

VERSION OF 16 DECEMBER 2022

PROCESS FOR DEVELOPING NETWORK CODES AND AMENDMENTS TO NETWORK CODES AND GUIDELINES

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1. Executive summary

The Process for Developing Network Codes (NCs) and Amendments to NCs and Guidelines (GLs) (hereafter referred as “the Process”) is an internal ENTSO-E process, part of its rules of procedure. It establishes ENTSO-E’s development processes taking place when (i) ENTSO-E receives the request to submit a NC proposal; (ii) the EU DSO Entity receives the request to submit a NC proposal in cooperation with ENTSO-E; (iii) ENTSO-E develops NCs amendment proposals for submission to the Agency for the Cooperation of Energy Regulators (ACER); and (iv) ENTSO-E answers to consultations on NCs and GLs amendment proposals by ACER or the European Commission (EC).

The Process is designed to achieve consensus within ENTSO-E and with the affected stakeholders and, in this way, to be fair, transparent and balanced.

This Process updates and replaces the “Network Code Development Process” approved in 2011 to integrate various changes brought by Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (IEM Regulation). In particular, the Process (i) includes a complete and consistent approach to propose NCs amendments to ACER and to assess ACER’s and the EC’s proposals for NCs and GLs amendments; and (ii) introduces the NC development process when ENTSO-E has to cooperate with the EU DSO Entity.

2. Introduction

NCs and GLs ensure a high standard of interoperability, reliability and security of the European electricity transmission systems within the framework of the EU electricity market. Many NCs and GLs have been adopted by the EC. Their constant review is necessary to keep them up to date and fit for purpose, given the experience gained during the implementation phase and the evolution of the system needs.

A certain number of NCs and GLs have been developed following the framework of the Third Energy Package. Subsequent NCs and GLs are now being developed and amended on the basis of the Clean Energy Package (CEP).

In particular, the IEM Regulation provides the legal framework for NCs and GLs¹. An important change brought by the IEM Regulation is that the EC will either request ENTSO-E or the EU DSO Entity in cooperation with ENTSO-E, to submit a proposal for a NC². Therefore, ENTSO-E will have a legal obligation to submit a new draft NC proposal when it receives this legal mandate from the EC and a legal mandate to cooperate with the EU DSO Entity when the EU DSO Entity receives the request to submit a NC proposal.

¹ On the one hand, Article 59 of the IEM Regulation describes the establishment of NCs, and Article 60 of the IEM Regulation their amendment. On the other hand, Article 61 of the IEM Regulation describes the establishment and amendment of GLs.

² See Article 59(9) of the IEM Regulation.

This document aims to align ENTSO-E's rules of procedure with the IEM Regulation, establishing the internal development processes taking place when (i) ENTSO-E receives the request to submit a NC proposal; (ii) the EU DSO Entity receives the request to submit a NC proposal in cooperation with ENTSO-E; (iii) ENTSO-E develops NCs amendment proposals for submission to ACER; and (iv) ENTSO-E answers to consultations on NCs and GLs amendment proposals by ACER or the EC.

Key Principles

The Process is designed to achieve consensus within ENTSO-E and with the affected stakeholders and, in this way, to be fair, transparent and balanced.

The amendment process considers the following key principles based on the “*Network Code Implementation Monitoring Group (NC IMG)*³ *informal guidance for the preparatory phases of the Network Code and Guidelines amendment process*”⁴, which includes some criteria meant to be used for the assessment of the proposals and which are relevant for the ENTSO-E's internal process to amend NCs and GLs:

- *the future preparatory work should take due respect of the roles and responsibilities of the parties as defined in the legislation in order to safeguard the legitimacy and accountability of the process (...);*
- *the transparency of the whole process and appropriate consultation of ENTSOs and all stakeholders is vital to allow the proper consideration, assessment and justification of new NCs and amendment proposals (...);*
- *to the appropriate extent and for consistency purposes, the preparatory stages of the amendment process will apply both to NCs and GLs, notwithstanding the different legal basis of their adoption;*
- *the preparatory stages of the NC and amendment process should be simple and avoid unnecessary delays. The priority and urgency of amendment proposals will be assessed in a flexible way at any stage, either as a result of ad hoc assessment or after regular reviews; however, efforts will be made to group amendments as far as possible; and*
- *to ensure consistency and transparent cooperation among NC IMG members, regular high-level implementation monitoring reports will be provided to the NC IMG or at working level groups, particularly to highlight progress, problems and bottlenecks that may lead to an amendment request.*

Generally, ENTSO-E should cooperate with the EU DSO Entity on topics that may be relevant to DSOs. In case the EU DSO Entity is in charge of submitting a NC proposal in cooperation with ENTSO-

³ The NC IMG is now called Gas and Electricity Policy Exchange Meetings (GPEM).

⁴https://ec.europa.eu/energy/sites/ener/files/documents/190405_nc_img_informal_guidance_on_preparatory_phases_of_ncs_amendment_process.pdf

E, the cooperation shall be based on the Memorandum of Understanding between ENTSO-E and the EU DSO entity (TSO DSO MoU).

Furthermore, ENTSO-E will follow the leading Committee's decision and – if necessary – an escalation process in accordance with its Articles of Association and Internal Regulations.

In order to ensure that all cross-Committee elements are identified, any amendment should be notified to all relevant Committees via the NC and CEP Implementation Programme (NCCIP).

In general, any proposal for amendment of the NCs and GLs coming from ENTSO-E, ACER or the EC should be discussed at an early stage between ENTSO-E, ACER and the EC, e.g. in the framework of the Coordination Group meetings and the Gas and Electricity Policy Exchange Meetings (GPEM)⁵.

Objectives

This internal Process - for the (i) development of NCs proposals, (ii) NC amendment proposals to ACER, and (iii) consultation responses to ACER and the EC for NCs and GLs amendment proposals - will ensure completeness and consistency. Specifically, this Process shall:

- be efficient in terms of internal and members' resources;
- be effective in making timely, good quality proposals and meeting deadlines;
- be legally consistent with all NCs and GLs;
- involve the Assembly, the Board and the Committees, as relevant; and
- ensure cross-Committee coordination.

