

Terms of Reference for the Market European Network Code Stakeholder Committee

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1. Introduction

Since 2011, considerable effort has been devoted to the development of the network codes and guidelines for electricity (NCs)¹ by the European Commission (EC), the Agency for the Cooperation of Energy Regulators (ACER, the Agency), the European Network of Transmission System Operators for Electricity (ENTSO-E), associations representing Distribution System Operators (DSOs), the European association of energy exchanges (Europex) and other stakeholders such as consumer organisations, generators, suppliers and many others from across the European electricity sector.

The drafting and approval of NCs is however just the start. The NCs have been designed to help realise Europe's triple energy policy objective of developing a reliable, sustainable and competitive electricity sector. The NCs will now become one of the starting points of the Energy Union. For this to happen, they need to be implemented and complied with across Europe.

This represents an important challenge for the sector with each NC requiring a series of steps to be taken, before being considered as fully implemented. This process will include, amongst other things, cross-national and national decisions, the conclusion of regional agreements, the creation of European-level common detailed methodologies and their actual (coordinated) application. All market participants, grid users, DSOs, Market Operators (MOs, entities responsible for such tasks as imbalance settlement), Nominated Electricity Market Operators (NEMOs), Power Exchanges (PXs), Transmission System Operators (TSOs) and National Regulatory Authorities (NRAs) will be involved in the extensive required development work and consultation.

Effective stakeholder engagement is essential to the overall success of the overall objectives. In practice, this involves efficient and intensive sharing of views and information by all interested parties throughout the process as a whole. Stakeholders will need to be kept abreast of developments and be provided with a forum to express their views and feedback. The parties responsible for implementation, will play an important role in this respect.

2. Scope and objectives of the Committees

ACER and ENTSO-E propose to co-organise three European Stakeholder Committees (ESCs), one per family of codes (Market codes, Operational codes and Connection codes)². These Committees aim to complement, and not to replace, the legal obligations of stakeholder consultation and information included in the NCs during the implementation period. More specifically, the activities of the ESCs are without prejudice to Article 7 of Regulation (EC) No 714/2009 and Article 10 of Regulation (EC) No 713/2009.

These Terms of References contain general rules for the three European Stakeholder Committees (ESCs) and specific rules for the purposes of the Market ESC to be established on 29 September 2015. These Terms of Reference do not prejudice the determination of specific rules in the Terms of References to be adopted by the other two ESCs in the future (Operation and Connection codes).

A. Objectives

The main objectives of the ESCs are:

¹ For clarity, the term “network codes” (NC) is mainly used in this document to define any set of common rules for electricity markets, be it “network codes” or “binding guidelines”, as defined by Regulation (EC) N°714/2009. The term “network codes and guidelines” is used on very specific occasions when it actually contributes to a better understanding of the consultation document.

1. To contribute to monitoring progress in the NCs implementation process – as well as the operation and functioning of the processes and arrangements established according to the NCs – at local, regional and pan-European level as an overarching structure of all network codes;
2. To serve as a platform to share general views on the NC implementation, with a particular focus to enable stakeholders to express their views and receive feedback;
3. To contribute to a more informed decision-making process for the methodologies and rules still to be developed for the implementation of the NCs.

Therefore, the ESCs will provide **all interested stakeholder representative organisations on a European level** with:

- the opportunity to join a forum with participation of the Agency, the EC and all the responsible parties for the NC implementation, through which the different implementation activities are discussed and consulted on;
- an efficient way to receive early information on the development of implementation projects; and
- an efficient way to input towards and provide comments to the relevant parties involved in all implementation projects, while receiving clear feedback from these parties.

The ESCs will provide **the Agency and NRAs** with:

- support to perform their monitoring tasks on the implementation status of each NC within each country and identifying any gap, inconsistencies, overlaps or inefficiencies from a European perspective;
- a platform to discuss the scope and progress of the monitoring of the implementation of network codes;
- an effective and responsive mechanism to monitor the operation and functioning of the processes and arrangements established according to the NCs.

