

MEMORANDUM OF UNDERSTANDING OF THE PENTALATERAL ENERGY FORUM ON RISK PREPAREDNESS IN THE ELECTRICITY SECTOR

The Ministers for Energy of the Pentalateral Energy Forum, consisting of Austria, Belgium, France, Germany, Luxembourg, the Netherlands and Switzerland, hereinafter referred to as the “signatories”, wish to confirm their intention to maintain and strengthen their existing cooperation on risk preparedness in the electricity sector.

The signatories have regard to Article 15 of Regulation (EU) 2019/941 of the European Parliament and of the Council on risk preparedness in the electricity sector and repealing Directive 2005/89/EC of the European Parliament and of the Council (‘Risk Preparedness Regulation’).

They take note of the legally non-binding Commission Recommendation (EU) 2020/775 of 5 June 2020 on the key elements of the fair compensation and other key elements to be included in the technical, legal and financial arrangements between EU Member States for the application of the assistance mechanism under Article 15 of the Risk Preparedness Regulation.

Considering:

- existing legal provisions from the Commission Regulation (EU) 2017/1485 of 2 August 2017 establishing a guideline on electricity transmission system operation, the Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing, the Commission Regulation (EU) 2017/2196 of 24 November 2017 establishing a network code on electricity emergency and restoration, Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity and Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU;
- that the Ministers for Energy of Austria, Belgium, France, Germany, Luxembourg, the Netherlands and Switzerland have signed a memorandum of understanding of the Pentalateral Energy Forum on emergency planning and crisis management for the power sector on 26 June 2017, that these countries have been closely cooperating within the Pentalateral Energy Forum in order to prevent electricity crises, and that they concur to assist each other in case of an electricity crisis, without exclusion, and in a spirit of solidarity and trust as laid down in the Risk Preparedness Regulation;
- that the “market-first” principle should apply in managing crisis situations and that all market-based measures should be given priority to mitigate the effects of a potential supply disruption. Non-market-based measures shall be activated in an electricity crisis only as a last resort if all options provided by the market have been exhausted or where it is evident that market-based measures alone are not sufficient to prevent a further deterioration of the electricity supply situation;
- that a signatory should only request assistance to prevent or manage electricity crises if all national measures in the requesting Penta country’s risk preparedness plan and inter-TSO (Transmission System Operator) support measures have been exhausted or where it is evident that these measures are not sufficient to prevent a further deterioration of the electricity supply situation;

- that security of supply, including risk preparedness in particular, is a national responsibility but national decisions can impact the EU internal electricity market, neighbouring countries and the Pentalateral Region;
- that cross-border and national grid infrastructure is essential for the security of supply in the Pentalateral Region;
- that a better mutual understanding of national concerns (energy mix, resource and transmission adequacy, flexibility needs, peak capacity, emergency plans, risk management plans) and common measures are necessary for efficient crisis mitigation;
- that mid- and long-term adequacy assessments on a national, regional and European level as well as the continuous improvement of their respective methodologies contribute to a better mutual understanding of security of supply and help identifying and mitigating security of supply issues from a regional perspective at an early stage;
- that common measures are helpful to ensure risk preparedness on a national and regional level in an effective and efficient manner;
- that this Memorandum of Understanding replaces the Memorandum of Understanding of 26 June 2017 on emergency planning and crisis management for the power sector;

with the intention to:

- lay down a framework for cooperation in the Pentalateral Region with a view to preventing, preparing for and managing electricity crises in a spirit of solidarity and transparency and fully respecting the requirements of a competitive internal market for electricity and the operational security procedures of the transmission network operators. This should also include simultaneous crisis situations affecting more than one Penta country;
- bring together the relevant representatives from Ministries, Transmission System Operators (TSOs), National Regulatory Authorities (NRAs) and potentially other stakeholders;
- strive for a joint coordination of regional measures to be implemented in case of a crisis situation, including possible implementation of rules for curtailment of interconnection capacities and load shedding, while ensuring compatibility with the internal energy market;
- prepare for the occurrence of a situation which may not be solved with market-based measures or existing operational procedures of the transmission system operators alone and which may require competent authorities to take non-market-based measures;
- refer to the Memorandum of Understanding as part of the national risk preparedness plans of the signatories in accordance with Article 10 of the Risk Preparedness Regulation;

have agreed the following:

Definition of an electricity crisis

- All countries share a common understanding that an electricity crisis is constituted by a present or imminent situation in which there is a significant involuntary electricity shortage.
- A regional electricity crisis is an electricity crisis simultaneously affecting more than one country within the region of the Pentalateral Energy Forum at the same time.