3. Network Codes and Guidelines characteristics

The NCs and GLs aim to provide the necessary degree of harmonization required for the integration of national electricity markets across Europe to achieve a well-functioning internal energy market.

⁵ GPEM are the formerly known NC IMG meetings. GPEM is a high-level coordination meeting between the EC, ACER and the ENTSOs. The GPEMs will focus on the discussion of strategic issues concerning the gas and electricity sector. These may be related to the NC/GL implementation, the implementation of the CEP or of the future legislative initiatives.

They are EU regulations adopted as implementing acts⁶ or as delegated acts⁷⁸. Non-compliance with their provisions may constitute the basis for judicial action.

Given their EU law nature, the NCs and GLs have primacy over potentially conflicting national legislation, which would cease to apply. However, the EU NCs and GLs are not intended to replace the necessary national network regulations for non-cross border issues. Member States have also the right to provide for more detailed provisions than those set out in the NCs and GLs, provided that those measures are compatible with the Union law.

NCs and GLs have a different legal basis. NCs are regulated in Articles 59 and 60 of the IEM Regulation, and GLs are regulated in Article 61 of the IEM Regulation. NCs and GLs should not regulate beyond the scope of their legal basis. In this case, there is a risk that the NC or GL in question may be declared inapplicable⁹. It is also important to bear in mind that ENTSO-E is only drafting in the case of NCs; the EC holds the pen for the GLs and consults ENTSO-E before adopting or amending them¹⁰.

Structure for new Network Codes and Guidelines

A NC or a GL defines certain obligations or requirements for TSOs and other entities acting in the European energy sector. In order to make NCs and GLs comprehensive and transparent, they may contain the following elements:

- **Title** shall be brief and concise, allowing for a quick and unambiguous identification of the area covered by the NC or GL;
- **Scope and Subject matter** shall mean a brief, comprehensive description of the NC or GL, of its main objectives and shall contain a general identification of the addressees obliged to

⁶ Pursuant to Article 291 Treaty of the Functioning of the European Union (TFEU).

⁷ Pursuant to Article 290 TFEU.

⁸ Implementing acts express uniform conditions for the implementation of the procedures contemplated in the primary legislation, and they are adopted following a comitology procedure. Delegated acts are more far-reaching; they can supplement or amend non-essential aspects of the primary legislation, and don't follow a comitology procedure; instead, designated experts of the Members States shall be consulted beforehand, and the adoption shall be notified to the European Parliament and to the Council.

⁹ See cases T-684/19 and T-704/19 MEKH v. ACER and FGSZ v. ACER, judgment of 16 March 2022.

¹⁰ Although the drafting of the GLs often began as NCs, the EC subsequently chose to develop and adopt them as GLs.

comply with the NC or GL in question, subject to any special regime further detailed in the NC or GL;

- **Definitions** introduce or define specific values, or a specific naming as given facts that may be used or cited within the NC or GL;
- **Rules** define obligations or requirements that are fixed and binding for the addressees. Rules are the core part of a NC or GL;
- **Special Rules** are variances in case of identified objective differences. Typically, in electricity systems or in market structures, a Rule may include variances for a TSO, a group of TSOs (for example a synchronous area) or other (group of) addressees; and
- **Entry into force** identifies the exact moment when the Rules and the Special Rules become binding subject to transitory regimes that are specified, if relevant, in the NC or GL.

Quality objectives

The **following main** quality objectives support the development and set-up of NCs and GLs:

- **Transparency.** Technical and physical principles of transmission grid operation are clearly described. The NCs and GLs should to a reasonable extent be written in a form readable to non-experts. Additional to technical and physical principles, operational figures relevant for the Internal Electricity Market should be taken into account;
- **Unambiguousness.** All (Specific) Rules of the NCs and GLs are written to be straightforward and unmistakable;
- **Future proofing and relevance to the present.** The (Specific) Rules in NCs and GLs shall anticipate the future conditions of the system and adopt a forward-looking approach. In addition, the (Specific) Rules shall be periodically assessed by ENTSO-E to promptly identify the need for adaptation to the changing technical, market and legislative environment and, if necessary, to initiate an amendment procedure with ACER¹¹;
- **Adequate level.** The NCs and GLs shall include (Specific) Rules based on effective technical solutions ensuring an adequate and reliable power system as well as market integration and not based on a lowest common denominator compromise. The (Specific) Rules in the

¹¹ Pursuant to Article 60 of the IEM Regulation.

NCs and GLs shall aim at achieving an objective that is the best approach for the overall performance of the interconnected power system;

- **Measurability.** Monitoring and implementation criteria, including each performance requirement, shall be stated so as to be objectively measurable;
- **Consistent terminology.** Each (Specific) Rule shall use a set of standard terms and definitions that are approved through the NCs and GLs development process. Terms, definitions, and cross-references shall be applied in a consistent way;
- **Coherent processes.** Each provision shall be consistent with related provisions in the relevant and other NCs and GLs. The provisions shall also be coherent with the act or regulation that provides their legal basis; and
- **Enforceability.** The (Specific) Rules shall be enforceable by national authorities.

4. Roles in the Network Codes Development and Network Code and Guidelines Amendment Process

In the Process, the following ENTSO-E bodies have the following competencies and powers.

The Assembly is the general leading body of ENTSO-E, responsible for:

- Approval of the Annual Work Programme (AWP), including expected requests to develop NCs, expected upcoming amendment processes, approval of the Budget, acknowledgement of the external requests for the development of a NC, confirming subsequent implementation measures and approval of the Key Policy Issue Papers (KPIP); and
- Approval of variations to AWP, KPIP, and Budget.

The Board is the managing body of ENTSO-E, responsible for:

- NC development: acknowledging external requests for the development of a NC, prior to acknowledgment by the Assembly, acknowledging the KPIP prior to approval by the

Assembly and advising on cross-Committee issues, providing strategic guidance to the NCCIP and the ENTSO-E Drafting Teams¹²; and

- NC or GL amendment proposals: advising on cross-Committee issues, providing strategic guidance to the NCCIP and the ENTSO-E Drafting Teams.

The Committees are the ENTSO-E bodies responsible for developing the NCs proposals, the amendment proposals and the consultation answers on amendment proposals to NCs and GLs in their respective areas of expertise, including their periodic review, as foreseen in the Section 6 below.

