

**ENERGY CHARTER
SECRETARIAT**

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Related documents: CC 636, CC 641

DECISION OF THE ENERGY CHARTER CONFERENCE

Subject: Report by the Chairman of the Industry Advisory Panel

The Energy Charter Conference at its 29th Meeting held on 27-28 November 2018 **took note** of the Communication from the Industry Advisory Panel as outlined in CC 636 (attached hereto) and **approved** the new IAP members in accordance with the attached membership list

Keywords: Communication, Chairman, Industry Advisory Panel, IAP, Membership List

REPORT BY THE CHAIR OF THE INDUSTRY ADVISORY PANEL

The Energy Charter Industry Advisory Panel (IAP) held two meetings in 2018 and submits the Annual Communication on its work for the attention of the Energy Charter Conference.

The Energy Charter Conference is invited to take note of the Annual Communication of the IAP and approve the attached membership list.

Membership structure and new members

1. Currently the IAP has 62 members from energy companies, international associations, intergovernmental institutions and individuals spanning 32 countries, which operate in fields such as exploration, production, generation, transmission, distribution, finance, equipment, services, technology and consultancy.
2. In 2018, the IAP received and accepted membership applications from 3 new members, namely Transgaz (Romania), EDF (France) and Power Producers & Distributors Inc. (Guyana).
3. Over the past 3 years, the IAP has admitted 16 new members, which demonstrates the continued value of the Panel as a forum for exchange of knowledge and expertise on energy matters in the service of the entire Energy Charter constituency.
4. A full list of IAP members is provided in Annex 3.

Meetings

1. The IAP held two meetings in 2018. In line with established practice, meetings were composed of: case studies provided by the IAP members; the review of expert work presented by the Secretariat or other invited authorities; and invited guest speakers addressing a specific topic of interest for the IAP and the International Energy Charter.
2. The first meeting was held in May 2018 in Brussels in a format of a joint session between the IAP and the Sub-Group on Modernisation. Its main focus was the modernisation of the Energy Charter Treaty (ECT). Given the importance and value of the core principles enshrined in the ECT, the IAP members recognised that the ECT provisions can be further strengthened through the modernisation process.
3. The IAP also met in Bucharest, Romania on 27 November 2018 to discuss issues regarding investment in innovation and new technologies that will impact the energy sector in the coming decades, such as the role of emerging technologies in enhancing energy security, accelerating energy transition, and increasing productivity while reducing costs.
4. Numerous IAP members also participated in two meetings of the Technical Subgroup on Transit which took place in May and October 2018, respectively. The meetings were devoted to issues related to transit of energy resources including access to infrastructure, regulatory environment, tariffs and Model Agreements on Cross-

Border Pipelines. The Subgroup on Transit received valuable comments from the IAP members present at those meetings.

5. IAP representatives also attended the launch of the flagship publication of the Energy Charter Secretariat, the Energy Investment Risk Assessment (EIRA), on 3 October 2018 in Brussels. They expressed their strong support for EIRA as a systematic and reliable tool that can be of great value to policy makers, investors and indeed all stakeholders in energy development.

Main issues considered in 2018

ECT Modernisation

1. In the view of the IAP, the Energy Charter Treaty provides a multilateral framework for energy cooperation that is unique under international law. It is a binding multilateral agreement aiming to promote energy security through the operation of open and competitive energy markets. The ECT's fundamental principles are the promotion and protection of investment, transit and trade in the energy sector, and the movement of finance, people and technology related to energy development. These safeguards contribute to limiting investment risk and increasing the attractiveness of a country's regulatory environment, including a level playing field for domestic and foreign investors in the energy sector.
2. For a number of reasons energy projects are particularly sensitive to investment risk. It is for this reason that the ECT is of particular relevance and value for both signatories and investors. The IAP members are fully aware that the energy sector is under constant change. In this respect, the ECT should be forward-looking and reflect ongoing developments and future expectations. Hence, the IAP members endorsed the principle of updating, clarifying and modernising the provisions of the ECT.
3. More specifically, with regard to investment protection, the IAP members are supportive of measures that could curb the pursuit of demonstrably frivolous claims. They are also in favour of extending investment protection to the pre-investment stage, bearing in mind that the main focus of the modernisation process should stay on the post-investment phase.
4. The IAP members would welcome greater clarity (and where appropriate definition) of the concept of "indirect expropriation." Similarly, they hold that the ECT provisions on expropriation and procedures for fair compensation remain absolutely central to the effectiveness of the Treaty and, as such, should not be diluted in any way through the modernisation process. Moreover, they highlight the benefit of greater transparency in the resolution of arbitration claims, noting that this would enhance legal predictability and stakeholders' confidence in the dispute resolution process. Where appropriate, provisions should be included for the protection of commercially confidential information.
5. With respect to energy trade and transit, the IAP members continue to attach great importance to the ECT provisions on cross-border transport and transit of energy and would welcome steps in the direction of strengthening the existing provisions. In particular, the IAP members would be interested to consider the inclusion of maritime

