



Brussels, 14.6.2022
C(2022) 3861 final

COMMISSION OPINION

of 14.6.2022

under Regulation (EU) No 2019/941, on risk-preparedness in the electricity sector and repealing Directive 2005/89/EC, on the Risk-preparedness Plan submitted by the Competent Authority of Spain to the European Commission.

Only the Spanish text is authentic

COMMISSION OPINION

of 14.6.2022

under Regulation (EU) No 2019/941, on risk-preparedness in the electricity sector and repealing Directive 2005/89/EC, on the Risk-preparedness Plan submitted by the Competent Authority of Spain to the European Commission.

Only the Spanish text is authentic

1. PROCEDURE

Article 10 of Regulation (EU) 2019/941 of the European Parliament and of the Council of 5 June 2019 on risk-preparedness in the electricity sector and repealing Directive 2005/89/EC¹ (the "Regulation") requires the Competent Authority of each Member State to establish a Risk-Preparedness Plan ("RPP"). In accordance with Article 10 (8) of the Regulation, the RPPs have to be updated every four years, unless circumstances require updates that are more frequent. The consultation between Competent Authorities and the Electricity Coordination Group provided for under Article 10(4) of the Regulation has to be carried out before the adoption of the RPP.

The RPP (as well as its updates) need to be based on the regional electricity crisis scenarios identified by ENTSO-E² pursuant to Article 6 of the Regulation as well as the national electricity crisis scenarios that each Competent Authority has to identify before the adoption of the RPP pursuant to Article 7 of the Regulation. The electricity crisis scenarios must be identified in relation to system adequacy, system security and fuel security and considering, among others, extreme natural hazards, accidental hazards and consequential hazards, including the consequences of malicious attacks.

The Competent Authority of Spain, the Ministry for the Ecological Transition and the Demographic Challenge ("MITECO"), did not notified its draft RPP to the Electricity Coordination Group for the purpose of the consultation required by Article 10(4) of the Regulation. MITECO notified to the Commission on 5 January 2022 its final RPP.

After having assessed the RPP, in view of the criteria mentioned in Article 11 of the Regulation and the templates provided for in the Annex to the Regulation, and having consulted the Electricity Coordination Group between on 7 January and 31 January 2022, the Commission has the following remarks on the RPP.

2. COMMISSION'S ASSESSMENT OF THE RISK-PREPAREDNESS PLAN

The RPP is quite comprehensive in the description of the national framework and measures. The RPP provides a clear list of measures applicable for each scenario and some past events linked to the scenarios. The RPP describes in detail the agents involved, including the agent detecting the situation at national level for each scenario, and includes specific references to civil protection, critical infrastructure protection and cyber response.

¹ OJ L 158, 14.6.2019, p. 1–21.

² European Network of Transmission System Operators for Electricity.

Nevertheless, the Commission considers that some elements of the RPP do not fully comply with the requirements of the Regulation.

2.1 Risk-Preparedness Plan (RPP)

2.1.1. Missing information on the electricity crisis scenarios

Pursuant to Article 7 of the Regulation, each competent authority has to identify the most relevant national electricity crisis scenarios on the basis of at least certain risks (rare and extreme natural hazards, accidental hazards and consequential hazards, including malicious attacks and fuel shortages). These scenarios have to be consistent with the regional electricity crisis scenarios identified by ENTSO-E pursuant to Article 6 of the Regulation. The national and regional electricity crisis scenarios are the basis on which the Competent Authority has to establish the RPP in accordance with Article 10(1) of the Regulation, and the RPP must include a summary of the electricity crisis scenarios defined for the Member State and the region, in accordance with Article 11(1)(a) of the Regulation and point 1 of the Annex thereto.

The RPP submitted by MITECO includes in section 1.1 the description of the regional electricity crisis scenarios identified by ENTSO-E and the list of national electricity crisis scenarios identified for Spain. A short description of the national electricity crisis scenarios is provided under section 4. However, these descriptions are of very general nature. It is not possible to conclude from these descriptions what the concrete scenarios simulated for Spain are. For example, for the scenario named ‘Cyberattack to critical control, protection and/or telecommunications equipment’, there are no details on the concrete simulations according to the type of cyberattack (e.g. denial of service, illegal access attempts or manipulation of the information used by the control systems), nor quantifications of the impact of the risk scenario (references are limited to possibilities without describing specific impacts, e.g. “Ultimately, this would lead to problems in the operation of the system”). Moreover, some of the scenarios considered with possible cross-border impact are not assessed (e.g. supply problems of natural gas).

