

**COMMUNICATION FROM THE INDUSTRY ADVISORY PANEL  
TO THE ENERGY CHARTER CONFERENCE  
*Athens, 28 November 2008***

## **1. Introduction**

- *Mandate, membership and working method of IAP*

The main objective of the IAP is to ensure cooperation and dialogue between the energy industry and the Contracting Parties, and to help promote the cause of the ECT. Initially the number of IAP members was just under 20 but due to great interest among businesses in various countries and parts of the energy sector, the membership has grown and now stands at 28, while the outlook is for more members to join.

The IAP seeks to advise the Energy Charter Conference on the basis of expert input from members (both private and state-owned companies) and consultants. The work of the IAP covers the full energy cycle, all the principal energy commodities, a wide scope of energy sector activities including exploration, production, processing, generation, transmission, distribution, finance, equipment, services and technology and the entire geographical reach of the Charter constituency.

- *Date of formation and number of meetings to date*

Since its inception in late 2004, the IAP has held 15 meetings, mainly in Brussels at the premises of the Secretariat, but recently also in Baku and yesterday in Athens. It is the intention of the IAP to convene its future meetings more often at various locations outside Brussels to the extent that this is reasonable. The meetings outside Brussels have provided outstanding opportunities for better acquaintance with regional perspectives and for allowing in-depth inputs from regional and local market players.

## **2. Work Programme for 2008**

- *Meetings in 2008*

In 2008, the IAP held three meetings, with two outside Brussels. SOCAR, the state oil company of Azerbaijan, kindly hosted the spring meeting of the IAP in Baku. This provided valuable insights on the oil and gas dynamics of the Caspian region and also on the relationship with global energy security. The second fall meeting for 2008 was held yesterday in Athens, at the invitation and with the generous support of Hellenic Petroleum. IAP members had a valuable opportunity to discuss with regional experts the perspectives for the downstream petroleum business and the global outlook for the oil market.

- *Main subjects considered*

During 2008 the IAP has concentrated its activities on policies required to secure adequate and timely energy availability in the context of far-reaching changes in the global energy markets. Particular attention has been given to the identification and mitigation of barriers and risks for energy investors, operators, traders and users of transit, while also emphasising regional perspectives.

For this purpose, the IAP has heard expert input from major companies and trade associations in the oil, gas and electricity production and transmission sectors, from private and public financial institutions and from expert energy advisors in the private and public sectors. The

IAP has also benefited greatly from the expert input provided by the Energy Charter Secretariat.

The main issues discussed in the three IAP meetings of 2008 were as follows:

- *The energy dynamics of the Caspian-Caucasus region*, which remains a key area of focus in addressing concerns about Eurasian energy security
- *Essential facts and trends in global energy* were presented to IAP members through the findings of the BP Statistical Review of World Energy 2008. Attention focused on the mid-2008 spike in energy prices, followed by a rapid decline, both illustrating the extreme volatility of oil and energy prices. The main reason for oil price volatility is the fundamental tightness of the market in physical terms, reflecting both cost inflation and significant restrictions on access to resources in key petroleum producing areas. This latter issue is now becoming of critical importance. Oil still remains the mainstay of the global energy industry and volatility on the oil markets leads to repercussions throughout the energy business, as well as in the supporting services sector.
- *Alternatives to fossil fuels* are slow to gain market share. The issue of climate change remains of prime concern but has recently been somewhat overshadowed by other policy issues, notably high energy prices and energy security. There are substantial opportunities for improved energy efficiency, especially taking into account the huge scope for technological deployment, but serious difficulties in collecting appropriate data on energy efficiency and other barriers are a matter of concern. It should be noted that the recent financial crisis is now impacting the liquidity of the energy markets, including the funding of energy efficiency programmes and investment.
- In the gas sector, *issues relating to LNG* are particularly noteworthy in terms of gas supply, demand and trade. While the preferences of suppliers are still strongly in favour of long-term contracts, technology may have a noticeable impact in the relatively near future, with the first floating LNG terminals (both liquefaction and re-gasification) likely to be operational in less than 3 years. Third party access (TPA) to LNG facilities seems difficult to implement even where legally available, especially when offered on negotiated terms. For example, no use of TPA has so far been recorded throughout the LNG industry in Japan, even though it is available on negotiated terms.
- *Underground gas storage (UGS)* in Eurasia may be one of the important options for enhancing energy security, especially if both upstream and downstream use of UGS is secured. The IAP recommends that the work of the Charter on UGS should be focused primarily in areas not covered elsewhere by public or private agencies. The issues to be considered should include demand side economic and energy sector context, supply side options, future gas prices, interaction with EU gas markets and UGS financing infrastructure. Some inspiration can be drawn from the South East Europe Gasification study produced for the Energy Community and the World Bank.
- The potential for investment in and market development of *carbon capture and storage (CCS)* is of considerable interest. The IAP focused its discussions on the geographical coverage of various international treaties regarding CCS, the legal treatment of CO<sub>2</sub> (waste or commodity) under the ECT and other treaties, the status of CO<sub>2</sub> transport under ECT provisions, the importance of removing barriers to construction and storage and access to CCS facilities across borders. The IAP

