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 (Text with EEA relevance)

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 194(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[(1)],

Having regard to the opinion of the Committee of the Regions[(2)],

Acting in accordance with the ordinary legislative procedure[(3)],

Whereas:

(1) The electricity sector in the Union is undergoing a profound transformation, characterised by more decentralised markets with more players, a higher proportion of energy from renewable sources and better interconnected systems. In response, Regulation (EU) 2019/943 of the European Parliament and of the Council[(4)] and Directive (EU) 2019/944 of the European Parliament and of the Council[(5)] aim to upgrade the legal framework governing the Union's internal electricity market, in order to ensure that markets and networks function in an optimal manner, to the benefit of businesses and Union citizens. This Regulation is intended to contribute to the implementation of the objectives of the Energy Union, of which energy security, solidarity, trust and an ambitious climate policy are an integral part.

(2) Well-functioning markets and systems, with adequate electricity interconnections, are the best guarantee of security of electricity supply. However, even where markets and systems function well and are interconnected, the risk of an electricity crisis, as a result of natural disasters, such as extreme weather conditions, malicious attacks or fuel shortages, can never be excluded. The consequences of electricity crises often extend beyond national borders. Even where such crises start locally, their effects can rapidly spread across borders. Some extreme circumstances, such as cold spells, heat waves or cyberattacks, may affect entire regions at the same time.

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(3) In a context of interlinked electricity markets and systems, electricity crisis prevention and management cannot be considered to be a purely national task. The potential of more efficient and less costly measures through regional cooperation should be better exploited. A common framework of rules and better coordinated procedures are needed in order to ensure that Member States and other actors are able to cooperate effectively across borders, in a spirit of increased transparency, trust and solidarity between Member States.

(4) Directive 2005/89/EC of the European Parliament and of the Council[(6)] established the necessary measures that the Member States are to take in order to ensure security of electricity supply in general. The provisions of that Directive have largely been superseded by subsequent legislative acts, in particular as regards how electricity markets are to be organised in order to ensure the availability of sufficient capacity, how transmission system operators are to cooperate to guarantee system stability, and as regards ensuring that appropriate infrastructure is in place. This Regulation addresses the specific issue of electricity crisis prevention and management.

(5) Commission Regulations (EU) 2017/1485[(7)] and (EU) 2017/2196[(8)] constitute a detailed rulebook governing how transmission system operators and other relevant stakeholders should act and cooperate to ensure system security. Those technical rules should ensure that most electricity incidents are dealt with effectively at operational level. This Regulation focuses on electricity crises that have a larger scale and impact. It sets out what Member States should do to prevent such crises and what measures they can take should system operation rules alone no longer suffice. Even in electricity crises system operation rules should continue to be fully respected and this Regulation should be consistent with Regulation (EU) 2017/2196.

(6) This Regulation sets out a common framework of rules on how to prevent, prepare for and manage electricity crises, bringing more transparency in the preparation phase and during an electricity crisis and ensuring that measures are taken in a coordinated and effective manner. It requires Member States to cooperate, at regional level and, where applicable, bilaterally, in a spirit of solidarity. It also sets out a framework for the effective monitoring of security of electricity supply in the Union via the Electricity Coordination Group (ECG), which was set up by a Commission Decision of 15 November 2012[(9)] as a forum in which to exchange information and foster cooperation among Member States, in particular in the area of security of electricity supply. Member State cooperation and the monitoring framework are intended to achieve better risk-preparedness at a lower cost. This Regulation should also strengthen the internal electricity market by enhancing trust and confidence across Member States and ruling out inappropriate state interventions in electricity crises, in particular avoiding undue curtailment of cross-border flows and cross zonal transmission capacities, thus reducing the risk of negative spillover effects on neighbouring Member States.

(7) Directive (EU) 2016/1148 of the European Parliament and of the Council[(10)] lays down general rules on security of network and information systems, while specific rules on cybersecurity will be developed through a network code as laid down in Regulation

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(EU) 2019/943. This Regulation complements Directive (EU) 2016/1148 by ensuring that cyber-incidents are properly identified as a risk, and that the measures taken to address them are properly reflected in the risk-preparedness plans.

