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**PRESS RELEASE**

**ERGEG and CESR advocate a tailored market abuse framework  
for energy markets in their advice to the Commission**

ERGEG, the European Regulators' Group for Electricity and Gas, and CESR, the Committee of European Securities Regulators, published today their final advice to the European Commission on market abuse issues related to energy trading. In their joint advice to the Commission, ERGEG and CESR advocate to develop a tailor-made EU market abuse framework within the electricity and gas sector. To better prevent market abuse in energy trading, the regulators also call for legally binding disclosure obligations in energy sector's regulation including sanction mechanisms. The advice published today follows a public consultation held from July to August 2008, receiving 36 responses from market participants.

The existing EU securities legislation (i.e. the Market Abuse Directive – MAD) applies almost exclusively to financial instruments admitted to trading on regulated markets and therefore does not adequately address market integrity issues in energy markets. The scope of the market abuse regulations (which establishes measures to prohibit insider trading and market manipulation) and the disclosure obligations of the MAD do not apply to physical markets for electricity and gas, such as spot contracts, and it only partly covers the derivatives markets for energy (i.e. those products admitted to trading on regulated markets).

As such, ERGEG and CESR advocate the creation of an EU market abuse framework for electricity and gas products not covered by MAD. In addition, there are substantial interdependencies between electricity and gas markets and other markets, such as emission allowances, coal and oil markets. The products in these markets are to a large extent traded by the same market participants and there are linkages in the price formation of processes of these markets. The Commission should take this into account when taking further decisions.

ERGEG Chair, Lord Mogg said:

*“The current MAD only covers the energy markets in part given that it is designed for financial markets. A more appropriate framework is needed to prohibit market abuse in energy markets. Market abuse can take many forms such as market manipulation or insider trading and regulators and market participants are hampered by the lack of transparency. We call on the Commission to commit to address this.”*

CESR Chair Eddy Wymeersch stated:

*“To ensure that we are on the front-foot in preventing market abuse in energy markets, a tailor-made EU framework for energy products, not covered by MAD, is needed. Ensuring integrity in financial markets is a key objective of securities regulators and we are therefore willing to take pre-emptive action to address this gap and wholeheartedly advise the Commission to develop such a framework. Thanks to the responses received following our consultation, it is clear that market participants also support a tailor-made EU framework and this should greatly help ensure that such a regulatory regime is all the more effective.”*

The final advice published today follows a mandate from the Commission in the context of the Third Energy Package. ERGEG and CESR will consult in October on the remaining mandate issues; record keeping, transparency and information exchange, and will deliver their final advice on these issues to the Commission by year end.

CESR

11-13 avenue de Friedland - 75008 PARIS - FRANCE - Tel.: 33.(0).1.58.36.43.21 - Fax: 33.(0).1.58.36.43.30

Web site: [www.cesr.eu](http://www.cesr.eu)

ERGEG

Email: [brussels@ceer.eu](mailto:brussels@ceer.eu)

Web site : <http://www.energy-regulators.eu>

**Notes for Editors:**

1. The European Regulators Group for Electricity and Gas (ERGEG) is made up of the national energy regulatory authorities of the EU's Member States. It was established by the European Commission in 2003 as an advisory group of the Commission on Internal Energy Market issues.
2. CESR is an independent Committee of European Securities Regulators. CESR's role is to:
  - Improve co-ordination among securities regulators;
  - Act as an advisory group to assist the European Commission, in particular in its preparation of implementing measures in the field of securities;
  - Work to ensure more consistent and timely day to day implementation of community legislation in the Member States;
  - The Committee was established under the terms of the European Commission's decision of 6 June 2001 (2001/1501/EC). It is one of the two committees envisaged in the Final Report of the Group of Wise Men on the regulation of European securities markets. Baron Alexandre Lamfalussy chaired this group. The report itself was endorsed by the European Council and the European Parliament. The relevant documents are available on the CESR website.
3. The “*CESR and ERGEG advice to the European Commission in the context of the Third Energy Package – response to Question F.20 – Market Abuse*”, follows a fact-finding exercise and public consultation during the summer. ERGEG and CESR's fact finding exercise finalised in July 2008 shows that less than 30 supply undertakings are licensed under the MiFID regime. The CESR and ERGEG advice on market abuse, the fact-finding advice, and the responses to the public consultation are available on the ERGEG ([www.energy-regulator.eu](http://www.energy-regulator.eu)) and CESR ([www.cesr.eu](http://www.cesr.eu)) websites.
4. The term “market abuse” is different from the concept of *abuse of market power (or dominance)* used in competition law. Market abuse refers to insider trading and market manipulation, both of which are possible without the competition law concept of market power.
5. The European Commission's mandate (December 2007) was issued in the context of the Third Energy Package proposals and the Commission's review of the Market Abuse Directive (MAD) which is to be completed in early 2009. The mandate sought the ERGEG and CESR advice on issues concerning record keeping and transparency of transactions in electricity and gas supply contracts and derivatives so as to determine if additional measures are necessary with respect to transparency in energy trading. Today's advice by ERGEG and CESR meets the request by the Commission for advice on whether the scope of the Market Abuse Directive is sufficient in relation to trading in energy and energy derivatives. The ERGEG/CESR final advice on other elements of the mandate - record keeping, transparency and exchange of information are sought by the end of December 2008.
6. The Market Abuse Directive (Directive 2003/6/EC on insider dealing and market manipulation – MAD) includes obligations on the disclosure of inside information and applies to financial instruments admitted to trading on regulated markets. The derivatives markets are not covered by the disclosure obligations because the disclosure obligations in MAD relate to issuers. In the context of derivatives markets, the issuer of a derivative is usually the market operator which is not an issuer within the meaning of MAD.
7. Other relevant EU legislation in this area includes: Directive 2003/54/EC concerning the internal market in electricity, Directive 2003/55/EC concerning the internal market in natural gas, and the Markets in Financial Instruments Directive (Directive 2004/39/EC – MiFID).

**Further information:**

Press Contact:

ERGEG

Una Shortall

Tel: + 32 484 668 599

E-mail: [una.shortall@ceer.eu](mailto:una.shortall@ceer.eu)

CESR

Victoria Powell

Tel: +33 158 36 43 21

E-mail: [vpowell@cesr.eu](mailto:vpowell@cesr.eu)