EXECUTIVE SUMMARY

EIRA assesses risks to energy investment that can be mitigated by adjusting legal and regulatory frameworks. It gives guidance to countries on how they can improve their investment climate and benchmarks their performance against international best practices.

EIRA evaluates three types of risks: (1) unpredictable policy and regulatory change, (2) discrimination between domestic and foreign investors and (3) breach of State obligations. It highlights the key strengths and areas for improvement in each country, gives recommendations to improve results, assists in designing risk mitigation plans, and influences governments to work towards such plans. EIRA recognises that various factors, which are outside its scope, can shape investment decisions. For this reason, it does not claim to give a complete picture regarding the investment prospects or attractiveness of a country. Similarly, it does not judge, predict or indicate if one country is better to invest in over another.

The target audience of EIRA is policymakers. Its objective is to assist them in (1) identifying policy and regulatory gaps and (2) taking action to attract the right investments in the energy sector. Additionally, it seeks to give the energy industry, investors and the financial sector insight into particular aspects of the investment climate in the assessed countries. That said, the findings of EIRA are not an alternative to the due diligence that companies must conduct before they invest in the energy sector of an assessed country.

The scope of EIRA 2019 is the same as last year. Like its predecessor, this second edition of EIRA does not delve into commercial and other market-related risks or geopolitical issues. Despite this, its application remains very comprehensive and covers investment across the entire spectrum of the energy sector. The scoring methodology is also the same as in 2018. All indicators carry equal weight and are the average of their component sub-indicators. Each sub-indicator is calculated through a set of questions that are scored between 0 to 100. The indicator scores are depicted through a five-band colour-coding (page 19).

Highlights of EIRA 2019

Participation in EIRA has grown considerably. 9 countries participated in the 2017 pilot version of EIRA. The number has increased to 34 in the 2019 edition of the report. The geographical reach of EIRA has also expanded and now spans countries in Africa, Asia, the Americas, and Europe.

The accuracy of the assessment has improved because participating countries have a better understanding of EIRA. Countries participating for the second consecutive year were more familiar with the data collection and validation process. As a result, the information provided by them was more extensive compared to last year. Understanding of the scope, purpose and practical use of EIRA has also increased. In fact, the project has integrated itself as a core activity in the International Energy Charter framework of many participating countries.

The network of external parties has grown significantly in 2019. This year, the number of external parties and reviewers was higher. The majority of external parties for EIRA 2019 have also contributed to reputed publications of other international organisations. EIRA now has a vast network of globally renowned law firms, industry associations, academia and financial institutions that actively participate in the project and promote it on a voluntary and pro bono basis. The full list of contributors for 2019 is available in the second last section of the report.

The text of the country profiles is more detailed and offers a year-on-year overview. As EIRA enters its second year, it is now better equipped to fulfil its ultimate objective: to track change. In the first year, the country profiles gave a snapshot of the country's legal and regulatory regime. Essentially, they served as a starting point for

measuring future performance. This year, the analysis has a comparative nature and shows how the legal and regulatory regime of countries has evolved in response to the set targets, commitments and policy direction. Profiles of the recurrent countries now have a table that reflects the change in their performance vis-à-vis 2018 on (1) the risk areas and (2) the indicators. It is important to note that the objective of EIRA is for countries to track their own progress over the years rather than to rank countries that have distinct economic, political and social makeups, and different growth trajectories.

EIRA 2019 attempts to address the enforcement and implementation of existing laws and regulations. This year EIRA tries to give a clearer picture regarding the application of laws and policies in the 34 participating countries. The qualitative assessment in the country profiles better reflects the implementation of the existing framework. It highlights the progress made in translating commitments to actions. Attention is given to the implementation of projects, programmes and secondary regulations between 2018 and 2019. With its current approach EIRA tries to tackle the issue to the greatest extent possible but further research is needed on how to embed this aspect more effectively in the scope and methodology.

EIRA is a source of latest information. All changes observed in the participating countries were tracked and recorded, to the greatest extent possible. For some countries, EIRA is one of the first reports to analyse these changes.