The ESCs will provide **ENTSO-E, NEMOs and other parties responsible for NCs implementation** with:

- a platform to report on implementation projects, in particular the lessons learned and problems encountered as well as to report on early drafts for the terms and conditions of methodologies or other projects to be developed;
- a platform to receive feedback from stakeholders, therefore contributing to a more informed decision-making process and enhancing the quality of the projects delivered.

B. Scope and consistency

The scope of each ESC is a priori limited to the implementation projects of the NCs it covers – monitoring progress in the NCs implementation process and in the operation and functioning of the processes and arrangements established according to the NCs. However, the scope of the Market ESC could also be extended to address the market-related aspects of the more technical NCs like, e.g., the Network Code on Emergency and Restoration (NC ER).³

The ESC Chairpersons (supported by the Secretariat) have the responsibility to ensure consistency of the discussions across the three ESCs; therefore, the Chairperson of each ESC, or upon the

³ Such decision will only be taken once the technical NCS are adopted and in coordination with the relevant ESCs.

Chairperson's request another party, will provide participants with regular consistency updates on the main relevant issues discussed by other ESCs.

ESCs shall not replace the obligation for general public consultations required by the network codes. The ESCs shall also preserve TSOs (and where relevant NEMOs) joint responsibility for the development of the implementation projects and the Agency/NRAs responsibility for monitoring and regulatory supervision of those projects. The Agency, ENTSO-E, NEMOs or other responsible parties may organise workshops on specific issues when needed and/or have bilateral contacts/meetings with individual stakeholders. The ESCs will be informed about the timing and conclusions of these communications/meetings where appropriate.

The ESCs will also help to monitor any failure or lack of stakeholder engagement at local level and identify appropriate measures as well as in sharing best practices.

C. Subgroups

The Chairperson, acting upon a recommendation of ESC, can propose the creation of time-limited or longer-term ad-hoc stakeholder groups (subgroups), which will focus on specific issues and projects or groups of projects. These will report to the respective ESC, which may provide input to their discussions and request specific actions, reports or explanations. Stakeholder groups that were created before the creation of ESCs by ACER, ENTSO-E or other responsible parties will be integrated into the ESC structure and assigned to the ESC that best responds to their statutory objectives.

D. Operational and market NCs implementation plans⁴

Following the adoption of an operational or market network codes, the Agency will ask ENTSO-E, NEMOs and other responsible parties to provide implementation plans. These will present a basic overview of pan-European, regional and national projects' timelines and the deliverables necessary to implement these codes.

Each ESC will assist the Agency, ENTSO-E, NEMOs and other responsible parties in monitoring the implementation of NCs against this plan.

3. Representation principles

The rules for membership and management of the ESCs will be a key factor to their success.

These rules must ensure proper representation of all interested parties which are directly or indirectly impacted by the NC implementation. The membership of the ESC should be balanced and on equal footing, representing all parts of the value chain and ensuring geographical diversity to the extent possible. Membership rules must however be designed in a way that enhances efficient discussions. To guarantee the application of these principles, the following rules should apply in all ESCs, and by default in all subgroups:

⁴ Pan-European and regional implementation plans are non-relevant for connection codes, as they only include provisions which need to be implemented at national level. Details of the timeline and procedures for establishing the market and operational NCs implementation plans will be presented by the Agency when necessary.

- The Agency chairs all Committees, and nominates the Chairperson of each subgroup after consulting the ESC;
- The Chairpersons have the purpose to facilitate and lead the discussions, allow the expression and active participation of all parties, and ensure that ACER, ENTSO-E, NEMOs and other responsible parties comply with their engagements, in particular in terms of follow-up;
- Membership should aim to participate in person. ESCs members commit to only substitute their representatives under exceptional circumstances;
- Members are nominated through a formal call for interest open to any interested association representing pan-European views or interests. Each association will be asked to designate a limited number of representatives;
- The number of representatives per association will be limited with the aim to keep the total number of members below 25;
- The European Commission will be invited to observe all meetings of the ESCs;
- External speakers can be invited by the chairperson when relevant to the missions of the ESCs;
- ENTSO-E is the main provider of secretarial services, organise the meetings in close cooperation with the Chairpersons, and maintains the IT platform;
- On a case-by-case basis, non-ESC members will be able to participate in meetings, to access all documents, to address comments and, if technically possible, to follow live streaming of the meetings through an IT platform, only if they are affiliated to an organisation represented in the MESC and pre-authorized by the Chairperson.