recommends that the work of the Charter on CCS should examine the risks perceived by various stakeholders but should not lead to a new layer of regulations.

- The IAP found that *reciprocity in energy investment and trade*, in both bilateral and multilateral treaties, as well as in terms of access for investors and access to markets, is an issue of particular importance. The IAP welcomed the paper on reciprocity developed by the Secretariat and noted that this provided many valuable perspectives. As the concept of reciprocity can sometimes be a cause of both legal and economic ambiguity, the IAP agreed that the issue merits further detailed study, with the results to be widely disseminated through an appropriate publication.
- The *Model Agreements* prepared by a task force headed by the Energy Charter Secretariat and assisted by a legal team composed of representatives from the industry, were found by the IAP to be a useful tool for promoting investment in critical elements of the chain of energy supply. The IAP favours continuity of work on this topic.

### 3. Key issues and recommendations for the Energy Charter Conference

- *The Year of 2008*
  - The year of 2008 has been tumultuous for the energy industry:
    - The unexpectedly high energy prices during the first half of the year have been followed by a sharp decline.
    - Business conditions have further deteriorated due to the turmoil on the financial markets and the deterioration of the macroeconomic outlook.
    - All these developments have deepened concerns about energy security and sustainability.
- *Energy prices are easing because of lower demand, not improved supply*
  - The downturn on markets during the second half of the year has been taken by many as a positive sign. However, it should be recalled that prices have eased not because of a surge in supply but because of erosion of demand. Volatility has contributed to the feeling of insecurity among investors and added to concerns about the ability to implement timely supply side investments. Indeed, it may be observed that there is now a *systemic supply side underinvestment in the energy sector* and this should be taken as an alarming sign.
  - As reiterated during the deliberations of the IAP over the last year, *barriers to investments in fossil fuels are mainly ‘above the ground’ rather than ‘below the ground’ technological issues*. As mentioned to the previous Conference, this is the core of the ECT remit and is where the Charter and its instruments are expected to play a major role in alleviating risks. The IAP consequently intends to continue in its support of the ongoing risk reduction dialogue of the Charter.
- *The IAP believes that access to infrastructure is of vital importance*
  - Developments in many regions have underscored the crucial importance of the terms of access to energy infrastructure.
  - In this respect, it is timely for the Charter to address the need for a well defined international framework for cross-border infrastructure development

and operation. The IAP believes that the ECT remain the best available starting point for inter-governmental cooperation in this area