energy transport within the ECT energy trade and transit provisions. Energy efficiency is currently covered by the Protocol on Energy Efficiency and Related Environmental Aspects (PEEREA). However, the IAP members would be interested to explore additional ways to integrate energy efficiency-related investments into the investment protection provisions of the ECT.

6. The IAP members are of the opinion that strengthening the ECT provisions on transfer of technology, movement of key personnel and competitive supply of energy-related equipment on a non-discriminatory basis would contribute to the improvement of the overall investment climate in the signatory countries. Furthermore, the IAP members consider that the amendment of the provisions on transfers related to investments would be appropriate since these provisions currently provide only partial protection to investors. Any potential amendment to provide for temporal restrictions to transfers should not impact existing host government agreements.

Work Programme for 2019

1. The IAP members will welcome the opportunity to comment further on the modernisation of the ECT and to engage with all stakeholders involved in the process. Moreover, the IAP remains ready to continue contributing to other initiatives of the Contracting Parties and promoting the Energy Charter Treaty.
2. In the context of the 2019 Review conducted under Article 34(7) of the ECT, the IAP members will discuss the IAP's role, mandate and modus operandi. The outcome of these discussions may result in revision of the Terms of Reference of the IAP.
3. The IAP will continue to fulfil its mandate. The Panel members will welcome further engagement of the Energy Charter Secretariat in facilitating the work of the IAP.
4. The IAP invites the Contracting Parties and Observer countries to promote the IAP in their respective energy sectors and enlarge as appropriate the membership of the Panel.

Annex 1

Modernisation of the Energy Charter Treaty

Submitted by the Industry Advisory Panel (IAP) to the Sub-Group on Modernisation in June 2018

Introduction

The members of the Industry Advisory Panel of the Energy Charter Treaty (ECT) warmly welcome the opportunity to offer comments on the ECT modernisation process.

This paper reiterates points made at the consultation meeting in Brussels on Monday 14th May 2018 and additional views expressed by members in subsequent exchanges between IAP members and the IAP Chairman.

Enduring Value of the Energy Charter Treaty

IAP members place enduring value on the provisions made on a multilateral basis within the ECT for the promotion and protection of energy investment, the protection of energy trade and transit, and the movement of finance, people and technology related to energy development.

These protections make a significant contribution to limitation of investor risk and thereby to the ability to attract and sustain energy investment. There is a direct benefit for the signatory state in which investment occurs and greater predictability and assurance for the investing entity. Consumers can also be expected to benefit from more reliable and competitively priced energy supplies.

It should be noted that these benefits apply equally to all forms of energy development, not only in ‘conventional’ oil and gas resources but also in wind, solar and other forms of renewable energy. In this way, the ECT can make a substantial contribution to greater diversity and lower carbon content of energy supplies.

The same principles can also be applied to energy efficiency, including efficiency of energy transportation, transmission and distribution.

In general the energy sector requires substantial up-front investments that are subsequently recovered over long periods of time, typically up to thirty years or more years. Thus the energy sector is particularly sensitive to investor risks over the entire life cycle. It is for this reason that a sectoral treaty (the ECT) has particular relevance and value for both signatory states and investors.

