

ROLE OF THE EU ENERGY REGULATOR

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BACKGROUND

The following briefing paper examines the role of the EU Energy Regulator and how it relates to Northern Ireland. It will examine the two existing Regulator bodies, the Council of European Energy Regulators (CEER) and the European Regulators Group for Electricity and Gas (ERGEG). The paper will also discuss the new European wide regulator, the Agency for the Cooperation of Energy Regulators (ACER) which will come into effect in March 2011.

KEY POINTS

- There are two existing EU Energy Regulators, **ERGEG**: European Regulators Group for Electricity and Gas; and **CEER**: The Council of European Energy Regulators;
- Both bodies are made up of the member states' national regulators with some slight variations in membership;
- OFGEM is the UK's representative in both CEER and ERGEG. However, OFGEM only represents Great Britain's electricity and gas suppliers. Northern Ireland has no direct representation on ERGEG and CEER;
- Consultations with OFGEM and NIAUR have identified that whilst the NI regulator has some influence on policy development in Europe this is limited at best;
- ERGEG was established by the European Commission in 2003 as its (official) advisory body. CEER is a voluntary body created by the national regulators and acts as a preparation body for ERGEG. As a voluntary body, CEER does not have the same level of influence on EU policy as ERGEG, but the two bodies work closely together with CEER conducting research which is subsequently used by ERGEG;
- ERGEG and CEER overlap each others functions significantly, with the same membership and the same Officers. The two organisations operate together on working groups and in many cases operate more like one body than two separate ones. They even share a website;
- A new body is being developed as part of the Third Energy Package (a series of legislation being passed through the EU Parliament to provide a framework for competition in the EU energy market) will be known as the

Agency for the Cooperation of Energy Regulators (**ACER**) and will come into effect in March 2011;

- It is intended that ACER will fill the regulatory gap at Community level (ACER will be able to adopt individual regulatory decisions in specific areas that ERGEG is currently not able to do) and contribute towards the effective functioning of the internal markets in electricity and natural gas, taking over some of the functions of ERGEG and CEER;

EUROPEAN ENERGY REGULATORS

At the current moment in time there are two organisations in Europe that have a role in energy regulation with a third one planned:

- **ERGEG**: European Regulators Group for Electricity and Gas;
- **CEER**: The Council of European Energy Regulators; and
- **ACER**: Agency for the Cooperation of Energy Regulators.

Both ERGEG and CEER are the representative bodies for EU states' national energy regulators. ACER is a new organisation currently being formed by the European Commission to act as the energy regulator of Europe. It will take over the role of ERGEG and it will coordinate the work of national regulation authorities for gas and electricity. The European Commission will decide whether or not ERGEG will continue to function following the commencement of operations by ACER.

ERGEG

ERGEG is the European Commission's formal advisory group for energy regulators.

The regulator was established to assist the Commission in creating a single EU market for electricity and gas. The organisation's membership is drawn from the heads of the national energy regulator authorities from the 27 EU Member States¹.

ERGEG has two main purposes²:

- On its own initiative, or at the request of the Commission, ERGEG advises and assists the Commission in consolidating the internal energy market, in particular with respect to the preparation of draft implementing measures in the field of electricity and gas, and on any matters related to the internal market for electricity and gas; and
- ERGEG facilitates consultation, coordination and cooperation of national regulatory authorities, contributing to a consistent application, in all member states, of the provisions set out in Directive 2003/54/EC, Directive

¹European Energy Regulators: CEER and ERGEG http://www.energy-regulators.eu/portal/page/portal/eer_home (first accessed 04/01/2010)

²European Energy Regulators : CEER and ERGEG *European Regulators Group for Gas and Electricity Rules of Procedure*, December 2008 http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/CEER_ERGEG_PAPER_S/Founding%20Documents%20and%20Rules/Founding%20Documents/E08-EP-23-05_RoP_10-Dec-08.pdf (first accessed 06/01/2010)

2003/55/EC and Regulation (EC) No 1228/2003, as well as of possible future community legislation in the field of electricity and gas.

As part of these aims, ERGEG runs projects across the EU. One of ERGEG's flagship projects is the Regional Initiatives, which it launched with the Commission's backing in spring 2006, in an effort to speed up the integration of Europe's market in electricity and gas.

For the Regional Initiatives, ERGEG works with the national regulators to divide Europe into seven electricity and three gas regions. The intention behind the project was to facilitate further integration between the member states in preparation for a single, European energy market.

Each region is tasked with improving the cooperation between its member states via the implementation of region specific initiatives. Northern Ireland is part of the France – UK – Ireland region for electricity and part of the North West Gas Regional Initiative.

ERGEG is expected to consult with stakeholders in an early and timely manner and is committed to best regulatory practice in terms of conducting its public consultations and engaging with stakeholders.

CEER

CEER is a not for profit association created by Europe's national energy regulators.

They voluntarily cooperate to protect consumer interests and to facilitate the creation of a single competitive and sustainable internal market for gas and electricity in Europe.

