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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 the Czech Republic to the European Commission.

(Only the Czech 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 the Czech Republic, the Ministry of Industry and Trade ("MPO"), notified its draft RPP to the Electricity Coordination Group for the purpose of the consultation required by Article 10(4) of the Regulation on 11 May 2021. MPO notified to the Commission on 3 January 2022 its final RPP.

After having assessed the RPP, in view of the criteria mentioned in Article 11 of the Regulation and the template 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 description of the national framework and measures, specifying roles for different actors, including the crisis coordinator, describing customers entitled to special protection and the procedures for the communication to the public in case

¹ OJ L 158, 14.6.2019, p. 1–21.

² European Network of Transmission System Operators for Electricity

of a crisis. The RPP also links preventive measures to a number of scenarios, including for cybersecurity and physical attacks, and announces ongoing projects to improve extreme weather conditions forecasting.

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

2.1. Amendments to the 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 MPO includes a table in section 3.2 with the national electricity crisis scenarios identified for the Czech Republic and a short description of each scenario, largely based on the regional electricity crisis scenarios identified by ENTSO-E. However, all these descriptions are of very general nature. It is not possible to conclude from these descriptions what the concrete scenarios simulated for the Czech Republic are. For example, for the scenario named ‘lack of fossil fuels, including natural gas’, there are no details on the concrete simulations per type of fuel (gas, nuclear, etc), nor quantifications of the impact of the risk scenario (references are limited to possibilities, e.g. possibility to have limited power reserves, possibility of import limitations).

The Commission considers that the RPP submitted by MPO needs to be amended to further describe all 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 MPO needs to be updated in the light of these circumstances, focusing on geopolitical risks, dependence on fuels (or fuel designs for nuclear generation) 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 MPO 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 and the justification of the selection;
- 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.
- Diversification plan for nuclear fuel supply, including timing of designing, licensing and use of fuel from alternative suppliers. The assessment should include qualitative analysis of potential alternative suppliers.
- 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 MPO refers to regional and bilateral cooperation among Transmission System Operators (TSOs) through System Operation Agreements concluded with neighbouring TSOs. The Plan also refers to an on-going collaboration at Ministry level between the Czech Republic and its neighbours, but there is no reference to concrete regional and bilateral measures agreed as a result of such collaboration or to the national measures necessary to implement the regional and bilateral ones.

The RPP also mentions that the information about the regional and bilateral agreements between the EU Member States is included in the international agreements concluded in accordance with the provisions of Article 15 of the Regulation. However, the measures should be at least described in the RPP in accordance with Articles 12 and 15 of the Regulation.

The Commission considers that the Czech 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 RPP, or in which it is impossible to supply electricity to consumers.

The RPP submitted by MPO does not contain a definition of electricity crisis. The RPP refers to the role of the TSO to declare the state of emergency as well as the role of the MPO to declare an electricity crisis and of the Government to declare a state of emergency at national level. However, there is no definition of what such state of emergency means nor the differences between the state of emergency declared by the TSO and the one declared by the government.

The Commission considers that the RPP submitted by MPO needs to be amended to include a definition of electricity crisis as required by the Regulation. The readability of the RPP would also improve if the differences between the states of emergency declared by different parties were explained.

2.1.4. Missing information on some national procedures and measures

Article 11(1)(c) of the Regulation as well as point 3(1)(b) of the Annex thereto require competent authorities to describe in the RPP the national measures designed to prevent or prepare for the risks identified in the national and regional electricity crisis scenarios. 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 and 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 RPP submitted by MPO describes under section 4, on the roles and responsibilities of the Competent Authority, some tasks to be carried out by the Energy Regulatory Office. These tasks include the decision, in urgent cases, on the imposition of the obligation to provide energy equipment necessary for the performance of the imposed obligation to supply power beyond the scope of the license, as well as the decision on easement. Another task is the decision on the imposition of the obligation to supply power beyond the scope of the license.

The RPP does not describe in detail these measures nor the triggers, conditions and procedures for its implementation.

The Czech RPP also refers, under section 6.10.1 on additional measures at national level within state competence, to the ‘*provision of state material reserves with a focus on alternative energy sources*’. Nevertheless, this is not detailed further in the RPP. This measure appears to go beyond the emergency supplies of grid components described in section 6.4 on scenario-specific preventive and preparatory measures, as these also seem to be under the TSO’s control. It is unclear whether this measure is linked to the measures described under section 6.2 on the Basic procedures in the electricity crisis, notably the one on ensuring the supply of electricity to consumers according to the determined shedding level from their back-up sources.

The Commission considers that the MPO has to be amended to include further information on the above mentioned measures, including on triggers, conditions and procedures for their application.

2.1.5. *Other missing items*

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.
- Competent authorities test periodically the effectiveness of the procedures developed in the RPPs for preventing electricity crises, including the mechanisms to share information and cooperate, carry out biennial simulations of electricity crises and include in the RPP a calendar for the biennial regional (and if applicable also national) real time response simulations of electricity crisis, procedures agreed and actors involved. (Articles 12(1)(d) and (3) of the Regulation and point 6 of the Annex thereto).
- The RPP includes information on related and necessary plans for developing the future grid that will help to cope with the consequences of electricity crisis scenarios, pursuant to Article 11(1)(k) of the Regulation.

The RPP notified by MPO does not include detailed information on the above-mentioned points. On the consultation with stakeholders, the RPP refers to a consultation with ‘relevant entities’ on the national electricity crisis scenarios and describes the mechanism established for the consultation of stakeholders when developing the RPP. However, none of these sections indicates who these relevant entities or stakeholders are nor the results of the consultations carried out.

The RPP submitted by MPO indicates that upon request by the Competent Authority, all subjects involved have to prepare a common testing scenario(s), including verification and timetable. Such framework has to be agreed and approved by the Competent Authority no later than 31 December 2021, according to the RPP. However, the RPP does not include any calendar for such testing scenario(s) nor describes the concrete procedures agreed or actors involved.

On grid developments, the RPP submitted by MPO refers only to the tasks of the TSO and the Distribution System Operator (DSO) to maintain and develop the transmission and

distribution network, but it does not refer to plans to develop the future grid nor indicates why this would not be relevant.

The Commission takes the view that the RPP submitted by MPO has to be amended to include the missing information indicated above. Moreover, and given the current exceptional circumstances, the Commission recommends that MPO 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 MPO, 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.

- Section 4 on roles and responsibilities of the Competent Authority refers to the possibility of the Competent authority to delegate operational tasks to other entities in the Czech Republic. To complete the RPP, MPO could confirm in the RPP whether any such tasks have been delegated, and to whom, or not.
- In section 6.8.2 of the RPP, on customers with special protection against curtailment and disconnection, the RPP describes seven levels of load shedding. Customers with special protection are exempted from levels 2-7 and subject only to level 1. The RPP should clarify if such level entails some power reduction or a disconnection. Also, following the Commission Recommendation (EU) 2020/775⁷, it would be desirable to describe the technical characteristic of these consumers, such as estimated consumption or if they have business continuity arrangements in place to maintain adequate supply services in the event of an electricity crisis.
- 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 MPO 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 MPO do not comply with certain provisions of this Regulation.

The Commission requests MPO 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

⁷ OJ L 184, 12.6.2020, p. 79–93

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 2.1.5, 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* the Czech Republic 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. MPO 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