The Commission considers that the RPP submitted by MITECO needs to be amended to further describe the national scenarios considered. This information on the national scenarios is necessary to assess the completeness and effectiveness of the preventive and mitigating measures contained in the RPP. Moreover, this information is also relevant for other Member States, notably within the same region, to understand the potential impacts and shared challenges that a number of these scenarios may pose.

The Commission also considers that a refined assessment of the crisis scenarios is particularly necessary following the dramatic changes in the EU security situation as a result of the invasion of Ukraine by Russia. Consequently, the Commission takes the view that the RPP submitted by MITECO needs to be updated in the light of these circumstances, including geopolitical risks, dependence on fuels and on other supply chains from third countries (including fuel-switching possibilities) and spill over effects from other sectors into electricity (e.g. increase in electricity demand for heating purposes in the absence of other fuels). The Commission reminds MITECO that Article 10(8) of the Regulation already requires updating the RPP more frequently than every 4 years where circumstances so warrant.

The Commission recommends that the description of the scenarios includes:

- A clear link between the national and regional scenarios, including the assumptions for its selection and/or rejection.
- A description of the scope, including the national and regional characterization of the hazard.
- The characterization of the selected scenario, including the cross-sector and cross-border interdependencies, initial condition of the system prior to the initiating event, assets exposure and vulnerabilities (based on damage curves if available), and the time-horizon and assumptions applied.
- Account and timeline of events, including the description of initiating events and chain of events. The description should include the coping mechanisms and characterization of the response, including the applicable procedures and measures at national and regional level.
- Impacts on the electricity system and assets, including electricity flows and consequences. The assessment should include a quantitative analysis in terms of EENS³/LOLE⁴ estimates and/or other quantitative values, as well as possible spill over effects to other sectors, e.g. to the gas sector.
- Specifically for scenarios on cyber-risks, a reference to a framework with minimum and advanced cybersecurity requirements, procedures to follow in case of an incident, a description of the roles and interactions between the competent authority and the cyber-specific actors, such as CSIRT⁵, CERT⁶ and cyber-specific authorities, including during a crisis, and the links with cyber specific legislation.
- Plans to reduce the nuclear supply dependency from third countries.
- Climate change considerations, such as climate vulnerability and risks, including with a view to design preventive measures against the climate risks identified with a view to reducing exposure and vulnerability to the risks.

2.1.2. Missing information on regional and bilateral measures for cooperation and assistance among Member States

Pursuant to Article 15 of the Regulation, Member States have to cooperate in a spirit of solidarity in order to prevent or manage crises. Where they have the technical ability, Member States have to offer each other assistance by means of regional measures (with Member States within their region) and bilateral measures (with Member States to which they are directly connected but do not belong to the same region). Such regional and bilateral measures must be described in the RPP in accordance with Articles 12 and 15 of the Regulation and point 3(2)(b) of the Annex thereto, as well as the national measures necessary to implement them pursuant Article 11(1)(j) of the Regulation.

³ Expected Energy Not-Served (EENS) as defined in Article 2(1)(e) of the methodology for identifying regional electricity crisis scenarios established in accordance with Article 5 of the Regulation.

⁴ Loss of Load Expectation (LOLE) as defined in Article 2(1)(g) of the methodology for identifying regional electricity crisis scenarios established in accordance with Article 5 of the Regulation.

⁵ Computer Security Incident Response Team

⁶ Computer Emergency Response Team

The RPP submitted by MITECO includes a list of actions between system operators at regional level. However, there is no reference to concrete regional and bilateral measures agreed with the Member States that have the technical ability to provide each other assistance in accordance with Article 15.

The Commission considers that the Spanish RPP has to be amended to include the regional and bilateral measures required by the Regulation, including any necessary technical, legal and financial arrangements, as well as the national measures necessary to implement them.

2.1.3. Missing definition of electricity crisis

Article 2(9) of the Regulation defines an electricity crisis as a present or imminent situation in which there is a significant electricity shortage, as determined by the Member States and described in their RPPs, or in which it is impossible to supply electricity to consumers.