CEER acts as a platform for cooperation, information exchange and assistance between national energy regulators and is their interface at European level with the EU community, in particular with the Directorate General Transport and Energy, DG Competition and DG for Research³.

It cooperates with the European Commission and Competition authorities in order to ensure consistent application of competition law to the energy industry.

CEER also strives to share regulatory experience worldwide through its links with similar associations in America and in Central/Eastern Europe. CEER has taken a central role in developing an effective and competitive electricity and gas market in the energy community of South East Europe.

CEER prepare work for ERGEG, with the organisations working closely together on a number of projects. In 2009 they focused on:

- Paving the way for the proposed third energy liberalisation packages;
- Advancing the development of regional energy markets through the ERGEG Regional Initiatives Project; and

³ European Energy Regulators: CEER and ERGEG *About CEER* http://www.energy-regulators.eu/portal/page/portal/eeer_home

- Monitoring the implementation of existing legislative requirements by member states to determine whether the markets are delivering benefits to customers.

In practice ERGEG and CEER divide their work among working groups. In 2009 these groups consisted of⁴:

- Electricity Working Group: Deals with issues related to the European electricity grids and the EU electricity market. It also addresses the issue of security, reliability of supply and the regulatory aspects of electricity generation from renewable sources;
- Gas Working Group: Responsible for addressing issues related to the gas transmission systems in the EU and the gas market;
- Customer Working Group: Responsible for putting the interests of consumers first by promoting customer empowerment and retail market functioning in order to facilitate the development of competition in the energy consumers interests;
- Energy Package Working Group: Provides input to and advice on the development of the third energy package both in the course of the negotiation process and in preparation for the implementation of the key elements of the new framework;
- Financial Services Working Group: Deals with the interdependencies between the financial and energy markets;
- Regional Initiatives Group: This group's focus is the electricity and gas regional initiatives. Its task is to gather information, identify synergies and to promote best practice throughout the seven electricity and three gas regions to facilitate the move towards a single EU market in these areas;
- Energy Community Working Group: This group closely follows the work of the Energy Community Regulation Board (ECRB) and will provide relevant input to formulate ERGEG's response to the regulatory developments in the energy community; and
- International Strategy Group: Responsible for the coordination of the European energy regulators activities in the fields of internal cooperation and training.

The groups are made up of technical experts from the national regulatory authorities who work together to address particular questions and policy issues. Based upon the available information at this time, Northern Ireland does not have any representatives on these working groups.

In 2010 the Energy Regulators will work closely on the development of ACER, providing advice to the EU Commission and the new agency on institutional, practical and organizational challenges. ACER is considered an evolution of ERGEG, superseding the original body with the power to make binding decisions.

⁴ Ibid

In addition the regulators will provide support on framework guidelines for the third package and will provide advice on the future work and development of ACER.

For the next year, the Energy Regulators will focus on seven areas:

- Implementation of the third package;
- Security of supply;
- Affordability and consumer agencies;
- Climate change and energy issues;
- Financial savings;
- Regional market integration; and
- External market.

It must be noted that ERGEG and CEER perform many of the same functions and in a number of ways act more like one organisation than two, sharing members, functions and working groups.

A new organisation, the Agency for the Cooperation of Energy Regulators, has been developed by the European Commission to expand upon the role of ERGEG, with the national regulators again being represented as part of its management structure.

AGENCY FOR THE COOPERATION OF ENERGY REGULATORS (ACER)

ACER was developed in order to expand the role of ERGEG as part of the third energy liberalisation package. The Agency is due to become operational in March 2011, with initial staffing commencing in the early part of 2010⁵.

ACER will coordinate the work of the national regulatory authorities for gas and electricity and will act in an advisory capacity to the EU institutions. It will have independent powers which are unavailable to the other EU energy regulators and will include⁶:

- Ensuring that regulatory functions performed by the national regulators are properly coordinated and, where necessary, completed at the Community level;
- Monitoring regional cooperation between transmission system operators in the electricity and gas sectors as well as the execution of the tasks of the European Network of Transmissions System Operators for Electricity (ENTSO for Electricity) and the European Network of Transmissions System Operators for Gas (ENTSO for Gas);

⁵ Official Journal of the European Union August 2009 *Regulation (EC) No 713/2009 Establishing an Agency for the Cooperation of Energy Regulators* <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:211:0001:0014:EN:PDF> (first accessed 06/01/2010)

⁶ Ibid

- Monitoring the internal markets in electricity and gas and inform the European Parliament, the Commission and national authorities of its findings where appropriate;
- Developing framework guidelines which are non-binding in nature with which network codes must be in line;
- Advising the Commission, other Community institutions and national regulatory authorities as regards the issues relating to the purpose for which it was established;
- Making recommendations to assist regulatory authorities and market players in sharing good practices;
- Consulting interested parties, where appropriate, and provide them with a reasonable opportunity to comment on proposed measures such as network codes and rules;
- Contributing to the implementation of the guidelines on trans-European energy networks;
- Contributing to the efforts of enhancing energy security;
- Adapting the structure of the agency to meet the specific needs of energy regulation. In particular, the specific role of the national energy regulatory authorities needs to be taken fully into account and their independence guaranteed; and
- The Agency should have the necessary powers to perform its regulatory functions in an efficient, transparent, reasoned and independent manner.

