decision. In particular, the Commission acknowledges that several CRM design aspects are intended to prevent the abuse of market power, and that the CRM is open to new capacity and provides long-term contracts to avoid unduly strengthening existing dominance.
- (240) The Commission therefore considers that aid granted under the CRM avoids undue negative effects on competition and trade.

### 3.2.3. *Weighing up the positive and negative effects of the aid*

- (241) According to Section 3.3 CEEAG, the Commission will assess whether on balance the positive effects outweigh the negative impacts on the internal market. Points 71 to 76 CEEAG give guidance on how the Commission will balance the identified negative effects on competition and trading conditions of the measure with the positive effects of the planned aid on the supported economic activities, including its contribution to environmental protection and objectives of energy policy.
- (242) On the positive side of the balance, as indicated in recital (131), the Commission considers that the measure contributes to the development of certain economic activities, primarily in the electricity sector by providing aid to electricity capacity providers to ensure security of supply, and, secondly, by benefiting also several economic activities that rely on electricity as an input. In this regard, ensuring security of energy supply is one of the aims of the Union's energy policy, pursuant to Article 194 TFEU.
- (243) Furthermore, the Commission notes that only units that fulfil the CO<sub>2</sub> emission limits as mentioned in recital (59), which are stricter than the emission limits laid down for capacity mechanisms in Article 22(4) of the Electricity Regulation, can participate in the measure. In addition, Belgium strengthened the sustainability clause, as mentioned in recitals (62) and (63), made it applicable to all long-term contracts and included a commitment to require an additional interim target for

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<sup>(56)</sup> Based on Belgium's implementation plan. For the avoidance of doubt, such potential future amendments are not covered by the present decision.

2030. It can thus be concluded that the measure contributes to environmental protection.

- (244) On the negative side of the balance, support to the beneficiaries of the measure may distort competition and trade in the electricity market, including between undertakings receiving the support and their competitors in the same sector, and support may be granted to fossil fuels (when selected in the auctions).
- (245) The Commission notes that the measure is open to all power generation plants, storage and DR units (see recital (37)), as well as to cross-border capacity (see section 2.9). The aid is granted through a competitive bidding procedure (see section 2.5.1) and the design of the CRM comprises several measures that are specifically intended to prevent the abuse of market power (see recital (239)).
- (246) The Commission also notes that the measure contributes to addressing a number of well-defined market failures (see section 2.3.3) in an appropriate and proportionate way (see section 3.2.2.7.1). Regarding the potential to involve support of fossil fuels, the Commission notes that through the sustainability clause, natural gas or other fossil fuel plants (that comply nevertheless with the CO<sub>2</sub> emission limits) will have to prove how they will lead to zero net-emissions by 2050, hereby limiting the lock-in effect.
- (247) Finally, the Commission notes that all other compatibility conditions set out in Section 3 CEEAG, as well as the specific compatibility criteria for aid for the security of supply in Section 4.8 CEEAG are met, and that the aid measure is subject to an *ex post* evaluation and monitoring (see section 2.14). Moreover, undue negative effects on competition and trade are avoided (see section 3.2.2.9).
- (248) The Commission therefore concludes that the positive effects of the measure outweigh the negative effects on the internal market.

#### 3.2.4. *Companies in difficulty and under recovery order*

- (249) As explained in recital (45), the Commission notes that aid will not be granted to undertakings in difficulty as defined by the Commission Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, since the offers submitted by those entities will be rejected.
- (250) Moreover, Belgium committed to suspend the award and/or payment of any aid under the existing aid scheme to an undertaking that is subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market (see recital (45)).
- (251) The Commission therefore concludes that the measure complies with points 14 and 15 CEEAG.

#### 3.2.5. *Evaluation*

- (252) According to point 456 CEEAG, *ex post* evaluation will be required for schemes when the State aid budget or accounted expenditures exceed EUR 150 million in any given year or EUR 750 million over the total duration of the scheme.

- (253) As mentioned in recital (100), the expenditures related to the financing of the CRM amount to approximately EUR 245 million per year and to approximately EUR 3.91 billion (both amounts are expressed in nominal value) over the 10-year duration of the CRM. Therefore, an *ex post* evaluation of the scheme is required.
- (254) As explained in section 2.14, Belgium commits to carry out the *ex post* evaluation of the CRM, respecting the requirements for such *ex post* evaluation as detailed in points 458 to 463 CEEAG.
- (255) As mentioned in recital (114), Belgium notified a draft evaluation plan in accordance with the common methodological principles provided by the Commission, to be carried out by an independent expert.
- (256) In line with the requirement of point 458 CEEAG, the *ex post* evaluation will assess the direct and indirect effects of the measure, the necessity and proportionality of the CRM, as well as certain specific design elements (see recital (115)).
- (257) The Commission also notes that Belgium plans to submit the final evaluation report at the latest by 30 June 2030, and that an interim evaluation report will be provided, which will update the Commission on the progress with data collection and the progress to apply the targeted methodologies (see recital (116)). No future similar scheme can be approved as long as the evaluation is not carried out, in sufficient quality, and its results taken fully into account in the design of any new scheme with a similar objective (see recital (117)).
- (258) The Commission therefore considers that the notified evaluation plan meets the requirements of point 76 and Chapter 5 CEEAG.

### 3.2.6. Conclusion on the compatibility of the notified measure

- (259) Belgium confirms that, apart from the notified amendments (described in section 2), all other amendments to the existing CRM are of purely formal or administrative nature which cannot affect the evaluation of the compatibility of the aid measure. Belgium also confirms that the other features of the CRM remain as described in the initial decision (see recital (11)).
- (260) The Commission concludes that the CRM continues to facilitate the development of an economic activity and does not adversely affect trading conditions to an extent contrary to the common interest. Therefore, the Commission considers that the notified amendments do not alter the Commission's conclusion on the compatibility of the existing aid scheme in the initial decision, and that the measure is compatible with the internal market based on Article 107(3), point (c), TFEU, as interpreted under the relevant provisions of the CEEAG.

## 4. CONCLUSION

The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3), point (c), TFEU.

Yours faithfully,

For the Commission

Didier REYNDERS  
Member of the Commission