



FS.16 Network Equipment Security Assurance Scheme - Dispute Resolution Process

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Table of Contents

1	Introduction		3
1.1	Overview	3	
1.2	Scope	3	
1.3	Definitions	3	
1.4	Abbreviations	4	
1.5	References	4	
1.6	Conventions	4	
2	Role of the NESAS DRC		4
3	NESAS DRC Members		5
4	NESAS Dispute Resolution Process		5
5	Liability of the NESAS DRC Members		8
Annex A	Dispute Scenarios		9
Annex B	Document Management		10
B.1	Document History	10	
B.2	Other Information	10	

1 Introduction

This document is part of the GSMA Network Equipment Security Assurance Scheme (NESAS), of which there is an overview available in FS.13 – NESAS Overview [1].

This document defines the dispute resolution process.

1.1 Overview

The Network Equipment Security Assurance Scheme Dispute Resolution Committee (NESAS DRC) is the authority responsible for handling any significant interpretation disputes that may arise between two or more NESAS participants, hereinafter called Parties, (for example network operators, equipment vendors, test laboratories, and auditors) with respect to NESAS processes and documentation and for publishing an objective ruling/decision on the matters raised.

The NESAS DRC is a standing committee consisting of a subset of the NESAS Accreditation Body membership and must only be contacted in exceptional cases, where no other solution can be found between the disputing parties.

1.2 Scope

This document defines the NESAS Dispute Resolution Process that is binding on all NESAS participants.

The NESAS DRC can handle interpretations of all processes and documentation pertaining to NESAS.

1.3 Definitions

Term	Description
GSMA Member	For the purpose of this document only, this is defined as a GSMA Parent Group Member, Full Member, Associate Member or Rapporteur Member.
NESAS Accreditation Body	Responsible for developing requirements on vendor network product development, network product lifecycle management process, and SECAM accreditation for vendors and evaluators and supporting documentation.
NESAS Dispute Resolution Process	The process used by the NESAS DRC to reach a ruling/decision.
NESAS Dispute Resolution Committee (DRC)	The impartial interpreter of NESAS processes and documentation that is required to adjudicate on disputes that may arise between two or more Parties.
NESAS DRC Chair	The individual identified as Chair and manager of the dispute resolution process within the NESAS DRC and listed as such on the GSMA Infocentre.
NESAS DRC Member	Experienced NESAS Accreditation Body member, from a GSMA member network operator, with extensive knowledge of NESAS, its processes and its documentation.

1.4 Abbreviations

Term	Description
GSMA	GSM Association
HQ	Headquarters
NESAS	Network Equipment Security Assurance Scheme
NESAS DRC	NESAS Dispute Resolution Committee

1.5 References

Ref	Doc Number	Title
[1]	FS.13	NESAS Overview
[2]	FS.14	NESAS Security Test Laboratory Accreditation
[3]	FS.15	NESAS Vendor Development and Product Lifecycle Requirements and Accreditation Process

1.6 Conventions

“The key words “must”, “must not”, “required”, “shall”, “shall not”, “should”, “should not”, “recommended”, “may”, and “optional” in this document are to be interpreted as described in RFC 2119 [3].”

2 Role of the NESAS DRC

The NESAS DRC acts as an impartial interpreter of NESAS processes and documentation that could be the subject of disagreement between two or more Parties.

The NESAS DRC must only be contacted if there is a dispute between two or more Parties with respect to interpretation of the NESAS processes or documentation.

If the interpretation issue at the root of the dispute is of fundamental significance and no bilateral solution can be reached between the parties concerned, the NESAS DRC can be contacted.

The NESAS DRC must proceed according to the Dispute Resolution Process described in this document and may provide additional guidelines and/or define further proceedings as it may deem necessary for the achievement of a resolution.

If an individual Party finds an error or an ambiguity in NESAS documentation, that Party is required to put the error or ambiguity in writing and submit it to the NESAS Accreditation Body for a decision, or resolution if required.

The ruling made by the NESAS DRC concerns only the interpretation of NESAS processes and documentation.

If one or more Party refuses to accept the NESAS DRC decision the dispute must be resolved according to the appropriate legal contracts in place.

The NESAS DRC does not take any part in resolving financial matters. Any financial matters arising from the dispute should be resolved by referring to the appropriate legal contracts in place.

3 NESAS DRC Members

The NESAS DRC consists of experienced GSMA member representatives that are experts in all matters pertaining to NESAS. Such NESAS DRC members shall be employed by GSMA member network operators. The NESAS DRC may also consult non-GSMA members or other external specialists, if their expertise is required in the event of a dispute.