The Agency shall:

- Issue opinions and recommendations addressed to transmission system operators;
- Issue opinions and recommendations addressed to regulatory authorities;
- Issue opinions and recommendations addressed to the European Parliament, the Council or the Commission;
- Take individual decisions based on specific cases related to the national regulatory authorities, cross border infrastructure and other tasks; and
- Submit to the Commission non-binding framework guidelines.

ACER ORGANISATIONAL STRUCTURE:

ACER will have three bodies operating as its management: the Administrative Board; the Board of Regulators; and the Director.

The Administrative Board will comprise nine members (two appointed by the European Commission, two appointed by the European Parliament and five members appointed by the European Council. Please note, MEPs cannot be appointed) who will be appointed by the Commission, the Parliament and the Council. The Administrative Board will be responsible for ensuring the Agency carries out its mission and performs the tasks assigned to it.

In addition it will also assign the membership of the Board of Regulators. Membership will consist of one representative per Member State from the national regulatory authority with each member having one vote regarding decisions under discussion by the Board.

The Board of Regulators will act as an advisor to the Director of ACER and will provide a recommendation regarding who should be appointed director.

The Director will have overall management responsibility of the Agency and will implement the annual work programme of the Agency, with the Board of Regulators providing guidance and the Administrative Board controlling administration.

In addition there will be a board of appeal for individuals or organisations to petition a decision made by the Agency.

EU ENERGY REGULATORS IMPACT ON NI ENERGY SECTOR

The existing EU energy regulator (ERGEG and CEER) has an advisory and consultative role within the EU, with input provided via national regulators. ERGEG and CEER have a large degree of influence regarding the setting of EU energy policy with the national regulators having a direct line to policy makers. This can have potentially far reaching consequences for Northern Ireland's energy sector. Northern Ireland has limited influence within the current and future energy regulators, with no direct representation within these bodies.

As the energy regulators themselves form CEER, ERGEG and have an important role in the soon to be operating ACER, they have a high level of input into the development of policies and strategies for the energy sector. National energy regulators, through their representation on CEER and ERGEG, are able to exert a high level of influence on the development of energy policy and strategies at EU level.

However, unlike National Regulators, this level of influence does not extend to NIAUR given the limited opportunities for representation at EU level.

Consultation, with a number of bodies (OFGEM, NIAUR and CER) has revealed that Northern Ireland is not directly represented on either CEER or ERGEG.

Both bodies only allow one representative from a member nation state regulator. In the UK's case this is OFGEM which only represents energy concerns for Great Britain, not Northern Ireland.

When asked "Does OFGEM represent Northern Ireland as part of its work on CEER and ERGEG?" an OFGEM representative stated:

“Where ERGEG or CEER has produced papers which address practices in each MS [Member State], we may consult NIAUR or ask them to provide a separate response...or, where appropriate, respond with the GB [Great Britain] example.”⁷

It went on to state:

“We discuss ERGEG/CEER issues with NIAUR from time to time and are open to further collaboration.”

This was corroborated by a NIAUR spokesman who stated⁸:

“OFGEM is the NRA [national regulatory authority] for the UK and under ERGEG rules of procedure is obliged to keep the Utility Regulator (NIAUR) informed about ERGEG’s discussions and to make arrangements to speak on our behalf should the need arise.”

NIAUR has stated that with the development of ACER it has attempted to gain an additional seat on the Board of Regulators in order to represent NI’s energy concerns:

“...this need not prevent the utility regulator attending meetings in some form of observer capacity. We are currently discussing with OFGEM how to ensure the Energy Regulator (NIAUR) may be appropriately involved in ACER taking into consideration that the Utility Regulator may be designated as a second NRA under the new directive.”

However, review of the EU regulation which established ACER found that:

“Only one representative per Member State from the national regulatory authority may be admitted to the Board of Regulators.”⁹

NIAUR does have some involvement with ERGEG through the Regional Initiatives Project. NIAUR has representatives on both the Electricity Regional Initiative (ERI) and the Gas Regional Initiative (GRI), programmes whose aim is to speed up the integration of Europe’s national electricity and gas markets.

Under ERI, NIAUR is part of the France-UK-Ireland region and sits on the Regional Coordination Committee (RCC) which looks at practical implementation programmes and is responsible for consulting with stakeholders, defining the way to deal with issues on a regional basis. The RCC acts as the overall coordinating body of the work and establishing priorities, milestones and deliverables.

NIAUR states that through this context it feeds into the policy making process. It goes on to state that it would like this role to be formalised through membership of, or a recognised role in relation to, ACER.

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⁷ Consultations with OFGEM

⁸ Consultations with NIAUR

⁹ Official Journal of the European Union August 2009 *Regulation (EC) No 713/2009 Establishing an Agency for the Cooperation of Energy Regulators* <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:211:0001:0014:EN:PDF> (first accessed 06/01/2010)