4. Roles, responsibilities and working arrangements

All ESCs members commit to:

- ensure high quality and consistency of the ESCs through regular and active participation;
- liaise with their members and stakeholders to update on network codes implementation and amendment and represent their views and concerns; and
- share issues and concerns early on, in particular if they could be detrimental to the internal market, while respecting the processes for the implementation of the network codes as set up by the Member States, regulatory authorities and other designated entities.

The Agency commits to:

- chair all meetings in a neutral way;
- ensure coordination of the three ESCs discussions;
- work in close collaboration with ENTSO-E, NEMOs and other responsible parties to prepare all necessary meetings documents (agenda, deliverables as per the action plan), and present them ideally 2 weeks or at least 5 working days before any meeting;
- periodically assess the ESCs structure and functioning and review them when necessary

The Agency, ENTSO-E, NEMOs and other parties responsible for implementation commit to act in close collaboration in an open and transparent manner to:

- provide information to facilitate participant's understanding, and prepare regular reports on

implementation projects taking into account the requests for reporting from ESCs members and chairs;

- initiate and provide information on aspects where participants input is expected:

in particular, inform on a regular basis ESCs members on the state of implementation of network codes related projects. This reporting shall be sufficiently detailed, and also be provided in advance to give the ESC the opportunity to contribute to a consistent implementation;

- for the same purpose, inform in advance the Stakeholder Committee of any new or updated methodology before implementation, study, consultations etc. with regards to the NCs implementation;
- take into consideration all issues and actions listed by the ESCs, expressed by stakeholders. They commit to justify and explain in details their views;

ENTSO-E commits to:

- prepare, in close collaboration with the Agency, and publish prior to the first meeting of each ESC a list of all existing national and regional structures responsible for stakeholder engagement during network codes implementation;
- support the Agency in the organisation of the ESCs by providing secretariat services, including:
 - preparation of all meetings documents (agenda, deliverables, attendance lists, minutes);
 - setting up and maintaining an IT platform to ensure transparency, in close collaboration with the Agency;
 - organisation of the meetings, in close collaboration with the Agency;
 - Conclusions with main action points: issues and actions logs.
- make sure, in close collaboration with the Agency, that all the accessible information on the implementation of any national-specific methodologies and provisions at national or regional level is made available to all stakeholders in Europe through an IT platform.

5. Organisation of meetings

Each ESC meets indicatively four times a year but can increase or decrease this number according to its needs. The meetings will preferably be held in Ljubljana.

The Chairperson drafts meeting agendas, while duly taking into consideration the input provided by the parties responsible for the implementation projects. Agendas are validated at the beginning of each meeting. Stakeholders can request the Chairperson to include a specific topic on the draft agenda.

Minutes of each meeting, which accurately reflect the discussions held, will be produced. Participants shall be provided with a reasonable time period in which to comment on the minutes. In the event that no comments are received, the minutes shall be deemed to be approved. In the event comments are received, the Chairperson can incorporate them when justified, into a final version of the minutes.

Minutes will include an action log, and a log of any issues raised by stakeholders that may require further investigation. At each meeting, the Chairperson shall seek for clear answers and reports on each item included in the issues and action logs from responsible parties.

Minutes from the precedent meeting, as well as the meetings agendas should be validated by a show of hands.

6. IT Platform for transparency

ENTSO-E will put in place a dedicated IT platform for each ESC, in close collaboration with the Agency. All documents, deliverables, minutes, lists of participants and agendas will be published on this platform. The IT platform will also allow stakeholders, members or non-members of the ESCs, to express comments on the main deliverables and will allow members to register for meetings. If technically possible, live streaming of each meeting will be publicly available.