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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 Romania to the European Commission.**

Only the Romanian 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/EC<sup>1</sup> (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-E<sup>2</sup> 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 Romania, Directorate for Prevention and Management of Risks in the Energy Sector - Ministry of Energy ("DPMRES"), notified its draft RPP to the Electricity Coordination Group for the purpose of the consultation required by Article 10(4) of the Regulation on 8 April 2021. DPMRES notified to the Commission on 11 May 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 11 May and 2 June 2022, the Commission has the following remarks on the RPP.

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<sup>1</sup> OJ L 158, 14.6.2019, p. 1–21.

<sup>2</sup> 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 provides a clear description of roles and responsibilities. The RPP provides a clear list of measures, operational procedures and agreements applicable in case of an electricity crisis, including specific details of the applicable actions in each scenario.

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 DPMRES provides a short description of the national electricity crisis scenarios, largely based on the regional electricity crisis scenarios identified by ENTSO-E and without differentiating between national and regional level. However, these descriptions are of very general nature. It is not possible to conclude from these descriptions what the concrete scenarios simulated for Romania are. For example, there are no details on the concrete simulations per type of fuel (gas, coal, etc) or the impact of water scarcity and temperature rise, for the scenario named 'Fossil fuel shortage', 'Dry period' and 'Heatwave'. There are no quantifications either of the impact of the risk scenario (references are limited to possibilities without describing specific impacts, e.g. the RPP states that there are difficulties in ensuring the adequacy, without providing any details).

The Commission considers that the RPP submitted by DPMRES needs to be amended to further describe all the national and regional 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 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 DPMRES 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 DPMRES 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 EENS/LOLE 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 (e.g. clarify “OP no. TEL-19-01\_Fight against cyber attacks announced by third parties”), a description of the roles and interactions between the competent authority and the cyber-specific actors, such as CSIRT<sup>3</sup>, CERT<sup>4</sup> 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 DPMRES refers to agreed mechanisms for cooperation between system operators within the region and with third countries within the relevant synchronous

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<sup>3</sup> Computer Security Incident Response Team

<sup>4</sup> Computer Emergency Response Team

area, including mutual assistance agreements. However, there is no reference to concrete regional and bilateral measures agreed within the region, in accordance with Article 15.

The Commission considers that the Romanian 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 State and described in their RPPs, or in which it is impossible to supply electricity to consumers.

The Romanian RPP does not contain a definition of electricity crisis.

The Commission considers that the RPP submitted by DPMRES 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*

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 Romanian RPP includes under point 3.1.A.2 and table 3.1 a list of technical and commercial measures with impact on the electricity market, including the reduction or cancellation of the available interconnection capacity and the notified export transactions. These measures are not described in detail and do not provide sufficient information to demonstrate their compliance with Article 16 of the Regulation. According to Article 16(2) of the Regulation, “non-market-based measures shall be activated in an electricity crisis only 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 Commission takes the view that the RPP submitted by DPMRES has to be amended to include further information on the above-mentioned measures, specifying the triggers, conditions and procedures for their implementation, and indicating how they comply with the requirements laid down in Article 16 of the Regulation as well as with regional and bilateral measures. In the absence of such clarifications, the measures cannot be considered in compliance with the EU legislative framework, in particular with Article 16 of the Regulation.

#### *2.1.5. Other missing items*

The Regulation also requires that:

- 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(1)(16) of the Regulation as a group of Member States whose TSOs share the same regional

coordination centre and, until such centres are established<sup>5</sup>, 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 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 Romanian RPP describes the cooperation and coordination agreements with neighbouring Member States and third countries. Nevertheless, the definition of region for the purpose of implementing the Regulation needs to be clarified, by clearly referring either to a Member State or to a group of Member States located in the same synchronous area.

The RPP submitted by DPMRES includes a list of tests for emergency situations. However, the RPP does not specify in all tests the actors involved and it does not include any references to biennial regional real time response simulations of electricity crises, including the procedures agreed and the actors involved.

The Commission takes the view that the RPP submitted by DPMRES has to be amended to include the missing information indicated above. Moreover, and given the current exceptional circumstances, the Commission recommends that DPMRES 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 DPMRES, 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 DPMRES provides information on the future development of the grid in the introduction. The RPP should describe in more detail how the future grid will help to cope with the identified electricity crisis scenarios.
- The RPP submitted by DPMRES describes the mechanism for manual disconnection to industrial costumers under section 3.1.c. Although this mechanism seems not to be applicable to other consumers, the RPP should clarify it is applicable and if there are categories of electricity users entitled to receive special protection against disconnection as referred to in Article 11(1)(h) of the Regulation. Should this category exist, the Commission reminds DPMRES that the RPP needs to specify

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<sup>5</sup> 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.

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 DPMRES 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.
- The RPP should identify and include a link to the applicable national regulatory framework (e.g. identify and include the link to the “applicable law” for the manual disconnection normative mentioned under point 3.2.c).

### 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 DPMRES do not comply with certain provisions of this Regulation.

The Commission requests DPMRES 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 2.1.5 and the missing information on regional and bilateral measures for cooperation and assistance among Member States described in section 2.1.2. The Commission urges DPMRES 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”,<sup>6</sup> while ensuring security of electricity supply. Furthermore, the Commission urges Romania 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* Romania 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. DPMRES 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.

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<sup>6</sup> COM(2022) 360 final.

Done at Brussels, 3.11.2022

*For the Commission  
Kadri SIMSON  
Member of the Commission*