In case of cross-Committee topics, a leading Committee should be appointed /designated which aligns with the other relevant Committees. The leading Committee and their respective Working Groups / Steering Groups are specifically responsible for:

- developing the KPIP for Board and Assembly approval, which includes the strategic direction for developing NCs and is finalized after ACER has submitted their Framework Guidelines to the EC;
- developing and approving the draft proposal of a NC prior to launching the formal stakeholder consultation process;
- developing and approving the final proposal of a NC prior to its submission to ACER;
- developing and approving the formal amendment proposals for submission to ACER; and
- developing and approving the answers to consultations by ACER and the EC on the amendment of NCs or GLs.

The Committee Chairs provide strategic guidance to the NCCIP and ENTSO-E Drafting Teams¹³ and/or escalate to the Board accordingly.

The NCCIP, consisting of the NCs and GLs advisors in the Secretariat and the relevant convenors working in the different Committees and in the Legal and Regulatory Group (LRG) on NC and GL implementation, administers the NCs development and periodic review processes, ensuring compliance with this Process in the following areas:

¹² In case of co-development of NCs proposals with the EU DSO Entity, the Board will provide guidance to the TSO-DSO Development Team.

¹³ In case of co-development of NCs proposals with the EU DSO Entity, the Committee Chairs will provide guidance to the TSO-DSO Development Team.

- integrity of the processes, and the consistency across NCs and GLs, quality and completeness of a NC or GL;
- support the coordination of the work across Committees and coordination of the different Drafting Teams together with the Committees;
- review and advise of KPIPs, new NCs, formal amendment proposals, consultation responses and drafts for implementing acts regarding cross-Committee issues, cross checking and coordinating the requirements of the different NCs; and
- administration of the consultation process associated with the NCs.

The LRG is the ENTSO-E body ensuring appropriate legal and regulatory support during the NCs development and the amendment process, including reviews to ensure legal and legislative quality control and regulatory consistency, as foreseen in Section 5 below.

The ENTSO-E Drafting Team is a team of experts, set up by and working under the coordination of a Working Group, Steering Group or a Committee, responsible for the development of a NC or the amendment of a NC or GL, including the assessment of and response to comments during the ENTSO-E consultation process. The Drafting Team is supported, as needed, by the LRG and the ENTSO-E Legal Advisors. In case of co-development of NCs proposals with the EU DSO Entity, its responsibility is taken by the common TSO-DSO Development Team.

ENTSO-E Legal Advisors shall ensure that the legal language, format and structure of a NC and GL comply with the standards of EU legislation considering that the proposed NCs and GLs will become EU legislation. They shall work in close cooperation with the relevant NCs and GLs advisors, the Drafting Teams and the LRG. They can also be a member of a Drafting Team.

The Drafting committee shall be convened by ENTSO-E, or the EU DSO Entity in cooperation with ENTSO-E, to support the NC development process. The drafting committee shall consist of representatives of ACER, ENTSO-E, where appropriate the EU DSO Entity and Nominated Electricity Market Operators (NEMOs), and a limited number of the main affected stakeholders¹⁴.

The TSO-DSO Development Team is a common team of experts from ENTSO-E and the EU DSO Entity, responsible for the drafting of a new NC proposal when the EU DSO Entity in cooperation with ENTSO-E shall submit it to ACER¹⁵.

¹⁴ See Article 59(10) of the IEM Regulation.

¹⁵ Pursuant to Article 59(3) of the IEM Regulation.

5. Network Codes development process

The general NC development process is described in Article 59 of the IEM Regulation and foresees the following steps:

- EC to request ACER to submit, within maximum 6 months, a non-binding Framework Guideline setting out clear and objective principles to be followed by ENTSO-E or the EU DSO Entity when developing the NC proposal;
- ACER to submit the Framework Guideline to the EC after consulting ENTSO-E and other relevant stakeholders;
- EC to request ENTSO-E, or the EU DSO Entity in cooperation with ENTSO-E, to submit the proposal for the NC to ACER within a maximum of 12 months;
- ENTSO-E, or the EU DSO Entity in cooperation with ENTSO-E, to convene a drafting committee with representatives of ACER, ENTSO-E and, where appropriate, the EU DSO Entity, NEMOs and main affected stakeholders¹⁶; and
- ACER to revise the proposed NC to ensure compliance with the Framework Guideline, consult stakeholders and submit it to the EC not later than 6 months.

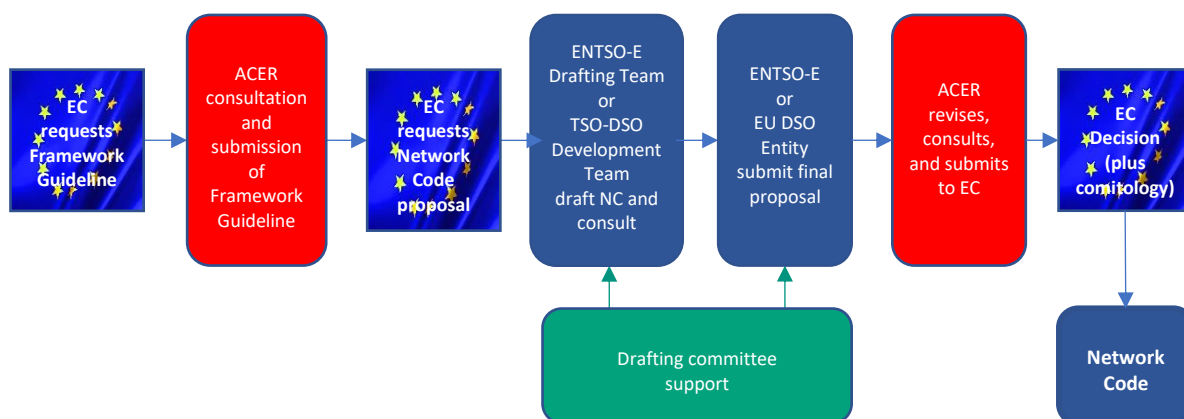


Figure 1 - Block Diagram General Network Codes Development Process

¹⁶ Pursuant to Article 31(1) of the IEM Regulation, in relation to the previous Article 30(1)(a), ENTSO-E or the EU DSO Entity in cooperation with ENTSO-E shall conduct an extensive consultation process.

