

ESB Submission
to the
Independent Review Panel Consultation
Pay Determination Processes – CEOs of Commercial Semi-State Bodies

1. Introduction & Executive Summary

ESB welcomes the opportunity to input to the public consultation being undertaken by the Independent Review Panel to review Senior Public Service Recruitment and Pay processes. ESB's submission is confined to comment on **Appendix 2: Pay Determination Processes – CEOs of Commercial Semi-State Bodies**.

The purpose of this submission is to advocate for the resumption of a formal pay determination process for the CEOs of commercial Semi-State Bodies. It would not be unreasonable to suggest that circumstances regarding CEO remuneration have changed significantly since 2011 when they were last revised and that a review is now appropriate for current and new appointees.

In order for ESB to attract and retain the best talent, the company must have competitive and market facing remuneration for everyone in the organisation, including the Chief Executive. The Chairman and the Board of ESB are strongly supportive of this approach to reward.

The Chairman is available to engage more fully with the Review Panel on the matter post-submission if that would be helpful.

2. Background & Context

Historically, the remuneration of Chief Executive Officers (CEOs) of commercial State Bodies came within the remit the Review Body on Higher Remuneration in the Public Sector ("the Review Body"). General reviews were usually carried out at four-yearly intervals. Following approval by the Government of the recommendations of the Review Body in their Report No. 37 (Dec 1996), a new system for establishing pay rates for CEOs of commercial state bodies was proposed, linking remuneration for CEOs of commercial semi state companies to the private sector. Hay Consultants were engaged by the Minister for Finance to conduct a comparative analysis of commercial semi state CEO roles and relevant private sector comparators and their report was published in July 1998. The recommendations in this report formed the basis of the packages to be offered to CEOs in commercial state bodies.

This approach continued until the financial crisis of the late 2000s. In the broader public sector, Financial Emergency legislation (FEMPI) was introduced while the commercial semi state companies were required to reduce the pay of CEOs.

In May 2011 performance related pay for CEO's were ceased indefinitely. In June 2011, the Minister for Public Expenditure and Reform announced the terms of a Government Decision for the introduction of pay ceilings for higher posts across the public service and for CEO posts in Commercial State Companies. General starting salaries for new appointees were provided¹. The Minister for Public Expenditure & Reform did acknowledge that maintaining the relative weightings

¹ [gov.ie](http://www.gov.ie) - [Minister Howlin announces pay ceilings for CEOs of Semi States and Senior Public Sector Posts \(www.gov.ie\)](http://www.gov.ie)

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between the salaries of all CEO's as determined under the "Hay" process was appropriate when setting out his proposals in this regard.

The current remuneration package of the CEO of ESB has remained unchanged since July 2011.

3. Governance Framework

The Department of Finance (2006) and more recently the Department of Public Expenditure and Reform (2016) have published guidelines to support the implementation of Government policy in relation to the total remuneration package and in relation to superannuation and termination benefits of CEOs of commercial state bodies.

ESB complies with the Code of Practice for the Governance of State Bodies Remuneration and the related Remuneration & Superannuation Guideline. When appointing the most recent Chief Executive (2021) prior approval of the contract of employment to be offered (based on template contract provided) and the amount of proposed remuneration was sought.

4. Role of the Board

Section 9 of the Code of Practice for the Governance of State Bodies and the related Remuneration & Superannuation document set out the requirements to be observed by Chairpersons and Boards of State Bodies in relation to the total remuneration package of CEOs.

Under the 2006 Department of Finance Guidance, Boards were also required to ensure that Remuneration Committees were established comprised of at least three non-executive directors.

While the ESB Board has established a Remuneration & Management Development Committee ("the Committee") with formal terms of reference, the Committee's role is constrained by current government pay policy. There is no scope to increase basic pay or to reward performance against targets set for the Chief Executive. The Committee continues to assess the CEOs development and performance against targets in the absence of any meaningful reward mechanism.

5. Statutory Position

The current statutory position regarding the remuneration of the Chief Executive of ESB is set out in Section 7 of Electricity (Supply) (Amendment) Act, 1988.