IAP members also recognise that the energy sector is constantly changing. Present trends towards decarbonisation, digitalisation, electrification and decentralisation will require extensive modification and upgrading of energy supply, transmission, distribution, operational management, storage, standby and other facilities, and major new investments on a global basis. In this respect the ECT should be forward looking and support future change and not only reflect past circumstances.

To the extent that the benefits of the core ECT provisions can be strengthened through the modernisation process, this would be welcomed by investors. However, it is equally important that nothing in the modernisation process should in any way dilute, or make more uncertain, the enduring value of the ECT as an instrument for the promotion and protection of energy investment, trade and transit.

It may also be noted that IAP members warmly endorsed the International Energy Charter signed in The Hague in May 2015 and remain in full support of the ambition of widened geographic reach of the Energy Charter principles and legal instruments.

Modernisation Issues

Promotion and Protection of Investment

These are regarded by investors as the core provisions of the ECT. IAP members are aware of current trends in Bilateral Treaties for Investment Promotion and Protection and of wider public policy debate on dispute resolution and international arbitration practice.

The ECT does not of itself establish a dispute resolution forum but provides for reference to other established dispute resolution mechanisms. Thus IAP members do not believe it is necessary or appropriate to comment on current debates with respect to dispute resolution practice.

With regard to the ECT provisions for investment protection and dispute resolution we would comment as follows:

Frivolous Claims

Noting the serious and generally long-term nature of energy investment, IAP members are in general supportive of measures to limit the pursuit of demonstrably frivolous claims.

Covered Investments – Pre-Investment Stage

Investors would welcome the extension of investment protection to the Making of Investments (the pre-investment stage) to the extent this is feasible. IAP members recall the original intent under the ECT (1994) to establish a supplementary treaty for this purpose. However, IAP members also take the view that the focus of modernisation should remain on the post-investment phase.

Indirect Expropriation

IAP members would welcome greater clarity (and where appropriate definition) of the concept of ‘indirect expropriation’. This would provide greater certainty/predictability regarding the applicability of ECT investment protection provisions for both signatory states and investors and thereby support long-term confidence in the ECT investment protection mechanisms.

Transparency and Interpretation of the ECT

IAP members have a clear presumption in favour of greater transparency concerning the resolution of arbitration claims, noting that this could support greater stakeholder confidence in the dispute resolution process and enhance legal predictability through the creation of visible precedent. Provisions should be included for protection of

commercially confidential information where appropriate. Great transparency regarding the resolution of arbitration claims may also assist with in addressing the question of frivolous claims.

Right to Regulate

It is the understanding of IAP members that the ECT unequivocally recognises and provides for state sovereignty over energy resources including the system of property ownership. Thus there seems to be no case for additional definition of or provision for the 'state right to regulate'.

In this context IAP members would also point out that:

- to the extent that the concept of 'indirect expropriation' can give rise to contention regarding the 'right to regulate', this point is already addressed above;
- the ECT provisions on expropriation and procedures for fair compensation remain absolutely central to the effectiveness of the Treaty and should not be diluted in any respect through the modernisation process.

Energy Trade and Transit

Energy resources of any type only have economic value if they can be successfully conveyed to the end-user in a cost competitive and reliable manner.

IAP members consequently continue to attach great importance to the ECT provisions for the cross-border trade and transit of energy. It is also anticipated that the economic importance of cross-border energy trade and transit will continue to increase in the future, in particular with respect to greater electrification in a more decarbonised energy system.

IAP members consequently have a strong ongoing interest in further strengthening the ECT provisions for cross-border transport and transit of energy and would welcome steps in this direction. It is recalled that there have been previous initiatives in line with this objective since 1995, with some progress achieved but not final success.

Recognising the importance of maritime transport in the energy sector, and in particular the expected continued growth in maritime transport of natural gas in the form of LNG (Liquefied Natural Gas), IAP members would be also be interested to consider the inclusion of maritime energy transport within the ECT energy trade and transit provisions.

Energy Efficiency

IAP members note that energy efficiency is beneficial to the environment and has the equivalent effect to discovery and development of new energy resources (of all types). Energy Efficiency is currently covered within the ECT structure by the Protocol on Energy Efficiency and Related Environmental Aspects (PEERA).

