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COMMISSION OPINION

of 19.10.2022

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 Portugal to the European Commission.

Only the Portuguese text is authentic

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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 Portugal, Directorate-General for Energy and Geology ("DGEG"), notified its draft RPP to the Electricity Coordination Group for the purpose of the consultation required by Article 10(4) of the Regulation on 13 May 2021. DGEG notified to the Commission on 4 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 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 identification and description of electricity crisis scenarios. The RPP clearly specifies the declaration and cessation of a crisis, responsibilities and information flows, including specific references to civil protection, critical infrastructure

¹ OJ L 158, 14.6.2019, p. 1–21.

² European Network of Transmission System Operators for Electricity.

and cyber response. The RPP is quite comprehensive in the definition of procedures and measures, including a general approach and a specific approach for each scenario, preventive and crisis management measures and a clear description of non-market measures.

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 DGEG includes a table in section 1.1 with the national electricity crisis scenarios identified for Portugal and a short description of each scenario. However, these descriptions are of very general nature. It is not possible to conclude from these descriptions what the concrete scenarios simulated for Portugal are. For example, for the scenario named ‘Prolonged international failure of gas supply’, there are no details on the concrete simulations, quantifications of the impact of the risk scenario (references are limited to possibilities without describing specific impacts, e.g. power plants that rely on natural gas may have limited available capacity to the system, without explaining to what extent or which plants) or possible mitigating measures (e.g. use of gas storages for electricity generation).

The Commission considers that the RPP submitted by DGEG 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 DGEG 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 DGEG 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.
- Climate change and environment considerations, such as climate vulnerability and risks and environmental impacts, including with a view to design preventive measures against the climate and environmental risks identified in order to reduce exposure and vulnerability to the risks. This would include an assessment of the reduction or increase of GHG emissions and the environmental impacts resulting from prevention and mitigation measures included in the RPP.

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

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

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.

The RPP submitted by DGEG includes a list of actions to be taken by transmission 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 of the Regulation.

The Commission considers that the Portuguese 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. Other missing elements

The Regulation also requires that:

- Member States consult a certain number of relevant stakeholders before they establish their RPP pursuant to Article 10(1) of the Regulation. The RPP must describe the mechanism used and the results of the consultations carried out for the development of the RPP, in accordance with point 5 of the Annex to 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 Portuguese RPP describes the consultations with the stakeholders. However, the RPP does not describe the mechanism used for the consultation or the results of the consultations carried out. The RPP submitted by DGEG does not specify a calendar for the biennial real time response simulations of electricity crisis either.

The Commission takes the view that the RPP submitted by DGEG has to be amended to include the missing information indicated above. Moreover, and given the current exceptional circumstances, the Commission recommends that DGEG 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 the DGEG, 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 RPP submitted by DGEG refers to a list of significant grid users and high priority significant grid users and to vulnerable and protected customers, but there is no mention to categories of electricity users entitled to receive special protection against disconnection as referred to in Article 11(1)(h) of the Regulation. To improve clarity, the RPP should confirm whether such category of electricity users entitled to receive special protection against disconnection exists in Portugal. Should this category exist, the Commission reminds DGEG 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.
- 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 DGEG 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 DGEG do not comply with certain provisions of this Regulation.

The Commission requests DGEG to amend the RPP taking duly into all consideration 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 2.1.3, 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 urges DGEG to describe and assess the actions to reduce gas consumption in the power sector, as called upon in the Communication "Save gas for a safe winter",⁷ while ensuring security of electricity supply. Furthermore, the Commission urges Portugal to take into consideration the Council Recommendation, proposed by the European Commission on 18 October 2022, on a coordinated approach to strengthen the resilience of critical infrastructure in the EU, and, in particular, the results of the stress tests of critical infrastructure foreseen therein.

The Commission's assessment expressed in this opinion is without prejudice to any position it may take *vis-à-vis* Portugal 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.

⁷ COM(2022) 360 final

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. DGEG 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, 19.10.2022

*For the Commission
Kadri SIMSON
Member of the Commission*