5.1 ENTSO-E responsible to submit a Network Code proposal

The Process involves the following steps when ENTSO-E is responsible to submit a NC proposal:

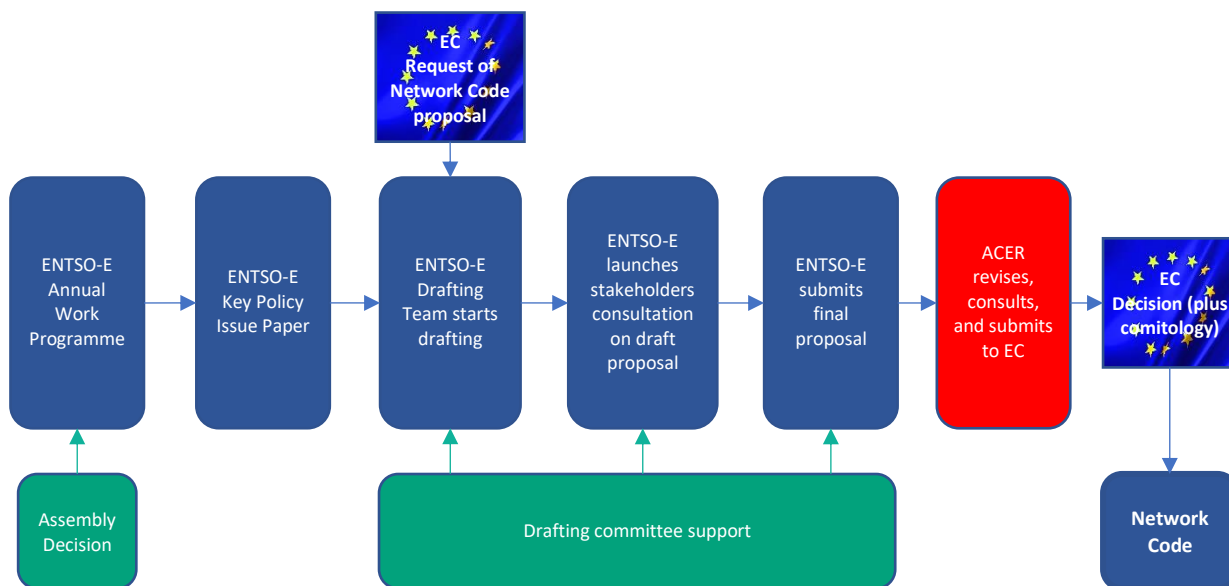


Figure 2 - Block Diagram ENTSO-E responsible to submit a Network Code proposal

Step 1 – Initiation

ENTSO-E has some foresight regarding upcoming NCs based on the priority list established by the EC¹⁷, and the preliminary work and exchanges with ACER and the EC, e.g. in the Coordination Group meetings and GEPEM. ENTSO-E is also informed once EC requests ACER to draft a Framework Guideline.

Based on this information, the plan to develop a NC shall be included in the AWP, proposed and managed by the leading Committee, coordinated across Committees by the NCCIP, and approved in the form of the overall ENTSO-E AWP by the Assembly. Variations to the AWP and Budget, e.g. due to updated planning from the EC shall be approved by the Assembly.

The Working Group or Steering Group shall coordinate with the EC and ACER in respect to the Framework Guideline, aiming at a common understanding of the scope of the work and the timetable before a NC is included in the AWP.

Furthermore, based on the planning in the AWP, a KPIP shall be prepared by the leading Committee or the relevant Steering Group, acknowledged by the Board and approved by the Assembly, providing the strategic frame in which a new NC shall be drafted.

¹⁷ Pursuant to Article 59(3) of the IEM Regulation.

The request to submit a NC in accordance with Article 59(9) and (10) of the IEM Regulation and based on the relevant Framework Guideline drafted by ACER in the areas stipulated in Article 59(1) and (2) of the IEM Regulation shall be acknowledged by the Assembly.

The leading Committee, with the support of a Working Group or Steering Group, if necessary, assigns the request to the designated ENTSO-E Drafting Team to develop a NC. The drafting committee convened by ENTSO-E shall support it in the NC development process. In case of NCs relevant for more than one Committee, a leading Committee shall be assigned, which closely coordinates with the relevant other Committees and groups.

If the proposed NC has implications for any combination of planning, operations, market, research and development, digital or transmission and distribution issues, the Drafting Team shall include a composite of individuals having the appropriate expertise. In addition, appropriate involvement of the other relevant Committee(s) or groups concerned shall take place.

Step 2 – Drafting

During the drafting process, the ENTSO-E Drafting Team will work aiming at the NC being in line with the relevant ACER Framework Guidelines and with the KPIP. Additionally, specific workshops, describing their detailed topics and timing, and possibly additional informal consultations with stakeholders and regulators may be organised.

The ENTSO-E Drafting Team prepares the working draft of a new NC, according to the timetable stipulated in the AWP approved by the Assembly, providing that it will not exceed a period of 6 months. Included in this time period are: (1) the ENTSO-E Legal Advisors' work to ensure that the legal language, the format and the structure of the NC comply with the expected standards of an EU piece of legislation considering that a NC shall become a binding EU law; and (2) the LRG general legal assessment of the NC.

The working draft of the NC shall be submitted to the leading Committee for comments and periodic updates shall be given to the relevant Committee(s), including approvals of the way forward on key points where relevant. In addition, appropriate involvement of the relevant Committee(s) via the NCCIP and e.g. dedicated Committee interactions shall take place. Based on the received comments, the ENTSO-E Drafting Team and the Secretariat (normally a team composed of the relevant NCs and GLs advisors and the relevant Legal Advisor) revise the working draft. After the legal assessment carried out by the LRG, the Secretariat submits the draft proposal of the NC for the leading Committee's approval. The period between the finalization of the working draft and the Committee approval of the draft proposal should not exceed 6 weeks.

The draft proposal should be accompanied by supporting material:

- a description of the objectives pursued together with explanations and justifications of the choices made; and
- cost benefit analyses based on the areas of expertise of the TSOs.