"There shall be paid by the Board to its chief executive (whether he is so described or otherwise) such remuneration and allowances as the Board, with the approval of the Minister given with the consent of the Minister for Finance, shall determine."

Sanction letters are provided for the appointment of a new Chief Executive or for the extension of a contract term of an incumbent when required.

6. Previous Review

In December 2019, the Minister for Public Expenditure & Reform wrote to relevant Ministers indicating that an evaluation of CEO remuneration in Commercial State Bodies (CSBs) would be undertaken by the Department of Public Expenditure and Reform (DPER) in conjunction with NewERA. The Minister expressed the view that circumstances regarding CEO remuneration had changed significantly since 2011 meriting a review.

A full response from ESB was submitted, supporting the implementation of a market-based reward model, using job evaluation and remuneration benchmarking as the basis for CEO remuneration.

The outcome of this evaluation is awaited.

7. Challenges Posed by Current Arrangements

As outlined above, since 2011 the remuneration of commercial semi state CEOs has been subject to pay caps and the cessation of performance related pay. Since then, it is noted that the practice has emerged in the broader public service of case by case approvals being sought for specific positions at the time of appointment or re-appointment. This approach runs the risk of relative weightings of various roles being disturbed.

It is also worth noting that ESB operates a market-based reward strategy for all employees. Our reward strategy has changed over time (i.e., pay scales etc) and is fully aligned with ESB's challenging business strategy, ambition and the competition for resources.

The reward framework attached to all roles is informed by the practice in the market for similar roles in other organisations. All roles are benchmarked on a periodic basis and adjustments made to the framework based on market practice and affordability. Pay for performance is a core principle at ESB, funded by business performance. Competitive, market-based reward with the opportunity for performance incentive is essential for attraction and retention of talent in today's market. This strategy risks being undermined by the current arrangement in respect of the CEO's remuneration.

Given the passage of time and changes in the market for talent since their introduction, recent experience would suggest that caps and limits set during the financial crisis are no longer appropriate.

The Chairman and Board of ESB are fully supportive of a pay determination model which is market facing and is capable of moving in line with the market in order to attract and retain the best people to deliver on our ambitious strategy "*Driven to Make a Difference: Net Zero by 2040*". They are also of the view that it is essential for determining the remuneration of the Chief Executive.

8. Proposal

While the statutory and governance position is clear, ESB nevertheless believes the current arrangements for setting CEO remuneration must be revisited. Significant upward pay pressure and the requirement to attract and retain top talent at senior levels suggest that a more structured approach is required.

As a starting point, it is proposed that the salary ranges in place as at 1/9/08 (see Footnote 1) should be re-instated. Following this, it is proposed that a "Hay" or equivalent type process is re-established with a two-step approach taken:

A. External

- Every 3 to 5 years an independent review body will review the sizing bands within which each commercial semi-state organisation is to be placed;
- The review would take account of various factors including the evolution of the organisation/restructurings etc; and
- A market assessment is conducted of the CEO salary bands and the overall remuneration package for the different sizing bands identified.

B. Internal

- The Board and the Remuneration Committee would continue to be responsible for annual assessments of CEO performance and to apply robust processes for determination of CEO pay, subject to the salary band/performance pay determined by

the external process. This would give the Chairman and the Board flexibility to set a competitive remuneration package for their CEO (should circumstances permit);

- The Board and the Remuneration Committee will take account, in the normal manner, of the organisation's ability to pay, current performance, market expectations, headroom etc.

9. Conclusion

ESB welcomes the Independent Review Panels consultation. As a commercial semi state company, it is critically important for the business to be able to attract, retain and motivate the best people across all levels of the organisation to deliver on our strategy and to meet our shareholders expectations in terms of decarbonisation, energy security, critical infrastructure provision and economic growth. In this context, a market facing remuneration model is essential.

It is the Board's view that the current pay determination model for the CEO needs to be re-set to reflect current market developments. The Chairman would be delighted to meet with the Review Panel to provide more detail if that would be of assistance.

Marie Sinnott

Company Secretary

10th August, 2022