(8) Council Directive 2008/114/EC[(11)] lays down a process with a view to enhancing the security of designated European critical infrastructure, including certain electricity infrastructure. Directive 2008/114/EC, together with this Regulation, contributes to creating a comprehensive approach to the energy security of the Union.

(9) Decision No 1313/2013/EU of the European Parliament and of the Council[(12)] sets out requirements for Member States to develop risk assessments at national level or at the appropriate sub-national level every three years, and to develop and refine their disaster risk management planning at national level or at the appropriate sub-national level. The specific risk prevention, preparedness and planning actions set out in this Regulation should be consistent with the wider, multi-hazard national risk assessments required under Decision No 1313/2013/EU.

(10) Member States are responsible for ensuring the security of electricity supply within their territories, while security of electricity supply is also a responsibility shared among the Commission and other Union actors, within their respective areas of activity and competence. Security of electricity supply entails effective cooperation among Member States, Union institutions, bodies, offices and agencies, and relevant stakeholders. Distribution system operators and transmission system operators play a key role in ensuring a secure, reliable and efficient electricity system in accordance with Articles 31 and 40 of Directive (EU) 2019/944. The regulatory authorities and other relevant national authorities also play an important role in ensuring and monitoring the security of electricity supply, as part of their tasks attributed by Article 59 of Directive (EU) 2019/944. Member States should designate an existing or new entity as their single competent national governmental or regulatory authority with the aim of ensuring the transparent and inclusive participation of all actors involved, the efficient preparation and proper implementation of the risk-preparedness plans, as well as facilitating the prevention and *ex post* evaluation of electricity crises and information exchanges in relation thereto.

(11) A common approach to electricity crisis prevention and management requires a common understanding among Member States as to what constitutes an electricity crisis. In particular this Regulation should facilitate coordination among Member States for the purpose of identifying a situation in which the potential risk of a significant electricity shortage or an impossibility to supply electricity to customers is present or imminent. The European Network of Transmission System Operators for Electricity ('ENTSO for Electricity') and the Member States should, respectively, determine concrete regional and national electricity crisis scenarios. That approach should ensure that all relevant electricity crises are covered, taking into account regional and national specificities such as the topology of the grid, the electricity mix, the size of production and consumption, and the degree of population density.

(12) A common approach to electricity crisis prevention and management also requires that Member States use the same methods and definitions to identify risks relating to the

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security of electricity supply and are in a position to compare effectively how well they and their neighbours perform in that area. This Regulation identifies two indicators for monitoring the security of electricity supply in the Union: 'expected energy non-served', expressed in GWh/year, and 'loss of load expectation', expressed in hours per year. Those indicators are part of the European resource adequacy assessment carried out by the ENTSO for Electricity, pursuant to Article 23 of Regulation (EU) 2019/943. The ECG should carry out regular monitoring of the security of electricity supply based on the results of those indicators. The Agency for the Cooperation of Energy Regulators (ACER) should also use those indicators when reporting on Member States' performance in the area of security of electricity supply in its annual electricity market monitoring reports, pursuant to Article 15 of Regulation (EU) 2019/942 of the European Parliament and of the Council[(13)].

(13) To ensure the coherence of risk assessments in a manner that builds trust between Member States in an electricity crisis, a common approach to identifying risk scenarios is needed. The ENTSO for Electricity should therefore, after consulting the relevant stakeholders, develop and update a common methodology for risk identification in cooperation with ACER, and with the ECG in its formation composed only of representatives of the Member States. The ENTSO for Electricity should propose the methodology and ACER should approve it. When consulting the ECG, ACER is to take the utmost account of the views expressed by the ECG. The ENTSO for Electricity should update the common methodology for risk identification where significant new information becomes available.