Step 3 – Formal Consultation

After the approval of the draft proposal by the leading Committee, ENTSO-E will launch a formal stakeholder consultation process, following the “ENTSO-E Consultation Process” (document available on the ENTSO-E website) allowing any interested party to provide comments.

Based on its own evaluation and on the leading Committee’s input, the ENTSO-E Drafting Team will review all remarks and comments and revise the draft proposal as needed. The ENTSO-E Drafting Team will report and document its opinion on all comments received in accordance with the requirements of the ENTSO-E Consultation Process.

After a legal check by the LRG, and a review by the NCCIP regarding cross-Committee topics, the final proposal is sent to the leading Committee, first for review, and then for approval.

Step 4 – Approval

The leading Committee will take a decision on the final proposal of the NC at its next meeting. If necessary, an extraordinary Committee meeting shall be called, or a written voting procedure shall be organized, pursuant to the Internal Regulations. Following the approval by the leading Committee, the final proposal of the NC shall be submitted to ACER for review.

In order to preserve the integrity of the due process, the amendments or modifications compared to the draft proposal for consultation that the Committee decides on the final proposal shall be documented on the ENTSO-E website.

If the Committee chooses not to adopt a final proposal of the NC, it may return it to the relevant Working Group or Steering Group for further work, or terminate the NC activity, providing to ACER the material reasons for this decision in relation to the non-adopted draft. Where ENTSO-E fails to develop a NC, the EC may request ACER to develop the NC proposal or develop the NC on its own initiative¹⁸.

Step 5 – Adoption

For NCs initiated following a request by the EC addressed to ENTSO-E¹⁹, ACER assesses whether the final proposal of the NC complies with the relevant Framework Guideline. ACER revises the NC

¹⁸ Pursuant to Article 59 (12) and (13) of the IEM Regulation.

¹⁹ Pursuant to Article 59(9) of the IEM Regulation.

within six months and submits a revised version to the EC²⁰. Finally, the EC revises and adopts the NC following the relevant institutional process.

Interpretations of Network Codes' rules

Any party materially affected by the NC, which can be a party that is internal or external to ENTSO-E, is allowed to request an interpretation of a particular (Specific) Rule once the proposed NC is published and has entered into force. Such requests shall be sent to the relevant ENTSO-E Legal Advisor and NC advisor or the NCCIP. Interpretation requests can also be raised in the NCs' European Stakeholder Committees. The request shall contain a description of the circumstances surrounding the request and what clarifications are required as applied to those circumstances. The request should indicate the material impact to the requesting party or others caused by the lack of clarity or a possibly incorrect interpretation of the (Specific) Rule. The relevant Working Group or Steering Group shall prepare a written interpretation of the (Specific) Rule as soon as practical, but no later than 60 days after receipt of the request.

Once the NC becomes EU legislation, the rules on the EU jurisdictional system as foreseen in the Treaties and in the EU case law for getting legally binding interpretations by the European Court of Justice shall apply and govern the interpretation of the NC. The non-legally binding interpretation given by ENTSO-E is to be assessed accordingly.

5.2 EU DSO Entity responsible to submit a Network Code proposal in cooperation with ENTSO-E

The Process involves the following steps when the EU DSO Entity is responsible to submit a NC proposal in cooperation with ENTSO-E:

²⁰ Pursuant to Article 59(11) of the IEM Regulation.

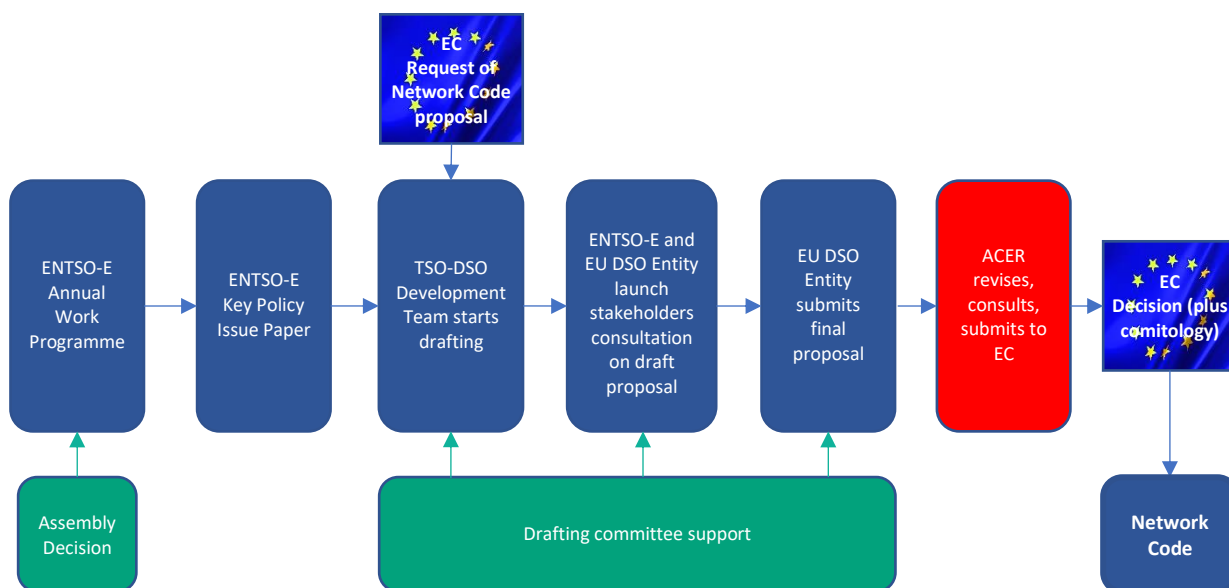


Figure 3 - Block Diagram EU DSO Entity responsible to submit a Network Code proposal in cooperation with ENTSO-E

Step 1 – Initiation

ENTSO-E has some foresight regarding upcoming NCs and GLs based on the priority list established by the EC²¹, and the preliminary work and exchanges with ACER and the EC, e.g. in the Coordination Group meetings and GEPEM. ENTSO-E is also informed once ACER is requested to draft Framework Guidelines.