The NESAS DRC member list shall include the following information:

- Name
- Company
- E-mail
- Telephone Number

Note: To become a member of the NESAS DRC, the volunteer applies to the NESAS DRC Chair, who is appointed by the NESAS Accreditation Body. Apart from the above information, the volunteer must supply, if requested, a brief description of relevant NESAS experience.

The NESAS Accreditation Body Chair maintains the NESAS DRC member list on the Infocentre.

New NESAS DRC members must be ratified by the NESAS Accreditation Body.

4 NESAS Dispute Resolution Process

The NESAS DRC acts as an impartial interpreter of NESAS processes and documentation. The NESAS DRC must follow the process described in this section to ensure an independent and objective ruling/decision.

Disputing Parties shall use all resources reasonably available to resolve disputes before involving the NESAS DRC. All Parties involved should identify the disputed issue(s) in advance in order to have a common understanding of the issue(s). All Parties involved in the dispute should agree on the wording of the NESAS DRC invocation, including the time at which the issue causing the dispute occurred. The time is important in order that the NESAS DRC can reference the documentation that was in effect at the time the issue arose.

The NESAS Dispute Resolution Process can be invoked by the requesting Parties sending a written request (e-mail) to the NESAS Accreditation Body Chair. The NESAS Accreditation Body Chair refers the matter to the NESAS DRC Chair who must then forward the written request to all other Parties involved in the dispute in order to ensure that all Parties are given equal opportunity to comment on the wording of the invocation.

It is necessary to ask all involved Parties about the dispute in order for the NESAS DRC to have all the arguments and points of view to fully understand the problem. All involved Parties can send their own written description of the disputed problem to the NESAS DRC Chair within seven days after the first notification about the NESAS Dispute Resolution Process invocation.

At the time of invoking the NESAS Dispute Resolution Process, the requesting Party(ies) must ask the NESAS Accreditation Body Chair to determine if a similar dispute has been previously resolved by the NESAS DRC. If such a dispute has previously been ruled on and published, the affected Parties must follow the decision made.

Where the NESAS DRC believes that the invocation of the NESAS Dispute Resolution Process is not in the best interests of NESAS, due to legal or other reasons, the NESAS DRC reserves the right to stop the NESAS Dispute Resolution Process. In the event NESAS DRC exercises such an option, the relevant parties invoking the NESAS Dispute Resolution Process agree to resolve the dispute amongst themselves and not involve the NESAS DRC or the NESAS Accreditation Body. For the avoidance of doubt, the NESAS DRC, acting through the NESAS Accreditation Body, may stop the NESAS Dispute Resolution Process at any time.

The NESAS DRC Chair is responsible for administering/documenting all disputes and organising the NESAS Dispute Resolution Process, according to the rules set out in this document. The NESAS DRC Chair is the authority that convenes and supervises the proceedings. In the case where the NESAS DRC Chair is unavailable or has a conflict of interest then the GSMA HQ appointed staff member will be the authority supervising the proceedings.

A ruling/decision must always be made by a minimum of two NESAS DRC members, in addition to the supervising authority. If such NESAS DRC members cannot solve the presented dispute they must contact the NESAS DRC Chair in order to enhance the resources and expertise with respect to the subject in question.

If a NESAS DRC member has a direct relationship (consultant or employee) with a Party involved in a particular request, the NESAS DRC must not involve that NESAS DRC member in the ruling/decision. In special cases where that particular NESAS DRC member has unique knowledge in the relevant area, the NESAS DRC can contact the other Party(ies) and ask for acceptance of the NESAS DRC member. The other Party(ies) will then have the right to refuse such a NESAS DRC member for the particular dispute.

If a NESAS DRC member previously had a direct relationship (consultant or employee) with a Party involved in a particular request, the Party may request the NESAS DRC member not to be used in the particular case.

Note: A valid reason has to be given in writing to the NESAS DRC Chair in the event that a NESAS DRC member is to be excluded from adjudicating on a dispute.

If insufficient NESAS DRC members are assigned to the Dispute Resolution Process, then the NESAS DRC Chair must inform the involved Parties that a ruling cannot be provided. The NESAS DRC Chair must then ask the NESAS Accreditation Body (without identifying the Parties) to review the appropriate documentation involved in the dispute to ensure the documentation is clear. This is to prevent any similar or identical future disputes. The outcome from any such review does not constitute a NESAS Dispute Resolution Process ruling and the dispute must be resolved bilaterally between the involved Parties.

When sufficient NESAS DRC members are assigned, the NESAS DRC Chair must inform all NESAS DRC members, as well as the involved Parties, when the NESAS Dispute Resolution Process has been invoked. The invocation note must contain a description of the dispute and the number of NESAS DRC members allocated. The notification must omit all names of any Party or NESAS DRC members taking part in the dispute.