The EIRA website introduces a number of new features. This year a website dedicated to EIRA has been launched (www.eira.energycharter.org). Its purpose is to offer extensive and updated information on the regulatory environment of the energy sectors of the assessed countries. To facilitate data collection, it allows the participating governments and external parties to fill in the EIRA questionnaire online. It also consists of an interactive webpage that projects the year-on-year trajectory of the country on different EIRA parameters. The website hosts a "question explorer" that provides detailed findings on each question and highlights the key changes observed on them. Finally, it has an online library that contains over 1,500 primary policy and legal documents for the 34 participating countries. Some of these documents are exclusively available on the EIRA website.

Key findings

The political commitment of countries towards the transition to clean energy resources and low-carbon technologies is driving legal and regulatory reforms in the participating countries. In 21 of the 26 recurrent EIRA participants, significant changes were made to the legal and policy frameworks. Some countries, such as Kenya and Uganda, enacted new energy and investment laws to modernise their existing regime and to introduce best practices. Albania, Greece, and Bosnia and Herzegovina updated their national energy policies and plans to give investors clarity on the future trajectory of their energy sectors. In all countries, the policy thrust is largely on migrating to renewable energy systems and clean technologies. While this is a progressive step, enforcement of these policies will be the most defining factor for their success. Actions, by policymakers and investors alike, must be taken in a timely manner to (1) achieve the clean energy goals and (2) maintain stability and predictability in the investment environment. The urgency of energy transition is only going to increase in the future, and this will have an effect not just on government policies and investor decisions but also on consumer attitudes.

Countries are pursuing energy transition in diverse ways. The policy objectives of countries differ significantly, ranging from improving energy security to achieving energy access and affordability. There is also variation in the natural resource endowment, energy consumption patterns, emission levels and socio-economic needs of each country. Due to these and other important variables, energy systems across the globe are transitioning in highly diverse ways. For instance, nations with high fossil fuel imports are taking measures to increase the share of power generation from domestic renewables. Morocco is a good example of this. Although its domestic energy demand is currently met by coal, oil and natural gas imports, the country is taking proactive steps to promote its solar industry, attract international green finance and deregulate the electricity market for greater competition in renewables. Similarly, countries with large emission-intensive industries are placing emphasis on the modernisation of the energy infrastructure, investment in R&D, and the adoption of cleaner and more efficient technologies. **Despite the divergence in approach, the underlying commonality observed is that all countries are making positive efforts to actually transform their energy and investment landscape**

in line with the ongoing transition. EIRA assists in this by providing evidence of real and meaningful regulatory reforms in countries, and by tracking the pace of change.

Policy focus needs to shift from short-term motivations to long-term objectives. All the EIRA countries have policy frameworks in place for sustainable energy. In most, short- and medium-term targets have been set for key priorities such as reducing emissions, integrating a larger share of renewable sources in the energy mix and for promoting energy efficient technologies. Despite these efforts, **the link between sustainable energy targets and long-term resource planning is relatively weak and will need to be strengthened**. The absence of seamless policies and targets will create barriers to the energy transition. It can potentially reduce the pace of change, affect the world's ability to meet the Paris Agreement goals, and result in unsustainable investment patterns for the coming years. The European Union serves as a model for countries currently developing long-term policies for the energy sector. In 2018, the European Commission presented its strategic long-term vision for a prosperous, modern, competitive and climate-neutral economy by 2050. The strategy demonstrates how Europe can achieve climate neutrality by investing in realistic technological solutions, empowering citizens, and aligning action in key areas such as industrial policy, finance, or research while ensuring social fairness for a just transition.

Investment in energy infrastructure lacks coherent long-term policy planning even though it is considered a priority. Targets and implementation plans exist in most countries for the development of energy infrastructure. This includes plans for strengthening regional interconnections, building new generation, transmission and distribution infrastructure, and for modernising the existing infrastructure. However, these targets and plans are not always integrated into the economy-wide investment strategy or do not complement the goals set for the development of different energy resources. Actions are focused on the near future and rarely take into account the changing power infrastructure needs. Unplanned investment in long-term fossil fuel projects will create liabilities for energy companies and most likely increase the amount of stranded assets. To avoid this risk, governments will need to design long-term plans for promoting investment in low-carbon energy technologies including smart grids, storage and e-mobility solutions. A clear strategy will also be needed for gradual divestment in dated power infrastructure. **Investors, just as policymakers, will have to align themselves with the changing national objectives and pathways**. Countries with large fossil fuel resources are driving for sustainability in the oil and gas industry. To avoid an abrupt abandonment of incumbent energy investments, oil and gas companies will have to review their long-term strategies, seriously consider diversifying their portfolios and adapt business models to be in line with a low-carbon energy transition.