Based on this information, the plan to cooperate with the EU DSO Entity on developing a NC shall be included in the AWP, proposed and managed by a Committee, coordinated across Committees by the NCCIP, and approved in the form of the overall ENTSO-E AWP by the Assembly. Variations to the AWP and Budget, e.g. due to updated planning from the EC shall be approved by the Assembly.

The Working Group or Steering Group shall coordinate with the EC, the EU DSO Entity and ACER in respect to the Framework Guideline, aiming at a common understanding of the scope of the work and the timetable before a NC is included in the AWP.

Furthermore, based on the planning in the AWP, a KPIP shall be prepared by the leading Committee or the relevant Steering Group, acknowledged by the Board and approved by the Assembly, providing the strategic frame in which a new NC shall be drafted.

The request to collaborate with the EU DSO Entity for submitting a NC in accordance with Article 59(9) and (10) of the IEM Regulation and based on the relevant Framework Guideline drafted by

²¹ Pursuant to Article 59(3) IEM Regulation.

ACER in the areas stipulated in Article 59(1) and (2) of the IEM Regulation shall be acknowledged by the Assembly.

The leading Committee, with the support of a Working Group or Steering Group, if necessary, organises the setup of the TSO DSO Development Team to develop a NC in cooperation with the EU DSO Entity. The drafting committee convened by the EU DSO Entity in cooperation with ENTSO-E, shall support it in the NC development process. In case of NCs relevant for more than one Committee, a leading Committee shall be assigned, which closely coordinates with the other relevant Committees and groups .

If the proposed NC has implications for any combination of planning, operations, market, research and development, digital or transmission and distribution issues, the TSO-DSO Development Team shall include a composite of individuals having the appropriate expertise. In addition, appropriate involvement of the other relevant Committee(s) concerned shall take place.

Step 2 – Drafting

The drafting is led by the common TSO-DSO Development Team.

During the drafting process, ENTSO-E’s delegation in the TSO-DSO Development Team will work aiming at the NC complying with the relevant ACER Framework Guideline and with the KPIP. Additionally, specific workshops, describing their detailed topics and timing, and possibly additional informal consultations with stakeholders and regulators may be organised.

The timeline should be agreed with the EU DSO Entity and should be according to the timetable stipulated in the AWP approved by the Assembly, providing that it will not exceed a period of 6 months. Included in this time period are: (1) the ENTSO-E Legal Advisors’ work to ensure that the legal language, the format and the structure of the NC comply with the expected standards of an EU piece of legislation considering that a NC shall become a binding EU law after the comitology process; and (2) the LRG general legal assessment of the NC.

The working draft of the NC shall be submitted to the leading Committee for comments and periodic updates shall be given to the relevant Committee(s), including approvals of the way forward on key points where relevant. In addition, appropriate involvement of the relevant Committee(s) via the NCCIP and e.g. dedicated Committee interactions shall take place. Based on the received comments, the TSO-DSO Development Team revise the working draft as needed. After the legal assessment carried out by the LRG, the ENTSO-E delegation to the TSO-DSO Development Team submits the draft proposal of the NC for the leading Committee’s approval. It shall be noted that the EU DSO Entity is in charge of submitting the final NC to ACER. The period between the finalization of the working draft and the leading Committee approval of the draft proposal should not exceed 6 weeks.

The draft proposal should be accompanied by supporting material:

- a description of the objectives pursued together with explanations and justifications of the choices made; and
- cost benefit analyses based on the areas of expertise of the TSOs.

Step 3 – Formal Consultation

After the approval of the draft proposal by the EU DSO Entity and ENTSO-E, a formal stakeholder consultation process will follow, allowing any interested party to provide comments.

Based on its own evaluation and on the leading Committee's input, the TSO-DSO Development Team, will review all remarks and comments and revise the draft proposal as needed. The TSO-DSO Development Team will report and document its opinion on all comments received.

After a legal check by the LRG, and a review by the NCCIP regarding cross-Committee topics, the final proposal is sent to the leading Committee, first for review, and then for approval.

Step 4 – Approval

The leading Committee will take a decision on the final proposal of the NC at its next meeting. If necessary, an extraordinary Committee meeting shall be called, or a written voting procedure shall be organized, pursuant to the Internal Regulations. It shall be noted that the EU DSO Entity is in charge of submitting the final NC proposal to ACER.

In order to preserve the integrity of the due process, the amendments or modifications compared to the draft proposal for consultation that the leading ENTSO-E Committee and the EU DSO Entity decide on the final proposal shall be documented on the ENTSO-E website. If the leading Committee disagrees with the EU DSO Entity, the final proposal shall be escalated to the Board or ultimately the Assembly of ENTSO-E.

Following the approval by the leading Committee, and the relevant body of the EU DSO Entity, the final proposal of the NC shall be submitted by the EU DSO Entity to ACER for review.

Where the EU DSO Entity fails to develop a NC, the EC may request ACER to develop the NC proposal or develop the NC on its own initiative²².

Step 5 – Adoption

For NCs initiated following a request by the EC addressed to the EU DSO Entity in cooperation with ENTSO-E²³, ACER assesses whether the final proposal of the NC complies with the relevant

²² Pursuant to Article 59(12) and (13) of the IEM Regulation.

²³ Pursuant to Article 59(9) of the IEM Regulation.

Framework Guideline. ACER revises the NC within six months and submits a revised version to the EC²⁴. Finally, the EC revises and adopts the NC following the relevant institutional process.

Interpretations of Network Codes' rules

Any party materially affected by the NC, which can be a party that is internal or external of ENTSO-E, is allowed to request an interpretation of a particular (Specific) Rule once the proposed NC is published and has entered into force. Such requests shall be sent to the EU DSO Entity and ENTSO-E. ENTSO-E shall closely align with the EU DSO Entity and involve the relevant ENTSO-E Legal Advisor and NC advisor or the NCCIP. Interpretation requests can also be raised in the NCs' European Stakeholder Committees. The request shall contain a description of the circumstances surrounding the request and what clarifications are required as applied to those circumstances. The request should indicate the material impact to the requesting party or others caused by the lack of clarity or a possibly incorrect interpretation of the (Specific) Rule. The relevant Working Group or Steering Group shall align with the EU DSO Entity for preparing a written interpretation of the (Specific) Rule as soon as practical, but no later than 60 days after receipt of the request.