(14) On the basis of the common methodology for risk identification, the ENTSO for Electricity should regularly draw up and update regional electricity crisis scenarios and identify the most relevant risks for each region such as extreme weather conditions, natural disasters, fuel shortages or malicious attacks. When considering the crisis scenario of a gas fuel shortage, the risk of disruption of the gas supply should be assessed based on the gas supply and infrastructure disruption scenarios developed by the European Network of Transmission System Operators for Gas (ENTSOG) pursuant to Article 7 of Regulation (EU) 2017/1938 of the European Parliament and of the Council[(14)]. The ENTSO for Electricity should be able to delegate tasks relating to the identification of regional electricity crisis scenarios to regional coordination centres established pursuant to Article 35 of Regulation (EU) 2019/943. Those delegated tasks should be performed under the supervision of the ENTSO for Electricity. Member States should establish and update their national electricity crisis scenarios on the basis of regional electricity crisis scenarios, in principle every four years. Those scenarios should provide the basis for the risk-preparedness plans. When identifying risks at national level, the Member States should describe any risks that they identify in relation to the ownership of the infrastructure relevant for security of electricity supply and any measures taken to address those risks such as general or sector-specific investment screening laws, special rights for certain shareholders, with an indication why they consider such measures to be necessary and proportionate.

(15) A regional approach to identifying risk scenarios and to developing preventive, preparatory and mitigating measures should bring significant benefits in terms of

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the effectiveness of those measures and the optimal use of resources. Moreover, in a simultaneous electricity crisis, a coordinated and pre-agreed approach would ensure a consistent response and reduce the risk of negative spillover effects that purely national measures could have in neighbouring Member States. This Regulation therefore requires Member States to cooperate in a regional context.

(16) The regional coordination centres should perform the tasks of regional relevance assigned to them in accordance with Regulation (EU) 2019/943. To ensure that they can carry out their tasks effectively and act in close cooperation with relevant national authorities with a view to preventing and mitigating larger-scale electricity incidents, the regional cooperation required under this Regulation should build on the regional cooperation structures used at technical level, namely the groups of Member States sharing the same regional coordination centre. The geographical regions of the regional coordination centres are therefore relevant for the identification of the regional electricity crisis scenarios and risk assessments. However, Member States should have the possibility to form subgroups within the regions for the purpose of cooperation with regard to concrete regional measures, or to cooperate in existing regional cooperation forums for that purpose, as the technical ability to provide mutual assistance to each other in an electricity crisis is essential. This is because not all Member States in a larger region will necessarily be able to provide electricity to another Member State in an electricity crisis. Thus, it is not necessary for all Member States in a region to conclude regional agreements on concrete regional measures. Instead, Member States that have the technical ability to provide assistance to each other should conclude such agreements.

(17) Regulation (EU) 2019/943 provides for the use of a common methodology for the medium to long-term European resource adequacy assessment (from 10-year-ahead to year-ahead), with a view to ensuring that Member States' decisions as to possible investment needs are made on a transparent and commonly agreed basis. The European resource adequacy assessment has a different purpose from the short-term adequacy assessments which are used to detect possible adequacy related problems in short time-frames, namely seasonal adequacy assessments (six months ahead) and week-ahead to at least day-ahead adequacy assessments. Regarding short-term assessments, there is a need for a common approach to the way possible adequacy-related problems are detected. The ENTSO for Electricity should carry out winter and summer adequacy assessments to alert Member States and transmission system operators to risks related to the security of electricity supply that might occur in the following six months. To improve those adequacy assessments, the ENTSO for Electricity should develop a common probabilistic methodology for them, after consulting the relevant stakeholders, and in cooperation with ACER, and with the ECG, in its formation composed only of representatives of the Member States. The ENTSO for Electricity should propose that methodology and updates thereto to ACER, and ACER should approve the proposal and the updates. When consulting the ECG, ACER is to take the utmost account of the views expressed by the ECG. The ENTSO for Electricity should update the methodology where significant new information becomes available. The ENTSO for Electricity should be able to delegate tasks relating to seasonal adequacy assessments