During the resolution, the NESAS DRC must reference the documents that were in effect at the time referred to by the requesting Party(ies) during the invocation of the NESAS Dispute Resolution Process. Later versions of these documents must also be considered in order to guarantee the applicability to future identical/similar disputes. All NESAS documentation that is relevant to the dispute may be referenced in order to solve the dispute.

The NESAS DRC must resolve the dispute as soon as practical and without undue delay (normally within 10 days of the notification). A majority decision must then be made by the NESAS DRC members.

The NESAS DRC Chair is responsible for the provision of a ruling/decision in writing. The result of the ruling/decision must be provided to the Parties and a copy must be provided to the NESAS Accreditation Body. Before publishing, all involved Parties must provide their comments about the NESAS DRC ruling/decision in order to verify if the clarification made is enough to resolve the dispute involving the affected Parties. Any comments must be delivered within 5 days.

After all the Parties have provided their comments (if any) to the NESAS DRC Chair, the NESAS DRC ruling/decision must be sent to the NESAS Accreditation Body. If it is necessary, the NESAS DRC could modify the original ruling/decision including the clarifications requested by the Party(ies). The documentation must contain the ruling/decision, minutes/notes from meetings held, and the number of NESAS DRC members involved in the ruling/decision, but must not name the Parties or the NESAS DRC members involved in the ruling/decision.

Rulings/decisions of the NESAS DRC could vary in terms of their nature and severity and could result in sanctions such as the revocation of product or test lab accreditations held by vendors. The sanctions to be imposed, if any, are entirely a matter for the NESAS DRC to decide on and to recommend to the NESAS Accreditation Body.

For the sake of clarification, the NESAS DRC ruling/decision is binding between the Parties involved in the NESAS Dispute Resolution Process at the time of the dispute as agreed during the invocation of the NESAS Dispute Resolution Process, and for future disputes as specified in the ruling/decision.

Any ruling/decision of the NESAS DRC must only be a binding precedent for identical/similar cases after the ruling/decision has been formally published. All NESAS participants must accept such a ruling/decision and these cannot be overruled by any other NESAS authority.

Note: In the event that a need to change NESAS documentation has been identified as a result of the decision, the NESAS DRC must refer the case to the NESAS Accreditation Body, which will develop the appropriate change request and propose it to the relevant document approval authority.

All disputes must be documented and archived on the GSMA's Infocentre.

5 Liability of the NESAS DRC Members

Any ruling/decision must be made in good faith and to the best knowledge of the NESAS DRC Members involved. However, no liability whatsoever, neither for the correctness nor for any damages caused by or resulting from any decision/ruling made by the NESAS DRC

must be borne by the GSMA, the NESAS DRC Chair, any NESAS DRC members, GSMA staff members or NESAS Accreditation Body members involved in the ruling/decision.

Therefore, as a condition to invoking the NESAS Dispute Resolution Process, the requesting Party(ies), and all other involved Parties, agree to hold the GSMA and the aforementioned individuals involved in rendering a ruling/decision harmless from any and all liabilities or damages arising from or related to the requesting Party(ies) invocation of the NESAS Dispute Resolution Process.

Annex A Dispute Scenarios

The following table illustrates a number of possible dispute scenarios that could arise within NESAS that involve a variety of parties. The table merely captures example scenarios and is not intended to be exhaustive.

	Operator	Vendor	Test Lab	Auditor	NESAS
Operator		NP or development and lifecycle process security inconsistency		Vendor accredited by auditor and challenged by operator	Operator believes SCAS is inadequate or challenges auditor accreditation
Vendor	NP or development and lifecycle process security inconsistency		Third party test lab refuses product evaluation	Accreditation withheld by auditor and disputed by vendor	SCAS documentation ambiguous or not fit for purpose
Test Lab		Third party test lab refuses product evaluation			SCAS documentation ambiguous or not fit for purpose
Auditor	Vendor accredited by auditor and challenged by operator	Accreditation withheld by auditor and disputed by vendor			Auditor unhappy with document quality and NESAS with audit work
NESAS	Operator believes SCAS is inadequate or challenges auditor accreditation	SCAS documentation ambiguous or not fit for purpose	SCAS documentation ambiguous or not fit for purpose	Auditor unhappy with document quality and NESAS with audit work	

Annex B Document Management

B.1 Document History

Version	Date	Brief Description of Change	Approval Authority	Editor / Company
0.1	Nov 2015	First draft NESAS Dispute Resolution Process	SECAG	James Moran, GSMA
0.2	Jan 2016	Second draft presented at SECAG#11	SECAG	James Moran, GSMA
0.3	Mar 2016	Final stable draft produced following SECAG#13	SECAG	James Moran, GSMA

B.2 Other Information

Type	Description
Document Owner	SECAG
Editor / Company	James Moran, GSMA

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