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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 the Netherlands to the European Commission.

Only the 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 the Netherlands, the Ministry of Economic Affairs and Climate Policy ("MINEZK"), 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. MINEZK notified to the Commission on 28 April 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 28 April and 17 May 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 very well the procedures in place to handle electricity crises and the roles that different actors play. The RPP also contains a complete National Risk Diagram and an overview on the overall impact of different risks.

¹ OJ L 158, 14.6.2019, p. 1–21.

² European Network of Transmission System Operators for Electricity.

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 and have even developed together a common chapter for the RPP of all members. 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 but reminds the Netherlands 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 MINEZK refers to national security interests and describes the National Security Strategy and the National Risk profile as well as how these have been developed. The RPP concludes that three basic national electricity crisis scenarios cover all the regional electricity crisis scenarios identified by ENTSO-E in terms of impact and crisis management capabilities. Indeed, these scenarios focus on impacts that can be caused by several electricity crisis scenarios and which could presumably require the resort to similar types of crisis management measures. However, as these scenarios do not consider different causes, it is unclear how these can serve for the design of preventive measures, which may vary depending on, for example, whether the cause are extreme weather events, cyber attacks or shortage of fuels (others than the sources considered in the third scenario), or the affected component of the system.

The Commission considers that the RPP submitted by MINEZK needs to be amended to further describe all the national electricity crisis 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

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

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 MINEZK 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 MINEZK 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, 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 CSIRT⁶, CERT⁷ 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.
- Plan to diversify nuclear fuel supply. The assessment should include qualitative analysis of potential alternative suppliers.
- Climate change and environment considerations, such as climate vulnerability and risks and environmental impacts, including with a view to design preventive

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.

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.

Moreover, and given the current exceptional circumstances, the Commission also recommends that MINEZK accelerates to the extent possible or at very least maintains their calendar for the mandatory tests on the effectiveness of the procedures developed in its RPP, currently envisaged for fall 2022. 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).

2.1.2. 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 MINEZK refers to the substantial cooperation between the countries of the Pentilateral Energy Forum (Penta). It describes the MoU on risk preparedness in the electricity sector signed by Penta members on 1 December 2021. 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 Dutch 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 description of preventive and emergency measures

Article 11(1)c) of the Regulation and the Annex thereto require that the RPP describes the national measures designed to prevent or prepare for the identified national and regional electricity crisis scenarios. Article 11(1)g) requires that the RPP identifies possible non-market based measures to be implemented in electricity crises, specifying triggers, conditions and procedures for their implementation.

The RPP submitted by MINEZK indicates that the transmission system operator (TSO) and the distribution system operators (DSOs) have the obligation to protect their network against external influences and that this encompasses the implementation of preventive measures. The TSO also has the obligation to monitor and analyse the security of electricity supply and to check if there is sufficient supply of electricity to meet demand at all times. However, it is unclear what the concrete preventive measures are and how they are related to the regional

electricity crisis scenarios considered relevant for the region (e.g. related to extreme weather events) and national electricity crisis scenarios.

The Dutch RPP refers to some measures that the TSO may take in case of a disbalance of the electricity system. However, it does not indicate what the triggers for such measures are nor the conditions for their implementation. This information is particularly relevant when it comes to measures such as cancelling exports of electricity.

The Commission considers that the RPP submitted by MINEZK needs to be amended to include or clarify the preventive measures and the triggers and conditions for the emergence measures to address all national electricity crisis scenarios identified.

2.1.4. *Other missing items*

The Regulation also requires that:

- Member States determine what a significant electricity shortage is as part of the definition of an electricity crisis to be included in the RPP pursuant to Article 2(9) of the Regulation.
- 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, pursuant to Article 11(1)(g) of the Regulation as well as point 3(1)(c) of the Annex thereto.
- Member States describe the mechanism in place for the 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.
- The RPP includes information on related and necessary plans for developing the future grid that will help to cope with the consequences of electricity crisis scenarios, pursuant to Article 11(1)(k) of the Regulation.

The RPP submitted by MINEZK does not explain how an electricity crisis is defined, even if there are detailed explanations on the procedures that would be triggered during such crisis and the actors involved, nor who is responsible for declaring such electricity crisis.

The RPP describes under point 3.1.3 the measures to mitigate an electricity crisis, including the sequence of measures to be taken by the TSO in the event of imbalance in the electricity system, which includes cancelling export of electricity and – if not sufficient to rebalance the electricity system, load shedding. However, the Dutch RPP does not describe how these measures comply with the requirements laid down in Article 16 on the compliance with market rules as well as with regional and bilateral measures.

The Netherlands has interconnectors with Denmark, Norway and the United Kingdom but the plan does not contain any detail regarding collaboration with these countries.

The RPP submitted by MINEZK does not include information on plans for developing the future grid and how this help cope with the identified crisis scenarios.

The Commission considers that the RPP submitted by MINEZK needs to be amended to include the above mentioned information.

2.2 Other comments

Apart from the substantive remarks presented above, the Commission would like to draw the attention of MINEZK 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 establishes under point 3.1.3, a 3-level list establishing the sequence in which consumers would be disconnected from the grid in the load shedding and recovery plans. The RPP could further explain how this prioritization was established and how it addresses the objective of economic efficiency⁸.
- The RPP could further explain the measures to be activated by the TSO to address disbalances referred to under section 3.1.2 of the RPP. The RPP could also clarify what is meant by measures to prevent opposing regulatory decision by foreign institutions.
- 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 SEA 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 MINEZK do not comply with certain provisions of this Regulation.

The Commission requests MINEZK 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 2.2.1, 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 MINEZK 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 the Netherlands 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* the Netherlands 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.

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

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. MINEZK 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