

PROPOSAL to redraft Art. 4(3):

3. Where ~~reference is made to this paragraph in this code~~, the determination of the terms and conditions for connection and access to networks or the methodologies to establish them shall be set by the National Regulatory Authorities, or any other entity designated by a Member State in compliance with Directive 2009/72/EC, it shall be made in close cooperation with the neighboring National Regulatory Authorities, or any other entity designated by a Member State in compliance with Directive 2009/72/EC, of the synchronous area [1] and it shall be subject to prior public consultation of the involved stakeholders [2] and to prior recommendation of the Agency [3], in accordance with the rules of national law implementing Directive 2009/72/EC, and with the principles of transparency, proportionality and non-discrimination.

4. Any decision by a Network Operator other than the Relevant TSO and any agreement between a Network Operator other than the Relevant TSO and a Power Generating Facility Owner shall be approved by the Relevant National Regulatory Authority pursuant to the principles of the previous paragraph of the present Article and shall be exercised in compliance with and respecting the Relevant TSO's responsibility to ensure system security according to national legislation. Further details to ensure this principle may be specified either by national legislation or by agreements between the Relevant TSO and the Network Operators in its Control Area, as the case may be.

5. When this Network Code establishes that a requirement can or shall be agreed, the TSO can determine this requirement if national law assigns it to the TSO and such an assignment was in place at the date of the entry into force of this Network Code.”

Clarification note

[1] In accordance with Article 37.1.c of Directive 2009/72/EC. “The regulatory authority shall have the following duties: “cooperating in regard to cross-border issues with the regulatory authority or authorities of the Member States concerned and with the Agency”
And Article 38.1 of Directive 2009/72/EC “Regulatory authorities shall closely consult and cooperate with each other, and shall provide each other and the Agency with any information necessary for the fulfillment of their tasks under this Directive”

[2] In accordance with Article 38.2.b of Directive 2009/72/EC. “Regulatory authorities shall cooperate at least at a regional level to
b) coordinate the development of all network codes for the relevant transmission system operators and other market actors”

[3] In accordance with Article 37.1.c of Directive 2009/72/EC. “The regulatory authority shall have the following duties:
“cooperating in regard to cross-border issues with the regulatory authority or authorities of the Member States concerned and with the Agency”
And Article 5 of Directive 2009/72/EC about technical rules set by NRAs, where “the Agency may make appropriate recommendations towards achieving compatibility of these rules, where appropriate”
And Article 6.2 of Directive 2009/72/EC. “The Agency shall cooperate with national regulatory authorities and transmission system operators to ensure the compatibility of regulatory

frameworks between the regions with the aim of creating a competitive internal market in electricity”