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COMMISSION OPINION

of 7.12.2022

under Regulation (EU) 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 Slovakia to the European Commission.

Only the Slovak 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 Slovakia, the Ministry of Economy of the Slovak Republic ("MoE"), 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 June 2021. MoE notified to the Commission on 5 January 2022 its Risk-Preparedness Plan.

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 on 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. The RPP provides a clear link between national and regional scenarios. The RPP includes a definition of electricity emergency, with a clear procedure to declare and revoke the state of

¹ OJ L 158, 14.6.2019, p. 1–21.

² European Network of Transmission System Operators for Electricity.

emergency in the electricity sector. The RPP provides a comprehensive description of roles and responsibilities in the case of emergency in the electricity sector, including delegations for critical infrastructure protection and cybersecurity. The RPP establishes a clear list of applicable measures for each group of scenarios, differentiating between preventive measures and crisis situations, and describes well the applicable legislation and plans at national level. The Commission welcomes the specific references to the Climate Change Adaptation Strategy of Slovakia.

The RPP explains that Slovakia is engaged in negotiations with other Member States in the region through a common platform. The Commission welcomes the ongoing work to conclude a Memorandum of Understanding (MoU) on risk-preparedness in the electricity sector but reminds Slovakia 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 submitted by MoE includes a short description of the national electricity crisis scenarios in section 2.2.2, followed by a short description of the crisis situations for groups of national scenarios in section 2.3. However, these descriptions are of very general nature. It is not possible to conclude from these descriptions what the concrete scenarios simulated for Slovakia are. For example, for the scenario named ‘cyberattack against the critical business ICT infrastructure of the entities connected to the electricity system’, there are no details on the concrete simulations according to the type of cyberattack or the entities affected, nor quantifications of the impact of the risk scenario (references are limited to possibilities without describing specific impacts, e.g. the scenario mentions control rooms that do not receive real-time data and a system management that is considerably restricted, without providing details). Moreover, some of the regional electricity crisis scenarios identified as significant for Slovakia by ENTSO-E pursuant to Article 6 of the Regulation are not described in the RPP, nor the reasons why they are not considered relevant at national level.

The Commission considers that the RPP submitted by MoE needs to be amended to further describe the national scenarios considered and to ensure consistency with the regional electricity crisis scenarios. 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 MoE needs to be updated in the light of these circumstances, including 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 MoE 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 EENS³/LOLE⁴ 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.
- 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 (considering the link between sectorial response and national level and EU cyber response), including during a crisis, and the links with cyber specific legislation.

³ Expected Energy Not-Served (EENS) as defined in Article 2(2)(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(2)(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.

- 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 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. Concretely, and according to Article 16(2) of the Regulation, non-market-based measures can only be activated in an electricity crisis as a last resort, they cannot unduly distort competition or the effective functioning of the internal electricity market, and they must be necessary, proportionate, non-discriminatory and temporary.

The Slovakian RPP includes under point 4.2 a description of the market activities that can be partially or fully suspended. These measures are not described in detail and the information provided is not sufficient to demonstrate their compliance with Article 16 of the Regulation. Moreover, it appears that existing legislation has been amended to extend the powers of the State in case of an energy crisis, including seemingly in the electricity sector. This amendment is not included in the RPP notified by MoE and no updated version of the RPP including such measure has been notified to the Commission.

The Commission takes the view that the RPP submitted by MoE 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 Article 16 of the Regulation.

2.1.3. 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 MoE states that, with respect to the regional measures and cooperation in resolving crisis situations that go beyond the existing contracts between Transmission System Operators (TSOs), Slovakia is engaged in negotiations with some Member States in

the region through a common platform. The RPP explains that a MoU on risk preparedness in the electricity sector is being finalised and is expected to be signed by 2022, laying the grounds for more intensive cooperation and coordination. However, regional and bilateral measures for cooperation and assistance with Member States have not been agreed yet.

The Commission considers that the Slovakian 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.

2.1.4. *Other missing items*

The Regulation also requires that:

- The RPP provides a framework for manual load shedding, specifying which categories of electricity users are entitled to receive special protection, pursuant to Article 11(1)(h) of the Regulation as well as point 3(1)(d) of the Annex thereto.
- 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.
- 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 RPP includes information on the future grid that will help to cope with the electricity crisis scenarios pursuant to Article 11(1)(k) of the Regulation.

The Slovakian RPP specifies under point 4.4.1 that the electricity consumption restriction procedure is not applied for certain consumers according to the national legislation, without specifying how the TSOs and distribution system operators are to decrease consumption.

The RPP submitted by MoE states that the draft RPP was consulted with the relevant electricity market participants and regulatory authority. However, the Slovakian RPP does not describe the consultations with all the stakeholders required by the Regulation, like industrial and non-industrial electricity customers, nor the results of such consultations.

The Slovakian RPP describes a Test Plan for the entities involved in the Defence Plan and the Restoration Plan⁷. However, the RPP states that agreements on emergency tests with the relevant neighbouring countries have not been signed yet, and will come after the signature of the MoU on risk-preparedness in the electricity sector with some Members States in the region.

The RPP submitted by MoE does not include any references to future grid development that will help to cope with the consequences of the identified electricity crisis scenarios nor indicates why this would not be necessary.

⁷ According to the 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.

The Commission takes the view that the RPP submitted by MoE has to be amended to include the missing information indicated above. Moreover, and given the current exceptional circumstances, the Commission recommends that MoE 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 MoE 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 MoE provides a short explanation of the mechanisms for informing the public about the declaration of electricity emergency, including mass media and means of dispatching management. The RPP should describe in more detail those means of dispatching management to inform the public.
- 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 MoE 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 MoE do not comply with certain provisions of this Regulation.

The Commission requests MoE 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 2.1.3 and the detailed description of national electricity crisis scenarios described in section 2.1.1. The Commission urges MoE 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 Slovakia to take into consideration the Council Recommendation, proposed by the European Commission on 18 October 2022, on a

⁸ COM(2022) 360 final

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* Slovakia 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. MoE 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, 7.12.2022

For the Commission
Kadri SIMSON
Member of the Commission