IAP members would be interested to further explore the possibilities for bringing energy efficiency related investments more fully within the investment protection provisions of the ECT, recognising the beneficial effect of such investment both on the environment and in terms of diversity and security of energy provision.

Other Provisions

Transfer of Technology and Key Personnel

IAP members value the ECT provisions for transfer of technology and movement of key personnel as relevant and important for daily business operations. Although members have not suggested specific problems, strengthening of the Treaty provisions in these specific areas would have added value for investors and represent a positive contribution to the overall investment climate in the signatory states.

Energy Related Equipment

IAP members do not see the provision of energy related equipment as a major issue but note with interest the reference in the original ECT text. Although not a high priority, the possibility of strengthened provisions for competitive supply of energy related equipment on a non-discriminatory basis would be of interest and potential value.

It may also be useful to revisit the ECT definition of ‘Economic Activity’ in the Energy Sector, in order to confirm applicability in the context of ongoing/anticipated changes in the energy sector such as digitalisation, decarbonisation, electrification and decentralisation.

An ongoing mechanism within the ECT for updating of relevant ‘Economic Activity’ within the Treaty definitions could also be of value.

Transfers Related to Investments

IAP members note that the provisions of the ECT with respect to transfers related to investments only provide partial protection for investors. Strengthening of these provisions would be welcome, in particular clarification that any potential amendment to provide for temporal restrictions to transfers should not hinder existing host-government agreements.

Industry Payment for Services

IAP members consider that the charging of fees for services provided is normal business and could apply to any commercial services provided by the Energy Charter Secretariat or related bodies. Equally IAP members do not believe that such a possibility needs to be specified in the Treaty.

Regarding the potential for prior up-front payment of an administrative fee to the Secretariat as a condition for commencing investment arbitration under the provisions of the ECT, the IAP is open for discussion but has not yet had the opportunity to discuss in greater detail with its members.

Annex 2

Terms of Reference (ToR) of the Energy Charter Industry Advisory Panel (2015-2019)¹

1. An Industry Advisory Panel (IAP) is established by decision of the Energy Charter Conference at its 14th Meeting on 15 June 2004 and renewed by subsequent decisions in 2008 and 2012.
2. The IAP shall be a consultative body to the Energy Charter Conference and its Subsidiary Bodies, with the goal of putting forward the views of business on matters related to energy investment, investment dispute settlement, energy trade, transit, and efficiency. The IAP's mission is to forge closer ties between the Energy Charter Treaty (ECT) constituency and the industry, with a particular focus on the effective implementation of the ECT the adoption of the International Energy Charter and the accession to the ECT by outreach and observer countries.
3. The IAP is invited to promote the key principles of the Energy Charter at relevant international conferences and events. To achieve the goal of providing advice and views of the industry, IAP members (i) may regularly contribute to the activities, events (e.g. training programs, seminars) and publications (e.g. country reviews, reports, occasional papers) of the Energy Charter Secretariat (Secretariat); and (ii) sponsor additional Energy Charter activities, events, publications as well as assign energy industry experts to assist the Secretariat.
4. The composition of the IAP shall be representative of the energy industry of the Contracting Parties, Signatories, observer and outreach States to the ECT, both in terms of geography and sectors. Its members shall be selected from energy companies, business associations and other organisations with substantial business interests in the energy sector, having their headquarters in the territories of the Contracting Parties, Signatories, observer and outreach States. Interested representatives from the financial sector may be nominated. Members shall be at a senior level and actively involved in the decision-making process of their companies/organisations.
5. Interested candidates may submit their request for IAP membership to the IAP Chair. Contracting Parties and Signatories may also propose candidates for IAP membership, either directly or through the Secretary General. It is at the discretion of the IAP Chairman to initiate silent procedure or reach a decision in this respect at the subsequent IAP meeting.
6. Upon review of a membership request in the light of Paragraph 5 above, the IAP will submit a list of members by means of annual communication to the Energy Charter Conference. To the extent that the Conference cannot reach a consensus, the decision shall require a simple majority of the Contracting Parties. Membership is renewed every year by submission of the list of members to the Conference.

