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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 Germany 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) 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 Germany, the Federal Ministry for Economic Affairs and Climate Action ("BMWi"), notified its draft RPP to the Electricity Coordination Group for the purpose of the consultation required by Article 10(4) of the Regulation on 31 March 2021. BMWi notified to the Commission on 5 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. It describes well the role, tasks and powers of several actors and establishes a clear link between preventive measures and the risks these aim to address. The RPP also refers to a broader set of

¹ OJ L 158, 14.6.2019, p. 1–21.

² European Network of Transmission System Operators for Electricity.

provisions for risk and crisis management and for the protection of critical infrastructure ('UP KRITIS').

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), 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 a number of regional measures. The Commission welcomes all this work and invites Germany to further deepen such cooperation, notably 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 submitted by BMWi describes briefly the national electricity crisis scenarios identified under section 1.2. In general, these descriptions explain well the relevance of the scenarios considered and the potential impacts, although the estimated level of risk associated to some scenarios, notably on fuel shortages, appears outdated following Russia's invasion of Ukraine.

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 BMWi 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

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

Commission reminds BMWi 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 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, 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 CSIRT⁶, CERT⁷ 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.

Given the current exceptional circumstances, the Commission also recommends that BMWi accelerates its calendar for the mandatory tests on the effectiveness of the procedures developed in its RPP. These tests should be carried out 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).

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.

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 to Article 11(1)(j) of the Regulation.

The RPP submitted by BMWi refers to several work streams with neighbouring Member States to develop such regional and bilateral measures, where the cooperation in the Pentalateral Energy Forum appears to be the most advanced one. The RPP describes the work of the Pentalateral 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 German 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.

2.2 Other comments

Apart from the substantive remarks presented above, the Commission would like to draw the attention of BMWi 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 under section 3.1.b) to a needs-oriented grid expansion and grid expansion planning, though in general terms and about their benefits to respond in a crisis. It would be advisable to add more concrete information on grid expansion, concrete projects and how these link to the risks observed.
- The RPP contains many references to legal acts and concrete provisions therein, showing it is grounded on a solid legal framework. However, readability would improve if the references to legal provisions were always accompanied by a short description or a few words of what each concrete article refers to, thus making the RPP as self-standing document.
- The RPP refers in Table 3 to a list of market-base measures that can be activated by the TSOs to tackle electricity crises. There is no prioritisation among the measures. One of the measures mentioned in the table is the possibility for the TSOs to “restrict capacity at interconnectors in agreement with the neighbouring TSO”. While this type of measure may be justified in extreme scenarios, in particular when there is not enough available redispatch or countertrading capacity to limit the flow of (imported) electricity on congested lines, it should only be a last resort solution to apply if all other remedial actions are insufficient or unable to ensure grid’s safety in view of its detrimental impact on the functioning of the internal electricity market according to

article 16(3) of the Electricity Regulation. Furthermore, such restriction should be agreed not only with neighbouring TSOs but with TSOs of the concerned capacity calculation region and regional coordination centre.

- The RPP could consider additional risks such as precipitation and flooding, in the light of recent weather events and the increasing frequency of extreme weather events, or explain in more detail than it currently does why these scenarios are not considered relevant.
- The Commission also recommends that the risk/impact on greenhouse gas (GHG) emissions of measures likely to have such impact (e.g. back-up fossil fuel generation, fuel switching or the resort to additional fossil fuel capacity normally out of the market) 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 BMWi do not comply with certain provisions of this Regulation.

The Commission requests BMWi 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 and the test on the effectiveness of the procedures developed in the RPP, both referred to in section 2.1.1, 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 BMWi 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",⁸ while ensuring security of electricity supply. Furthermore, the Commission urges Germany 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* Germany 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. BMWi 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.

⁸ COM(2022) 360 final

Done at Brussels, 19.10.2022

For the Commission
Kadri SIMSON
Member of the Commission