In addition to stepping up renewable electricity generation, actions should be directed towards other high-emission sectors. Significant work is being undertaken to reduce CO_2 emissions through renewable electrification. A number of countries from Afghanistan to Viet Nam have set policies, targets and implementing plans in this respect. In contrast, the integration of renewable policies in other sectors is less defined. This is particularly the case of high-emission sectors, such as transport. The penetration of low-emission transportation models should be actively pursued to (1) shift the sector to a sustainable path and (2) contribute to the reduction of urban air pollution. Energy efficiency targets for the heating sector are also low and need to be addressed. This should be done sooner rather than later as it is bound to cause changes in investment patterns, impact the value of assets for certain investors, as well as affect the cost of doing business.

NDC planning and implementation largely remains disconnected from the national development planning. Synchronisation of the NDC targets with the overall development objectives can be improved across countries. Actions and programmes in relation to NDCs continue to be standalone. Synergies between the NDCs and the overall socio-economic objectives such as job creation, education, poverty reduction and health should be explored for holistic and coordinated policy development. In particular, more effective planning is needed to fully integrate the NDC targets in the national energy policies. For example, sectoral targets for GHG emissions and removal from land use, land-use change and forestry (LULUCF) are stated in the NDC of some EIRA countries but rarely find mention in the national energy and climate change strategies. Governments are urged to address this disconnect while making revisions to their NDCs, and use this as an opportunity to better align their international commitments with their national plans.

Monitoring and evaluation (M&E) of energy policies is not sufficient or systematic. Energy policies and plans in most countries contain detailed procedures on monitoring the performance indicators for the energy sector. Information on the lead authorities conducting the evaluation, the data-gathering bodies and the list of activities are also available in certain cases. Some countries have taken a different approach and incorporated

M&E provisions in regulatory impact assessment laws. **Although M&E is considered a significant part of the overall policy-making process, most countries are struggling with its actual implementation**. Conclusions of the M&E activities are rarely accessible to the public. Data collection and sharing between the national and local level can also be better organised. Most importantly, greater clarity is required on how effectively countries are trying to close the gap between the policy actions and associated costs. Disaggregated costs of each action should be calculated and the results of ex post and ex ante cost-benefit analysis for all planned activities must be widely circulated. **M&E of GHG emissions and energy efficiency targets stand out as exceptions since most countries have unified data sources, inventories and evaluation mechanisms in place**. Monitoring mechanisms for these indicators can be used as models for evaluating the performance in other areas.

Although decision-making on the national level is well functioning, coordination between the national and subnational governments needs attention. All EIRA countries make reference to the contribution of local governments in the energy planning through their national laws, policies or plans. They are considered pivotal to monitoring performance standards, bringing changes to behaviour patterns, improving energy efficiency and creating greater awareness of the use of renewable energy sources. Typically, local authorities are responsible for granting permits, certifications and approvals for projects located in their jurisdiction. They conduct land use and spatial planning and in certain cases also contribute to de-risking local energy projects by providing the necessary financial resources or guarantees. Despite the significant role of local authorities in the energy sector, **the link between policies and development plans on the national and local level remains weak**. This raises questions regarding the ability of local governments to implement decisions that are taken with their limited involvement or that do not necessarily complement their individual plans. It also creates administrative burdens for investors who have to juggle overlapping or conflicting regulations on the national and subnational level. At present, there is little evidence to suggest that countries are taking proactive measures to remedy the situation. To avoid a mismatch of priorities and actions, it is urged that the division of roles and responsibilities between the national and local governments should be clarified, including a defined budgetary relationship. In Kenya the new energy law tries to resolve this issue by delimiting the role of the central government to policy coordination, and vesting local planning and implementation in the county governments. Greece has also made efforts to decentralise the energy processes and engage local communities and administration in the energy planning. In 2018, it enacted a law promoting the direct participation of citizens, municipalities and small- and medium-sized local businesses in the production, distribution and supply of energy.

