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COMMISSION OPINION

of 13.7.2023

**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 Austria to the European Commission**

Only the German 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) needs 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 Austria, the Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology, Directorate General VI, Department Crisis Management and Energy Intervention (BMK), 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 May 2021. BMK notified to the Commission on 23 December 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 12 January and 2 February 2023, the Commission has the following remarks on the RPP.

¹ OJ L 158, 14.6.2019, p. 1–21.

² European Network of Transmission System Operators for Electricity.

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

The RPP is quite comprehensive in the description of the national framework and measures. It describes in detail preventive measures in certain types of electricity crisis scenarios, including measures to ensure the supply of natural gas (as this may be relevant for the supply of electricity), and contains links to other existing legislation, such as Regulation (EU) 2017/1938³ concerning measures to safeguard the security of gas supply or the Network Code on electricity emergency and restoration⁴. The RPP also describes a series of national emergency tests conducted in the electricity sector in recent years.

The Commission welcomes the efforts devoted to regional cooperation with neighbours, under the Pentalateral Energy Forum⁵ ('Penta') and with Central Eastern European Member States. 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) and have identified regional crisis scenarios complementary to those of ENTSO-E. Moreover, members have also signed a Memorandum of Understanding ('MoU') that identifies and provides an umbrella for regional measures. Similarly, a MoU has also been signed between Austria, Germany, Czechia, Slovakia, Poland and Hungary. The Commission welcomes all this work but reminds Austria that further work to deepen such cooperation is necessary in the light of the comments included in the sections below.

Furthermore, 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 BMK includes under section 1.2 a table with a short description of the national electricity crisis scenarios, their potential impact and preventive/preparatory measures. The table is quite detailed in the description of the preventive measures. However, the descriptions of the scenarios and their impacts are of very general nature. It is not possible

³ OJ L 280, 28.10.2017, p. 1–56

⁴ Commission Regulation (EU) 2017/2196 of 24 November 2017 establishing a network code on electricity emergency and restoration, OJ L 312, 28.11.2017, p. 54–85.

⁵ The members of the Pentalateral Energy Forum are Austria, Belgium, France, Germany, Luxembourg, The Netherlands and Switzerland.

to conclude from these descriptions what the concrete scenarios considered for Austria have been, nor the estimated impacts. For example, for fossil fuel shortages, the scenario description refers to gas shortages that can last for ‘a longer period of time’, but it is not clear what such a period can be. Also, for extreme weather events, the impacts are considered to range from negligible to even widespread outage.

The Commission considers that the RPP submitted by BMK needs to be amended to further describe all the national and regional scenarios considered. This information on the national scenarios is also 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. The RPP considers this to some extent in the description of preventive measures, for example for scenario 13, but it is unclear how these preventive measures have been factored in the scenarios considered. Consequently, the Commission takes the view that the RPP submitted by BMK needs to be updated in the light of these circumstances, focusing on geopolitical risks, where relevant, 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 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 EENS⁶/LOLE⁷ estimates and/or other quantitative values, as well as possible spill over effects to other sectors, e.g. to the gas sector, manufacturing industries and cross-border value chains.

⁶ 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.

⁷ 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.

- 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 CSIRT⁸, CERT⁹ and cyber-specific authorities (considering the link between sectorial response and national level and EU cyber response), 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 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 BMK refers under section 3.2 to a number of arrangements for regional and bilateral cooperation, notably the conclusion on two MoUs within the Pentalateral Energy Forum and with Central Eastern European Member States respectively. Both MoUs reflect the intention of the signatory countries to offer each other assistance in the event of an electricity crisis by means of regional measures, where they have the necessary technical ability. They also identify a number of measures to be ‘fleshed out in the future’, such as the cross-border use of reserve capacity and flexible loads, the provision of emergency equipment or the exchange about demand disconnection plans. However, these measures have not been developed in detail and appear not be operational yet.

The Commission considers that the RPP submitted by BMK has to be amended to include firm regional and bilateral measures as 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 information on some national procedures and measures

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-based 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. According to Article 16(2) of the Regulation, “non-market-based measures shall be activated in an electricity crisis only

⁸ Computer Security Incident Response Team.

⁹ Computer Emergency Response Team.

as a last resort if all options provided by the market have been exhausted or where it is evident that market-based measures alone are not sufficient to prevent a further deterioration of the electricity supply situation. Non-market-based measures shall not unduly distort competition and the effective functioning of the internal electricity market. They shall be necessary, proportionate, non-discriminatory and temporary”.

The Austrian RPP describes under section 3.1.4 on measures to mitigate electricity crisis a series of ‘energy intervention measures’ that can be applied in a crisis. It refers for example to ‘regulations regarding the supply of electrical energy to and from EU Member States and third countries’, ‘regulations on the procurement of energy from renewable sources’ and ‘regulations regarding the operation of electricity generating stations and permissions to breach emission limits’. The RPP explains the general trigger for the energy intervention measures and the procedure to enact them. However, it is not clear what these measures would actually consist of, what specific conditions apply for their implementation and how they would comply with the provisions in article 16 of the Regulation – in particular the regulations related to the supply of electricity to and from EU member states and third countries, and to the procurement of energy from renewable sources, and with other relevant EU law.