¹ *Only linguistic changes have been made.*

7. The Energy Charter Conference or its Subsidiary Bodies may ask the IAP for advice. The IAP's advice will be presented to the Conference and/or its Subsidiary Bodies and annual Policy Conferences as appropriate and, as general rule, be considered in the context of the relevant Subsidiary Body before its submission to the Energy Charter Conference.
8. The IAP may request the Conference or its Subsidiary Bodies to consider issues falling within its mandate through an Annual Communication. The Secretary General shall recommend that the Energy Charter Conference take account of such suggestions at a high political level. The Secretariat shall ensure that the Annual Communication is annexed or referred to in the final declaration of the Energy Charter Conference; it is proposed for implementation in the Energy Charter Program of Work; and, finally, it is cited in the Energy Charter meetings and activities.
9. The IAP may elect a Chair and other officers and organise its activities in accordance with these ToR, as it deems appropriate. The IAP may establish regional Chairs. The Secretariat shall assist the IAP in the organisation of its work. The Energy Charter Secretariat should prepare IAP meetings and summary records thereof ; draft IAP Annual Communications and statements; promote IAP membership and correspond with candidate members; and invite IAP members to contribute to its activities.
10. The members of the IAP shall cover their own costs.
11. The Energy Charter Conference shall periodically review the working methods of the IAP and its ToR in the light of the experience acquired through the years.

Annex 3



COMPOSITION OF THE ENERGY CHARTER INDUSTRY ADVISORY PANEL (IAP)

MEMBERS AS OF 12 NOVEMBER 2018:

COMPANIES

Azerbaijan

State Oil Company of Azerbaijan Republic (SOCAR)	VELIYEV Nazim	Head of Science and Technical Department
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Bulgaria

Bulgarian Energy Holding EAD	IVANOV Petyo	Chief Executive Officer
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People's Republic Of China

China National Petroleum Corporation (CNPC)	WANG Haiyan	Deputy Director International Department
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Electric Power Planning & Engineering Institute (EPPEI)	XIE Qiuye	President
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Czech Republic

ČEZ a.s.	JEDLICKA Michal	Lawyer – European Affairs
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France

EDF	CATENOS Laurent	Vice President Coordination and Performance
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Georgia

Georgian Oil and Gas Corporation	TSITSISHVILI David	Head of Commercial Department
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Germany

UNIPER SE	AHLUWALIA Kavita	Senior Vice President and Head of EU office Political & Regulatory Affairs
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EWE AG	SCHULTE-DERNE Sebastian	Head of Brussels Representative Office
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Greece

Hellenic Petroleum SA	GOUTA Liana	Director of Energy Policy & International Affairs
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Guyana

Power Producers & Distributors Inc.	FRASER Arron	Chief Executive Officer
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Hungary

MOL Group	VARI Ilona	Head of EU Regulatory Affairs
	PÁLMAI Márton	Brussels Representative

Italy

Edison S.p.A.	MARGHERI Marco	Head of EU Liaison Office
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Enel S.p.A.	ZANGRANDI Roberto	Head of Institutional European Affairs
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Eni S.p.A.	MARCHETTI Fabio	Head of European Government Affairs
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ERG S.p.A.		
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Japan

Japan Oil, Gas and Metals National Corporation (JOGMEC)	TAKAHIRO Mochizuki	Deputy General Manager London Office
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Mitsubishi Corporation International (Europe) Plc.	MATSUSHITA Takeshi	Senior Vice-President Energy Business
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Mitsui&Co. LTD	UENO Eiichi	Senior Vice President & Divisional Operating Officer of Energy Division
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	SUGIMOTO Shigeo	European Affairs Manager
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Jordan

Jordan Petroleum Refinery Company LTD	AL-REFAI Ahmed	Chief Executive Officer
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Kazakhstan