33 of the 34 EIRA countries have an established legal framework on transparency and information access. Legislative initiatives are now geared towards strengthening the accountability of public and private actors. 23 of the EIRA countries are members of the Open Government Partnership that aims to promote accountable, responsive and inclusive governance. In 2018, the Federal Republic of Nigeria issued a new executive order for adopting higher transparency standards for public authorities, prescribing disciplinary actions and penalties for public authorities and officials found misappropriating government assets. Slovakia also introduced amendments to its Anti-Money Laundering Act to increase accountability in business transactions. **Moreover, countries with rich extractive industries are adopting international best practices and higher standards of public disclosure**. Access to information on government expenditure, transfer of revenue on the subnational level, licence allocation, and state participation in oil and gas projects are receiving particular attention. An example is Ukraine, which adopted a new law to ensure transparency and prevent corruption in the country's extractive industries. Senegal has also adopted a new petroleum code through which all extractive industries are obliged to comply with the principles of the Extractive Industries Transparency Initiative.

There is a gradual convergence to international best practices for benchmarking the independence of national energy regulators. Each country decides on the type and structure of its national energy regulator based upon a number of country-specific issues such as the size and structure of its market and its traditional legal and administrative setup. Even with these variances, it is notable that most EIRA countries are making efforts to safeguard and guarantee greater independence for their national energy regulators. The decisions of national regulators are binding across all assessed countries and most of them have operational independence. However, **asymmetries exist in how the best practices are applied and this can lead to uncertainty for market players**. In some countries, provisions safeguarding budgetary independence are highly robust whereas those guaranteeing the appointment and governance of Board Members are not up to the same standard. To avoid such irregularities, countries are urged to evaluate whether the concept of independence is applied holistically to all aspects of the regulator. Equal attention must be given to ensuring autonomy

in the institutional setup, human resources, financing, appointment procedures, decision-making and enforcement of decisions across all the assessed countries.

Market liberalisation and non-discriminatory market access still remain issues of significance for a number of EIRA countries. To bring greater legal stability and predictability for investors, a number of countries are consolidating and updating secondary rules, codes and guidelines on technical issues. This includes issues of network and market operations, financial arrangements between market players, and regulatory reforms on network access. In December 2018, Georgia adopted the Concept Design for the Georgian Electricity Market, which describes implementation activities for establishing a competitive electricity market by 2022. Bangladesh also adopted a new Grid Code in 2018 for ensuring transparent, non-discriminatory and economical access to the grid. **In countries with mature regulatory setups, based on well-grounded principles of transparency and a high level of competition, the focus was on fine-tuning existing guidelines rather than undertaking major structural reforms**.

The quality of judicial processes needs to be enhanced and legal provisions on the respect for property rights must be updated. For investors, actual recourse to courts is less likely and less significant compared to potential recourse. They place a higher premium on the knowledge that in case of potential recourse their rights will be guaranteed. Dated case management systems and dispute resolution mechanisms can considerably reduce the attractiveness of a country in the eyes of investors. It increases their risk of getting embroiled in protracted and costly litigation. For this reason, having a defined length of proceedings, adequate human and financial resources, and easy access to the relevant information gives investors predictability and a feeling of legal security. **While the EIRA countries have well-functioning legal systems, there is a definite need for modernisation and improvement of judicial effectiveness**. Rwanda is one country making consistent efforts to improve the quality of its judiciary. In 2018, it enacted a new legislation introducing provisions for limiting the adjournment of case hearings exclusively for unforeseen and extraordinary situations. **In a similar vein, many countries still have traditional expropriation rules that are not sufficient to address the evolving challenges**. Though legal provisions guaranteeing the property rights of investors exist in all jurisdictions, their ability to give legal protection must be enhanced. This is especially relevant in terms of defining “public interest” and providing timely and adequate compensation.