- The IAP appreciated the opportunity to review the work of the Secretariat in two specific areas impacting energy security, namely, underground gas storage and reciprocity in terms of access for investors and access to markets. The IAP provided specific suggestions on UGS and hopes that these could be used to arrive at a better understanding of the role of UGS in natural gas markets, cross-border gas flows, and increased energy security.
- *The IAP has retained focus on climate change and environmental issues.*
  - A study by the Secretariat on carbon capture and storage (CCS) provided an opportunity for discussions on the subject. The IAP hopes that this study will continue in order to provide further insights. As the linkage between the energy sector and climate change and environmental issues becomes ever more important, the IAP recommends expanding the effort of the Charter in this respect.
  - Finally, issues relating to energy efficiency remain of prime importance from the industry point of view, since energy efficiency has the potential both to address demand side concerns and to open new business opportunities, while at the same time tackling the environmental dimension.

#### **4. The future of the Energy Charter**

##### ***a. The IAP has contributed to the Ad Hoc Strategy Group***

A special presentation was made by the IAP to the Ad Hoc Strategy Group meeting held in Brussels on 17 October 2008. Highlights were also provided to the Investment Group meeting on 20 October 2008. The presentation is available to delegations.

##### ***b. Recommendation of IAP in view of the Review Process of Energy Charter in 2009 (Article 34.7)***

The principal recommendations of the IAP to the team leader of the Energy Charter Review process may be summarised as follows:

- Support for the Energy Charter process deserves to be widened:
  - The IAP believes that the Charter provides a unique international and multilateral framework for dealing with energy sector activities throughout the value chain. In the view of IAP members, the ECT is a key reference point for all stakeholders in the global energy business;
  - The scope and value of the Charter would be difficult to replicate;
  - Future efforts should be focused on building partnerships and cooperation among the ECT constituency and between the ECT members and industry.
- The IAP notes the potential for enhancing the role of the Charter by expanding its geographic scope.
- This expansion will increase the value of the Charter as a multilateral tool and contribute to its role as a forum for dialogue, cooperation and exchange of views.
- In the view of IAP members the Energy Charter institutions could take a more active role in tracking the implementation of the ECT. Particular emphasis should be given in this respect to the arbitration mechanisms available under the Treaty. This would be

important in strengthening the reputation of the Charter and enhancing stakeholder engagement.

- The IAP believes that use of Charter resources could be optimised by focusing on key performance objectives relating to partnerships, communication and negotiations.
- It may be helpful to more actively engage the expertise of IAP members in discussions about the Charter work programme and activities, covering such areas as the:
  - Setting of performance expectations and milestones;
  - Review of research and reporting activities;
  - Facilitation of partnerships and cooperation with the other international agencies, both in terms of alleviating possible redundancies and towards achieving synergies and freeing resources.
- Communication and engagement:
  - Current best practices and successes should be taken as a basis for further strengthening the communications performance of the Charter
  - The IAP is also of the view that cooperation between the Charter and industry could be enhanced through other possible areas of cooperation, for example, through secondment, rotation or training assignments.
  - The IAP stands ready to discuss these possibilities in more detail, as well as other possibilities for the reallocation of resources and strengthening of the interaction between the Charter and the IAP.

## **5. IAP Work Programme for 2009**

The IAP plans to continue its activities on a broad range of issues relating to all aspects of the energy sector. The following topics may be taken up in the agenda for 2008, subject to the continuing advice and priorities of the IAP members:

- World energy market dynamics;
- Key supply side developments (Russia, Caspian, North Africa);
- Supply side energy efficiency;
- Electricity market development;
- Refining system economics and security;
- Supply chain security and costs.

## **6. Extension of the IAP Mandate**

The IAP members have repeatedly expressed their satisfaction with the contribution and functioning of the IAP and the value it can add to the ECT constituency. With this in mind, the IAP members unanimously agreed to request from the Conference an extension of the IAP mandate for a period of four years. It is the firm belief of the IAP members that an effective industry dialogue within the ECT process, is of benefit to all stakeholders and can assist in strengthening the investment and operational climate in the international energy sector. In this respect, the IAP members remain enthusiastic to continue their work and wish to seek the continued support of the ECT constituency for this purpose.