The Spanish RPP mentions the definition from Article 2 of the Regulation, but it does not contain a definition of national electricity crisis. The RPP also includes a section on triggering events, but the information contained therein is not sufficient to define an electricity crisis.

The Commission considers that the RPP submitted by MITECO needs to be amended to include a definition of electricity crisis as required by the Regulation.

2.1.4. Missing information on some national procedures and measures

Pursuant to Article 11(1)(e) of the Regulation and point 3(1)(a) of the Annex thereto, the RPP has to establish detailed procedures to be followed in electricity crises, including the corresponding schemes on information flows. Moreover, according to Article 11(1)(g) of the Regulation as well as point 3(1)(c) of the Annex thereto, the RPP has to identify possible non-market measures to be implemented in electricity crises, specifying the triggers, conditions and procedures for their implementation, and indicating how they comply with the requirements laid down in Article 16 on the compliance with market rules as well as with regional and bilateral measures.

The Spanish RPP describes the actors involved in each scenario. However, the RPP does not describe procedures and corresponding schemes on information flows to be followed in the cases of an electricity crisis. Furthermore, the Spanish RPP includes a list of actions at national level to be adopted during a crisis for each scenario. Nevertheless, for the non-market-based measures, the plan does not specify the triggers, conditions and procedures for their implementation, and how they comply with the requirements laid down in Article 16 of the Regulation and with the regional and bilateral measures adopted under Article 12 of the Regulation.

The Commission considers that the RPP submitted by MITECO has to be amended to include further information on the above-mentioned measures, including on procedures and corresponding information flows, triggers and conditions for their application.

2.1.5. Missing information on the national crisis coordinator

Article 11(1)(d) of the Regulation as well as point 4 of the Annex thereto, set up that the RPP shall designate a national crisis coordinator, establish its tasks and specify its contact details.

The Spanish RPP does not identify a national crisis coordinator.

The Commission considers that the RPP submitted by MITECO needs to be updated to define the role of the crisis coordinator.

2.1.6. Missing information on stakeholder consultation

Pursuant to Article 10(1) of the Regulation as well as point 5 of the Annex thereto, the RPP shall describe the mechanism used and the results of the consultations carried out for the development of this plan. Accordingly, the following parties have to be consulted: distribution system operators considered relevant by the competent authority, the transmission system operators (TSOs), the relevant producers or their trade bodies, the electricity and natural gas undertakings, the relevant organisations that represent the interests of industrial and non-industrial electricity customers, and the regulatory authority where it is not the competent authority.

The Spanish RPP does not include the consultations with the above-mentioned stakeholders.

The Commission takes the view that the RPP submitted by MITECO needs to be amended to include the consultations with all the above-mentioned stakeholders, describing the mechanism used for the consultation and the results of the consultations carried out.

2.1.7. Other missing items

The Regulation also requires that:

- The RPP describes the mechanisms used to inform the public about electricity crises, pursuant to Article 11(1)(i) of the Regulation as well as point 3(1)(e) of the Annex thereto.
- The RPP includes information on the future grid that will help to cope with the electricity crisis scenarios pursuant to Article 11(1)(k) of the Regulation.
- The competent authorities test periodically the effectiveness of the procedures developed in the RPPs for preventing electricity crises, with the involvement of relevant stakeholders and including the mechanisms to share information and cooperate, and carry out biennial simulations of electricity crises, pursuant to Article 12(3) of the Regulation as well as point 6 of the Annex thereto.
- The RPP describes the region to which the Member State belongs (Annex to the Regulation) and which serves as a basis, among others, for the cooperation and assistance among Member States. Such region is defined by Article 2(16) of the Regulation as a group of Member States whose TSOs share the same regional

coordination centre and, until such centres are established⁷, regions refer either to a Member State or to a group of Member States located in the same synchronous area, pursuant to Article 22 of the Regulation.

The Spanish RPP does not include the above-mentioned information. It does not contain information on the mechanisms to inform the public about electricity crises, the future grid developments that will help to cope with the electricity crisis scenarios, or the region to which Spain belongs. The RPP submitted by MITECO does not contain any information either on real time response simulations of electricity crisis or biennial simulations of electricity crises.