Once the NC becomes EU legislation, the rules on the EU jurisdictional system as foreseen in the Treaties and in the EU case law for getting legally binding interpretations by the European Court of Justice shall apply and govern the interpretation of the NC. The non-legally binding interpretation given by ENTSO-E and the EU DSO Entity is to be assessed accordingly.

6. Network Codes and Guidelines amendment process

The EC is empowered to adopt amendments of the NCs within the areas listed in Article 59(1) and (2) of the IEM Regulation, in accordance with the relevant procedure set out in that same Article (through implementing or delegated acts)²⁵.

In order to keep the NCs and GLs up to date they are periodically reviewed by each ENTSO-E Committee, at least every five years. This may result in proactive proposals from ENTSO-E to amend NCs to ACER²⁶. ENTSO-E should do its best endeavors to align these proposals with the EU DSO Entity where the topics are relevant for the EU DSO Entity.

On the other hand, ACER and the EC shall consult ENTSO-E and the other stakeholders on their NCs and GLs amendment proposals (on which ENTSO-E may submit an opinion)²⁷.

²⁴ Pursuant to Article 59(11) of the IEM Regulation.

²⁵ See Article 60(1) of the IEM Regulation.

²⁶ Pursuant to Article 60(2) of the IEM Regulation.

²⁷ See Article 60(3) and Article 61(6) of the IEM Regulation.

6.1 Submission of amendment proposals to ACER

ENTSO-E can propose draft amendments to NCs to ACER²⁸. Amendment proposals can result from the regular review process or from continuous work and may be necessary to, inter alia:

- adapt content to new developments;
- add new provisions;
- clarify issues;
- correct mistakes; and/or
- correct translation mistakes.

Amendment proposals shall be raised to and discussed in the relevant Working Group or Steering Group and shared for review with the NCCIP and the relevant Committee(s). The Working Group or Steering Group highlights already identified cross-code relevant changes to the NCCIP and relevant Committee(s). The NCCIP will review all amendment proposals with the strategic alignment of the Committee Chairs, confirming the cross-code topics and how to deal with them (identify leading Committee, Committees to align with, how to deal with changes implied on another code, etc.). Following the acknowledgement of the leading Committee, the relevant Working Group or Steering Group can informally discuss topics considered for amendment proposals with ACER and the EC, e.g. in the Coordination Group meetings and GEPEN. Reciprocally, ENTSO-E should be informed about planned amendments by ACER and the EC e.g. in the Coordination Group meetings and GEPEN.

To formally submit amendment proposals to ACER, the relevant Working Group or Steering Group prepares the amendment proposals including the reasoning why the change is beneficial, by when it is needed, and a prioritization based on the importance of the changes. Furthermore, the related impacts on TSOs and ENTSO-E should be elaborated regarding:

²⁸ Pursuant to Article 60(2) of the IEM Regulation.

- resources;
- budget;
- relation to existing projects;
- need for new projects; and
- others.

Afterwards, the leading Committee shall be consulted for a final review and approves the amendment proposals for submission to ACER. Then, the dedicated group for the specific NC submits the amendment proposal to ACER. A feedback loop and early exchanges on the proposal shall be established with ACER and EC, e.g. via Coordination Groups and GEPEM.

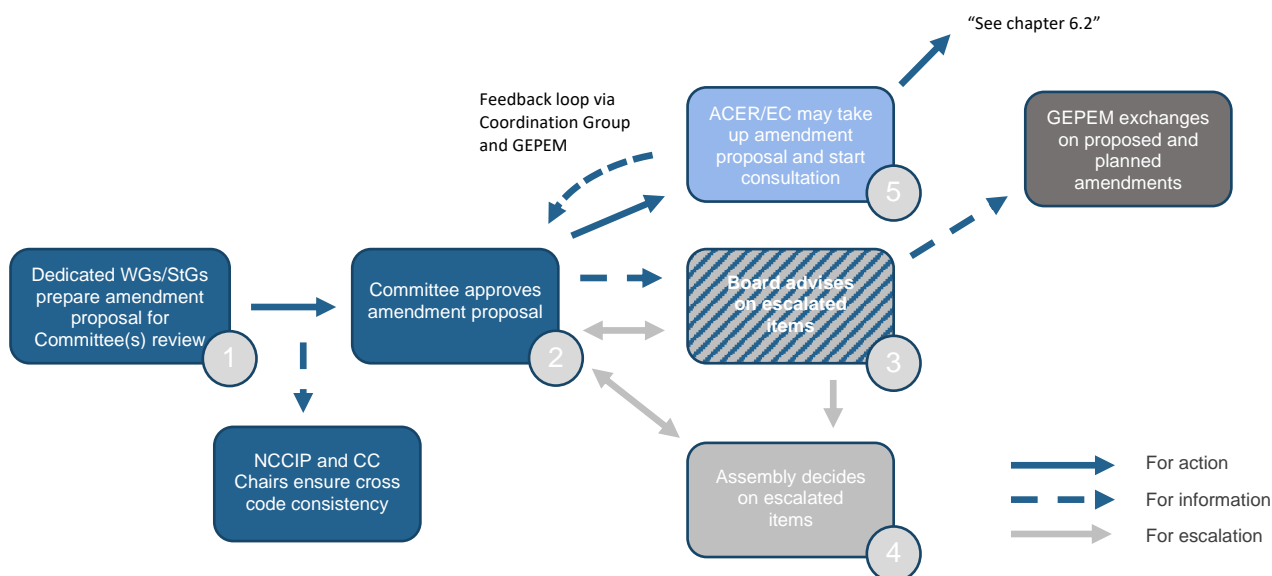


Figure 4 - Amendment proposal

6.2 Answering consultations organised by ACER or the EC

In case an amendment proposal reaches ENTSO-E through the channel of a public consultation issued by ACER or the EC²⁹, the process for assessing the NC or GL amendment proposal will focus on the elaboration of a proper response, ensuring the involvement of all relevant bodies.