The Commission takes the view that the RPP submitted by BMK has to be amended to include further information on the above-mentioned measures, specifying what the measures consist of, conditions for their implementation, and indicating how they comply with the requirements laid down in Article 16 of the Regulation and with other relevant EU law.

2.1.4. Other missing items

The Regulation also requires that:

- The RPP indicates the calendar for the biennial regional (and, if applicable also national) real time response simulations of electricity crisis, pursuant to point 6 of the Annex to the Regulation.
- The RPP describes the agreed mechanism for cooperation in 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 to the Regulation.
- The RPP describes the results of the consultations carried out for its development, pursuant to point 5 of the Annex to the Regulation.
- The RPP includes information on plans to develop the future grid that will help to cope with the electricity crisis scenarios pursuant to Article 11(1)(k) of the Regulation.

The Austrian RPP explains that E-Control, the national regulatory authority, is authorised to order exercises based on the assumptions of crisis scenarios every two years. The RPP also refers to the exercises in the context of the National Crisis and Disaster Management (SKKM) and details national exercises carried out recently. Concerning regional emergency tests, the RPP refers to the intention of the MoU signatories (mentioned in section 2.1.2 of this opinion)

to prepare and conduct regional crisis exercises. However, there is no concrete calendar for the tests.

The Austrian RPP includes a section (section 3.2.1) on the agreed mechanism for cooperation in the region and for ensuring appropriate coordination before and during the electricity crisis, including the decision-making procedures for appropriate reaction at regional level. However, the information contained therein refers to regional and bilateral measures for the implementation of Article 15, i.e. the provision of assistance. There is no information on the coordination with other Member States in a crisis before the resort to Article 15 of the Regulation or where such mechanism is not applied. Figure 2 on information flows includes some exchange of information between BMK and the European Commission and other Member States for the implementation of energy intervention measures, but this is not explained in the RPP. The RPP does not refer either to issuing ‘early warnings’, as envisaged in article 14 of the Regulation.

The RPP submitted by BMK details the stakeholders consulted for the preparation of the RPP, including some beyond those requested by the Regulation, but it does not explain what the results of the consultations have been. This information is only provided for the consultation on the list of national electricity crisis scenarios.

The Austrian RPP does not include information on related and necessary plans for developing the future grid that will help to cope with the consequences of identified electricity crisis scenarios.

The Commission takes the view that the RPP submitted by BMK has to be amended to include the missing information indicated above. Moreover, and given the current exceptional circumstances, the Commission recommends that BMK accelerates any calendar for the mandatory tests on the effectiveness of the procedures developed in its RPP. 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 BMK, 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 refers as part of the energy intervention measures described in section 3.1.4, to provisions for the supply of the available electrical energy to final consumers ‘according to the degree of urgency’. It also refers to the determination of consumption quotas for the provinces, whose implementation falls under the responsibility of the provincial governors. They may decide to exclude certain geographically circumscribed areas from ‘electricity withdrawal’ or ‘cut -off’. The RPP should clarify if these measures establish, directly or indirectly, categories of electricity users entitled to receive special protection against disconnection as referred to in Article 11(1)(h) of the Regulation. Should these categories exist, the Commission reminds BMK 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 RPP should contain a clearer definition of electricity crisis, as required by Article 2(9) of the Regulation. In the Austrian RPP this is only deducted indirectly from sections 3.1.3 and 3.1.4 through the cases in which energy intervention measures can be applied.
- The RPP refers to measures that could have an impact on greenhouse gas (GHG) emissions. The Commission recommends that the risk/impact on GHG emissions of these measures 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 BMK do not comply with certain provisions of this Regulation.

The Commission requests BMK 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 Austria to describe and assess the actions to reduce gas consumption in the power sector, as called upon in the Demand Reduction Regulation (EU) 2022/1369¹⁰ and its prolongation¹¹, as well as the Communication "Save gas for a safe winter",¹² while ensuring security of electricity supply. Furthermore, the Commission urges Austria to take into consideration the Council Recommendation on a Union-wide coordinated approach to strengthen the resilience of critical infrastructure in the EU, as adopted by the Council on 8 December 2022¹³, 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* Austria 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. BMK 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.

¹⁰ OJ L 206, 8.8.2022, p. 1–10

¹¹ Council Regulation (EU) 2023/706, OJ L 93, 31.3.2023, p. 1–6

¹² COM(2022) 360 final.

¹³ OJ C 20, 20.1.2023, p. 1–11

Done at Brussels, 13.7.2023

For the Commission
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