The Commission takes the view that the RPP submitted by MITECO has to be amended to include the missing information indicated above. Moreover, and given the current exceptional circumstances, the Commission recommends that MITECO accelerates any calendar for the mandatory tests on the effectiveness of the procedures developed in its RPP. These tests should be carried as soon as possible and with a focus on winter 2022-2023. They should cover regional and national measures and communication and coordination protocols, in cooperation with neighbouring countries within the region. These tests should help improve the existing measures and the mechanisms for cooperation and communication, and identify additional national and regional measures (the latter preferably jointly with regional partners).

2.2 Other comments

Apart from the substantive remarks presented above, the Commission would like to draw the attention of MITECO, to some other elements of the submitted RPP, which do not raise legal concerns in terms of their compatibility with the elements mentioned in Article 13(2)(a) to (f) of the Regulation, but which may provide useful guidance to the Competent Authority for future amendments of the RPP.

- The Spanish RPP does not contain information about electricity users entitled to receive special protection against disconnection. To improve clarity, the RPP should confirm whether such category of electricity users entitled to receive special protection against disconnection exists in Spain. Should this category exist, the Commission reminds MITECO that the RPP needs to specify such users pursuant to Article 11(1)(h) of the Regulation as well as point 3(1)(d) of the Annex thereto and the RPP would then need to be amended.
- Spain is directly interconnected with third countries within the relevant synchronous area. The Spanish RPP should describe the mechanisms in place for cooperation and coordination, before and during the electricity crisis, with other Member States outside of the region as well as with third countries within the relevant synchronous area.
- The Commission welcomes the specific assessment of likelihood, cross-border impact, EENS and LOLE for the electricity crisis scenarios. Nevertheless, the Spanish RPP should extend this assessment to all scenarios (i.e. including scenario E3b).

⁷ Pursuant to Article 35 of Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity, OJ L 158, 14.6.2019, p. 54–124.

- In order to improve clarity, the Spanish RPP should confirm that the RPP is also applicable to the non-peninsular systems. The Commission reminds MITECO that in case a different regime applied to the non-peninsular systems, it would have to be described in the RPP and, consequently, the RPP would have to be amended.
- The Spanish RPP should follow the template provided in the Annex of the Regulation with all the relevant elements translated into English (e.g. translate the national crisis scenarios for Spain identified on section 1.1).
- While the RPP does not refer to preventive or mitigating measures that could have an impact on greenhouse gas (GHG) emissions (e.g. back-up fossil fuel generation or the deployment of additional fossil fuel capacity), the Commission reminds MITECO that such measures should be listed in the RPP if they existed. In such case, the Commission also recommends that the risk/impact on GHG emissions is quantified and assessed to determine the alignment of the RPP with the climate neutrality goal.

3. CONCLUSION

Based on the above assessment, and in view of Article 13(2)(c) of the Regulation, the Commission concludes that some elements of the RPP submitted by MITECO do not comply with certain provisions of this Regulation.

The Commission requests MITECO to amend the RPP taking duly into consideration all the concerns expressed by the Commission in the present opinion and notify the amended RPP to the Commission within three months of receipt of this opinion, pursuant to Article 13(3) of the Regulation. In view of the circumstances following Russia's invasion of Ukraine, the Commission recommends to prioritise the focused update of the RPP described in section 2.1.1, the test on the effectiveness of the procedures developed in the RPP referred to in section 2.1.7, the missing information on regional and bilateral measures for cooperation and assistance among Member States described in section 2.1.2 and the detailed description of national electricity crisis scenarios described in section 2.1.1.

The Commission's assessment expressed in this opinion is without prejudice to any position it may take *vis-à-vis* Spain as regards the compatibility of national measures with EU law, including in the context of infringement proceedings and the enforcement of European Union competition rules, including State aid rules.

The Commission will publish this opinion. The Commission does not consider the information contained herein to be confidential, in particular as it relates to the RPP which is publicly available. MITECO is invited to inform the Commission within five working days following receipt of the opinion whether it considers that it contains commercially sensitive information, the confidentiality of which is to be preserved.

Done at Brussels, 14.6.2022

For the Commission
Kadri SIMSON
Member of the Commission