To submit consultation responses to ACER and the EC, the NCCIP conducts a preliminary assessment involving the SPOCs from the different Steering Groups to identify the leading Committee and which Committees need to be involved, e.g. in an ad-hoc call with Committee Chairs, the NCCIP informs the relevant Committee(s) and follows up on cross-code issues. In case

²⁹ Pursuant to Article 60(3) and Article 61(6) of the IEM Regulation.

of disagreement on cross-code issues, the leading Committee can find a solution or escalate to the Board.

Afterwards, the relevant Working Groups or Steering Groups in charge of the relevant NC or GL:

- conduct a detailed assessment including the related impacts (resource implications, budget impacts, relation to existing projects need for new projects, etc.) on TSOs and ENTSO-E;
- prepare the consultation response; and
- submit the draft response and the findings of the assessment for approval to the leading Committee and for information to the NCCIP.

Finally, the leading Committee approves the consultation response for submission to ACER and the EC. The dedicated group for the specific NC or GL submits the consultation response to ACER or the EC using the proposed consultation platform on their website. A feedback loop and early exchanges on the upcoming consultations shall be established with ACER and EC, e.g. via Coordination Groups and GEPEM.

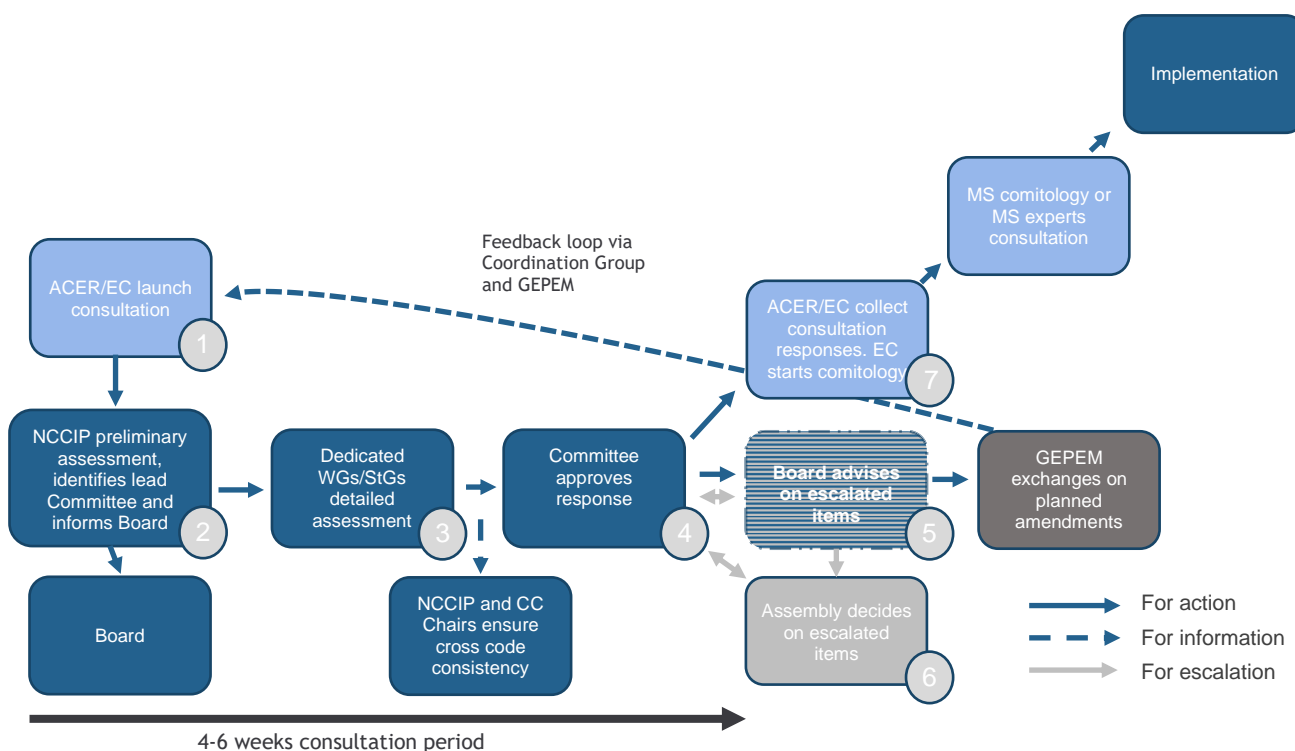


Figure 5 - Answering consultations by ACER or EC

7. Publishing information

The whole procedure of developing NCs and GLs will be tracked on the ENTSO-E website and the e-codes app³⁰ using electronic tools for the publication of drafts, for sending and publishing comments, and for publishing the approved NCs and NCs and GLs amendments. The NCCIP is responsible for maintaining and updating the database.

³⁰ The e-codes app provides the latest updates regarding NCs and GLs development and other NCs and GLs materials up to date, together with general ENTSO-E news, events and consultations. The app was renovated, and the new version was available in May 2022, including a notifications service which allows quick spread of information across the TSO community and stakeholders. You can download the e-codes app for android ([E Codes - Apps on Google Play](#)) and iOS ([E Codes in de App Store \(apple.com\)](#)).

Annex 1. Process to develop Network Codes



Figure 6 – Block diagram: Detailed Network Codes development process

Annex 2. Acronyms and abbreviations

ACER	Agency for the Cooperation of Energy Regulators
AWP	Annual Work Programme
CC Chairs	Cross Committee Chairs
CEP	Clean Energy Package
EC	European Commission
ENTSO-E	European Network of Transmission System Operators for Electricity
EU	European Union
EU DSO Entity	The European Entity for the cooperation of electricity Distribution System Operators in the European Union
GEPEM	Gas and Electricity Policy Exchange Meetings
GLs	Guidelines
IEM Regulation	Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity
KPIP	Key Policy Issue Paper(s)
LRG	Legal and Regulatory Group
NCCIP	NC and CEP Implementation Programme
NC IMG	Network Code Implementation Monitoring Group
NCs	Network Codes
NEMOs	Nominated Electricity Market Operators
StG(s)	Steering Group(s)
The Process	The Process for Developing Network Codes and Amendments to Network Codes and Guidelines
TSOs	Transmission System Operators
TSO DSO MoU	Memorandum of Understanding between ENTSO-E and the EU DSO Entity
WGs	Working Groups