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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 France to the European Commission**

(Only the French 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 France, the Ministry of Ecological Transition ("MET"), notified its draft RPP to the Electricity Coordination Group for the purpose of the consultation required by Article 10(4) of the Regulation on 9 June 2021. MET notified to the Commission on 4 February 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 4 and 28 February 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 includes a clear list of applicable regulations and plans at national level. The RPP provides a clear and comprehensive description of the responsibilities and information flows, as well as the applicable measures, including on load shedding. The RPP provides a clear link

¹ OJ L 158, 14.6.2019, p. 1–21.

² European Network of Transmission System Operators for Electricity.

between national and regional scenarios, and contains a detailed annex with specific measures for each scenario, including the different national territories concerned.

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), that 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, the 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 France 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 MET includes in section 1.2 the list of national electricity crisis scenarios, which are shortly explained in the annex. However, these descriptions are of very general nature. It is not possible to conclude from these descriptions what the concrete scenarios simulated for France are. For example, , there are no details on the concrete simulations according to the type of fuel (e.g. oil, gas, etc) or impact of water scarcity and temperature rise, for the scenarios named 'Fossil fuel shortage' and 'Heatwave, drought and fires'. As for nuclear fuel shortage, the scenario does not refer to lower output due to maintenance nor why that would not be relevant. 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 a low availability of fossil fuels leads, firstly, to a reduction in the production and, secondly, to their shutdown, without providing further details).

The Commission considers that the RPP submitted by MET needs to be amended to further describe the national electricity crisis scenarios considered. This information on the national

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

electricity crisis 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 MET 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 MET 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 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.

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.

- 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 MET refers to the cooperation with neighbouring Member States and third countries in the Pentalateral Energy Forum, but it states that there are no bilateral or regional measures between Member States specific to the electricity sector. 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 French 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. *Other missing items*

The Regulation also requires that:

- Member States shall determine and the RPP describe the definition of an electricity crisis, pursuant to Article 2(9) of the Regulation.
- The RPP has to describe the mechanisms in place for 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, pursuant to point 3(2)(c) of the Annex 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 French RPP contains a characterization of a "crisis", whose application to a situation depends on the analysis of the actors at the time, but it does not contain a clear definition of electricity crisis as required by the Regulation.
- The RPP submitted by MET states under point 5.3 that there are no bilateral agreements with some of the third countries within the relevant synchronous area. Nevertheless, the French RPP needs to describe all the mechanisms in place for cooperation and coordination, 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, including the agreements between TSOs.
- The French RPP highlights that national authorities and operators regularly organize or participate in exercises at national and European level, and lists the non-confidential exercises carried out in the last years. However, the RPP 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 MET has to be amended to include the missing information indicated above. Moreover, and given the current exceptional circumstances, the Commission recommends that MET 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 MET, 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 French RPP mentions the bidding zones and capacity calculation regions, as well as the Pentilateral Energy Forum, the North Sea Energy Cooperation and the High Level Group on Interconnections for South West Europe, but it does not provide a clear definition of region. The definition of region for the purpose of implementing this Regulation should be clarified, referring either to a Member State or to a group of Member States located in the same synchronous area.
- The RPP submitted by MET should provide more details on the mutual assistance offers between TSOs mentioned under point 4.3.2 and the mechanisms in place for cooperation and coordination between TSOs in the region.
- The French RPP describes under point 4.3.3 the electricity users who are entitled to special protection against service interruptions, including a reference to "other users who, because of their particular situation, may be given priority over other users, within the limits of availability, particularly in the event of an emergency". The Commission recommends to clarify this point by giving an example of users under this category.

- 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 MET 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 MET do not comply with certain provisions of this Regulation.

The Commission requests MET 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 2.1.3, 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 MET 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 France 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* France 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. MET 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

⁸ COM(2022) 360 final.