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COMMISSION OPINION

of 3.11.2022

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 Belgium to the European Commission.

Only the French and Dutch 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 Belgium, Federal Minister of Energy ("FME"), notified its draft RPP to the Electricity Coordination Group for the purpose of the consultation required by Article 10(4) of the Regulation on 4 April 2022. FME notified to the Commission on 20 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 24 January and 15 February 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 description of roles and responsibilities, including information flows between institutions. The RPP is in many aspects detailed and comprehensive in the description of applicable regulations and measures, differentiating preventive, preparedness and emergency response measures, and including specific references to critical infrastructure,

¹ OJ L 158, 14.6.2019, p. 1–21.

² European Network of Transmission System Operators for Electricity.

cyber response and climate adaptation. The RPP provides a clear explanation of operational procedures, differentiating between electricity shortfall and sudden phenomena.

The Commission welcomes the efforts devoted to regional cooperation with neighbours, in particular under the Pentalateral Energy Forum³. Such cooperation appears among the most advanced ones in the EU in terms of risk preparedness. As a result of this work, the members of the Pentalateral Energy Forum have established a network of risk-preparedness experts from ministries, regulatory authorities and transmission system operators (TSOs), that have identified regional crisis scenarios complementary to those of ENTSO-E and have even developed together a common chapter for the RPP of all members. Moreover, the members have also signed a Memorandum of understanding ('MoU') that identifies and provides an umbrella for a number of regional measures. The Commission welcomes all this work but reminds Belgium that further work to deepen such cooperation is necessary in the light of the comments included in the sections below.

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 includes a description of the national electricity crisis scenarios under point 2.2, including its risk profile, impact, likelihood and cross-border impact. However, these descriptions are of general nature. It is not possible to conclude from these descriptions what the concrete scenarios simulated for Belgium are. For example, there are no details on the concrete simulations per type of fuel (gas, coal, etc) or impact of water scarcity and temperature rise, for the scenarios named 'Fossil fuel shortage' and 'Dry Period & Heatwave'. There are no quantifications either of the impact of the risk scenarios. References are limited to possibilities without describing specific impacts, e.g. the RPP states that Belgium relies fully on fuel import and that is strongly interconnected in order to allow imports of several fuel types, without providing further details.

The Commission considers that the RPP submitted by FME needs to be amended to further describe the national scenarios considered. This information on the national scenarios is

³ The members of the Pentalateral Energy Forum are Austria, Belgium, France, Germany, Luxembourg, The Netherlands and Switzerland.

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 FME needs to be updated in the light of these circumstances, focusing on 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 FME 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 EENS⁴/LOLE⁵ 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, include a reference to a framework including 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 CSIRT⁶, CERT⁷ and cyber-specific authorities (considering the link between sectorial response and national level and EU cyber response), and the links with cyber specific legislation.

⁴ 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.

⁵ 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.

⁶ Computer Security Incident Response Team.

⁷ Computer Emergency Response Team.

- Climate change considerations, such as climate vulnerability and risks, including with a view to design preventive measures against the climate risks identified 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.

The RPP submitted by FME describes the work of the Pentilateral Energy Forum leading to the signature on 1 December 2021 of a MoU on risk preparedness in the electricity sector. The MoU contains an agreed schedule for regional crisis simulations and identifies a number of measures to be studied in greater depth, such as possibilities for the cross-border use of reserve capacity, the provision of emergency equipment or possible ways to coordinate calls to reduce demand. However, these measures have not been agreed yet.

The Commission considers that the Belgian 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 Belgian RPP indicates that, while drawing up the plan, the need to set a clear-cut definition of a crisis in national legislation was highlighted and will be tackled in the revision of the relevant national legislation.

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

2.1.4. Other missing items

The Regulation also requires that:

- The RPP describes the agreed mechanisms for cooperation within the region and for ensuring appropriate coordination before and during the electricity crisis, including the decision-making procedures for appropriate reaction at regional level, pursuant to point 3(2)(a) of the Annex of the Regulation. The RPP describes the mechanisms in place for cooperation and for coordinating actions, 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 pursuant to point 3(2)(c) of the Annex of the Regulation.

- The RPP identifies 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, pursuant to Article 11(1)(g) of the Regulation as well as point 3(1)(c) of the Annex thereto.

The Belgian RPP mentions existing inter-TSO agreements for assistance, and briefly describe them as a defensive measure. Nevertheless, the RPP does not specify the TSOs participating in these inter-TSO agreements nor specifies the details of such agreements.

The RPP submitted by FME states under point 4.1.9.4 that the TSO may interrupt or modify interconnections with other networks within the control area. These measures are not described in detail and do not provide information on whether it affects cross-border interconnections and the compliance with Article 16 of the Regulation.

The Commission takes the view that the RPP submitted by FME has to be amended to include the missing information indicated above. Moreover, and given the current exceptional circumstances, the Commission recommends that FME 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 FME, 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 Belgian RPP states that the Pentilateral Energy Forum is the framework for regional cooperation in Central Western Europe, but it does not provide a clear definition of region. The definition of region for the purpose of implementing this Regulation should be clarified. The RPP describes under section 4.1.9.4 the load-shedding plan for Belgium, highlighting eight sub-groups of consumers. The RPP could further explain how this prioritization was established and how it addresses the objective of economic efficiency.⁸

⁸ Article 11.6.b of the emergency and restoration network code (OJ L 312, 28.11.2017, p. 54–85) establishes that the measures contained in the system defense plan have to be economically efficient

- The RPP submitted by FME refers to high priority significant grid users, 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 Belgium. Should this category exist, the Commission reminds FME 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.
- The Belgian RPP should include the updates on the next steps envisaged in the RPP, in particular the more in-depth analysis of the impact and probability of the identified electricity crisis scenarios and the revision of the national regulatory and legislative framework for electricity crisis management.
- 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 FME 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(c) of the Regulation, the Commission concludes that some elements of the RPP submitted by FME do not comply with certain provisions of this Regulation.

The Commission requests FME 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 2.1.4, 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 FME 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",⁹ while ensuring security of electricity supply. Furthermore, the Commission urges Belgium 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* Belgium 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.

⁹ 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. FME 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, 3.11.2022

For the Commission
Kadri SIMSON
Member of the Commission