Confidential common contact list

- All countries will share a confidential common contact list with names and contact details of all entities involved in crisis prevention and management, which contains at least the competent authority, the crisis coordinator, as well as the National Regulatory Authority (NRA) (if involved in crisis situations) and the Transmission System Operators (TSOs) of each country, and which

will be updated annually by the Benelux Secretariat, unless circumstances warrant more frequent updates.

- All countries pledge to keep the others informed of their organisation and the evolution of their organisation.
- When communicating with another Penta country, a communication protocol will be followed. Unless detailed otherwise in this communication protocol, representatives of Ministries, TSOs, NRAs communicate with their respective peers, with the exception of early warnings that should be issued by the relevant Competent Authorities to all contacts of the confidential common contact list.

Exchange on security of supply situation and the functioning of crisis management policies

- Experts from the Ministries, NRAs and TSOs of the Pentalateral Region will meet regularly to discuss the security of supply situation on a national and regional level as well as the functioning of national and regional electricity crisis management policies.
- Upon request of one of the signatories, a meeting or call will be organized at short notice.
- If deemed necessary by one of the signatories, an invitation to the meeting can be extended to other entities, provided that all other regular participants accept this.

Penta regional scenarios

- Relevant regional electricity crisis scenarios for the Pentalateral Region will be identified by the Pentalateral Energy Forum, included in the national risk preparedness plans and revised every four years, unless circumstances warrant more frequent updates.
- These regional scenarios for the Pentalateral Region should be consistent with and complementary to the national electricity crisis scenarios as identified by the countries of the Pentalateral Energy Forum.

Information on an electricity crisis

- In case of an imminent electricity crisis, or when confronted with an electricity crisis, the competent authority of the affected country will inform all competent authorities of the Pentalateral Region of the situation, the measures taken and planned at national level and the possible regional measures identified.
- The competent authority of the country, having faced an electricity crisis, will provide an ex-post evaluation report during a dedicated meeting with experts from Ministries, NRAs and TSOs of the Pentalateral Region. The meeting should result in a list of lessons learnt and may result in an adaptation of the risk preparedness plans.

Assistance in case of an electricity crisis

- The signatories intend to, where they have the necessary technical ability, offer each other assistance by means of regional measures. To that end, and with the purpose of protecting public safety and personal security, signatories aim to decide as quickly as possible on regional measures of their choice in order to deliver electricity in a coordinated manner.
- Therefore, the signatories will assess possible measures such as cross-border usage of reserve capacities and flexible loads; exchange about demand disconnection plans; surveillance of the short-term security of electricity supply; coordinate information regarding saving appeals to the public; support with electric equipment, knowledge and expertise; and usage of mobile generators.
- Conditions under which support can be requested and provided should be clear, objective and harmonised. They should build upon and go beyond existing rules and measures for inter-TSO assistance.
- The signatories intend to agree on the necessary technical, legal and financial arrangements for the implementation of the regional measures. Such arrangements should specify, inter alia,

the maximum quantity of electricity to be delivered at regional level, the trigger for any assistance and for suspension of assistance, how the electricity will be delivered, and provisions on fair compensation between the signatories.

- With regard to fair compensation, the signatories will strive for an agreement covering at least:
(a) the cost of the electricity delivered into the territory of the affected country requesting assistance as well as the associated transmission costs; and
(b) any other reasonable costs incurred by the country providing assistance, including reimbursement for assistance prepared without effective activation, as well as any costs resulting from judicial proceedings, arbitration proceedings or similar proceedings and settlements.
- In the event of an electricity crisis in which the signatories have not yet decided on regional measures and technical, legal and financial arrangements, they will apply existing measures of cooperation, such as the dedicated Penta standing group on electricity scarcity, or decide on ad hoc measures and arrangements that are most suitable to address the crisis.
- Possible measures of assistance will need to be coordinated with the concerned national TSOs before such assistance is activated.

Electricity crisis exercises

- With the involvement of relevant stakeholders, the competent authorities of the signatories intend to periodically test the effectiveness of the procedures developed in risk preparedness plans for preventing electricity crises, and carry out biennial simulations of electricity crises.
- A calendar for the preparation and the execution, as well as a proposal for the format and goals of the upcoming crisis exercises will be presented in Q4 2021.

This Memorandum of Understanding does not create any rights or obligations under international law and does not intend to replace or modify any existing legal obligations between the signatories.

Signed in Brussels on the 1st of December of the year two thousand and twenty one.

For the Kingdom of Belgium



For the Republic of Austria



For the French Republic



For the Federal Republic of Germany



For the Grand Duchy of Luxembourg



For the Netherlands



For the Swiss Confederation