Kazakhstan Electricity Grid Operating Company (KEGOC)	KATYSHEV Sergei	Managing Director
KAZENERGY Association	RAKHMETOVA Klara	Energy Charter Project Manager
Luxembourg		
R-square RiskLab	MAJUMDAR Chitro	Managing Partner
Moldova		
Moldovagaz	MORARU Marcelina	Adviser for international cooperation and regulations
Norway		
Equinor	ENGE Trond	Vice President of Policy and Regulatory Affairs & Country Manager Belgium
Poland		
Gas Transmission Operator GAZ-SYSTEM S.A.	KUŚ Piotr	Deputy Director Development Division
Portugal		
EDP Energias de Portugal SA	BEIRAO Francisco	Head of Brussels Office
	FERREIRA Ricardo	Head of Market Studies and Competition Department
Romania		
Transgaz	FODOR Alexandra	Head of International Relations
Russian Federation		
Gazprom	POTAPOV Maxim	Head of Division International Business Department
Lukoil	BUNIN Maxim	Director Corporate Affairs
The Netherlands		
Gasunie	GROENENDIJK Wim	Head of International Business
Shell International B.V.	VAN DOESBURG Ruben	Senior Legal Counsel
Serbia		

NIS a.d. Novi Sad	RADOVANOVIC Nikola	Chief legal officer for EU legislation
Spain		
ACS Servicios, Comunicaciones y Energía, S.L.	NEBRERA Jose A.	General Manager Grupo Cobra
Abengoa S.A.	BEJARANO GARCIA Germán	Advisor to the Chairman, Director for Institutional Affairs
Gas Natural Fenosa		
La Unión Española Fotovoltaica (UNEF)	GONZALEZ Aida	Chief Policy & Regulatory Officer
Asociación Nacional de Productores de Energía Fotovoltaica (ANPIER)	GARAU Laura	Brussels Office Representative
Slovakia		
Eustream	SEDLÁČEK Milan CZETŐ Daniel	Head of EU Affairs and Strategy Representative for EU Affairs
Vychodoslonenska energetika Holding (VSE Holding)	HEJCMAN Thomas Jan	Chief Executive Officer
Switzerland		
Axpo Group	HESSELBARTH Thomas ROEHM-MALCOTTI Eberhard	Axpo Power AG Gas Asset/Infrastructure Management Axpo Services AG Head of EU Energy Policy
Turkey		
BOTAŞ Petroleum Pipeline Corporation	AKTAN Hülya	Foreign Relations and EU Coordination Manager International Projects
Ukraine		
Naftogaz of Ukraine	VOROCHEK Victoria	Deputy Head of Strategic Planning Department of NJSC
NEC "Ukrenergo"	BNO-AIRIIAN Mykhailo	Director of Communications and International Cooperation
NNEGC "Energoatom"	KUKHARCHUK Mykola	Director for International Cooperation

TIURIN Andriy Director of Brussels Office

United Kingdom

BHP Billiton KILKENNY Carmel Commercial Manager
BP HUIJGENS Rutger Director European Government Affairs
John Crane MORTON John Product Line Director
LAIMINA Liene Senior Manager Government Relations
The Prince of Wales's Corporate Leaders Group KOEGLER Peter Programme Manager

United States

The Dow Chemical Company CHASE Howard Director of Government Affairs Europe
(IAP Chair)

INTERGOVERNMENTAL ORGANISATIONS

CIS Electric Power Council MISHUK Evgeny Chair Executive Committee
European Bank for Reconstruction and Development (EBRD) RASMUSSEN Eric Director Natural Resources

INTERNATIONAL BUSINESS ASSOCIATIONS

European Committee of Domestic Equipment Manufacturers (CECED) FALCIONI Paolo Director General
Eurelectric RUBY Kristian Secretary General
NOYENS Koen Director of Communication & Corporate Affairs
Eurogas RAABE Beate Secretary General
EU Turbines BARON Sonia Manager European Affairs
Central Europe Energy Partners JAKUBIK Maciej Executive Director
Gas Infrastructure Europe (GIE) ACHOVSKI Boyana Secretary General
GO15. Reliable and Sustainable Power Grids DOBBENI Daniel President
STEVEN Alain Secretary General
International Association of Oil & Gas SCHWARCK Christian Deputy Director, EU Affairs

Producers (IOGP)

WindEurope

DICKSON Giles

Chief Executive Officer

INDEPENDENT EXPERTS

KALKAVOURA Anastasia

(Deputy Chair of IAP)