

# **EIRA 2019 METHODOLOGY PAPER**



# **RISK AREAS AND INDICATORS FOR EIRA**



EIRA evaluates specific risks affecting energy investment that can be mitigated through adjustments to policy, legal and regulatory frameworks. The performance of countries against the EIRA risk areas is evaluated through four indicators. The indicators are constructed to reward countries for sound regulation and efficient processes. They capture the ability to cope with the risks through various positive measures such as the creation of predictable policy objectives, transparent decision-making, the establishment of strong public institutions, development of competent market oversight mechanisms, and the successful resolution of disputes with foreign investors.

## What are the risks assessed by EIRA?

EIRA analyses the following risk areas:

### **Unpredictable policy and regulatory change**

Governments reserve the right to adopt measures that are necessary for pursuing legitimate public policy objectives. Nevertheless, unsystematic and arbitrary modifications can detrimentally affect the interests of foreign investors. They can lead to increased or stranded costs for operating a business, reduced attractiveness for investment, and an overall distorted competitive landscape. Foreign investors may reconsider investing in the country or relocate the investment. It follows that in exercising their right to regulate, governments must make investors aware of the conditions and nature of policy changes.

### **Discrimination between domestic and foreign investors**

Foreign investors need clarity on the extent to which markets are competitive and whether they offer a level playing field. While discrimination can take various forms, between energy resources, technologies and types of investors, EIRA focuses

on discrimination between domestic and foreign investors. This includes the likelihood of an unfair advantage to local investors, as recipients of rights and privileges, to the exclusion of foreign investors. Discrimination may also occur in the form of 'protectionist' practices intended to restrain trade and give rise to foregone investment gains.

### **Breach of State obligations**

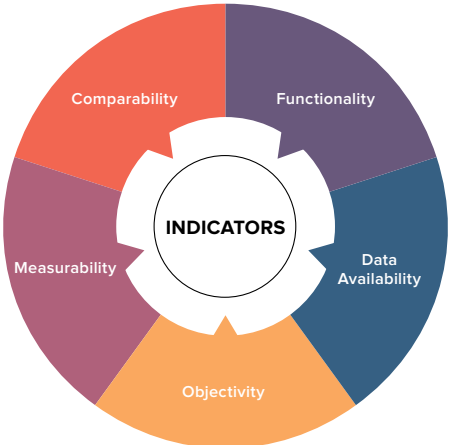
Disputes brought by investors against a State can disrupt the relations between the two parties and even damage the overall investment climate. Investors must have confidence that they will have recourse to mechanisms for dispute resolution and the enforcement of rights if governments default on their obligations. Such obligations include protection against discrimination, expropriation and nationalisation, breach of investment treaties, and limited access to alternative dispute settlement avenues.

# How are the EIRA indicators selected?

The indicators have been constructed from a wide range of variables. They bear direct relevance to a government’s overarching objective of creating a secure, favourable and transparent investment environment.

Five criteria are applied to determine the appropriate indicators:

Figure I.1 – Criteria for selection of indicators



**Functionality/Actionability** – Indicators are ‘reform-oriented’. They reflect best practices through which countries can manage the risks. They capture aspects of policy-making and regulation that are under the control of governments.

**Data availability** – Data for indicators is available from sources that are reputable and reliable. Indicators are based on data that is relevant, readily accessible and easy to collect.

**Measurability** – Indicators provide a quantifiable assessment. They are robust and unaffected by minor changes in the method used for their construction.

**Comparability** – Indicators allow comparability across (1) countries; (2) energy sub-sectors; and (3) the energy value chain. Additionally, they are consistent and comparable over time.

**Objectivity** – Indicators reflect an accurate overview of the policy, regulatory and legal reality in the assessed countries.

# What are the EIRA indicators?

Based on the above criteria the indicators selected are:

- | Foresight of policy and regulatory change
- | Management of decision-making processes
- | Regulatory environment and investment conditions
- | Rule of law (compliance with national and international obligations)

The indicators are cross-cutting and apply to more than one risk. Each indicator consists of two sub-indicators. They measure the ability of governments to identify whether the assessed risks exist and the extent to which they can be mitigated. The indicators reward countries for taking positive measures that manage and limit arbitrary or discriminatory policy changes which could result in a breach of State obligations. Such measures include designing and setting long-term policy objectives and goals, ensuring transparency in decision-making, granting equal treatment to foreign and domestic investors, and effectively managing disputes with foreign investors.

Table I.1 – Correlation between EIRA risk areas and indicators

RISK AREAS	INDICATORS			
	Foresight of policy and regulatory change	Management of decision-making processes	Regulatory environment and investment conditions	Rule of law
<b>Unpredictable policy and regulatory change</b>	✓	✓		✓
<b>Discrimination between domestic and foreign investors</b>		✓	✓	✓
<b>Breach of State obligations</b>				✓

## INDICATOR 1

### Foresight of policy and regulatory change

National energy priorities and regulatory frameworks evolve in response to changing circumstances. Meeting new objectives may result in policy revisions, and governments must be sensitive to the impact of such revisions on long-term investments. Ensuring stable conditions is a major challenge as the global energy transition is proving to be a highly dynamic process. Policy and investment patterns are likely to evolve as countries seek to decarbonise their energy sectors under the Paris Agreement. Managing this change is crucial, so governments must communicate any adjustments to their energy policy objectives and effectively plan and implement the means to pursue them. Investors can then better manage risk, modify investment portfolios and cope with the policy changes.

#### SUB-INDICATOR:

##### COMMUNICATION OF VISION AND POLICIES

This sub-indicator captures the commitment of governments to convey the vision of their energy sector. It also looks into the approach and principles that will guide governmental decisions in this respect.

Risk management requires a view on the future. This forward-looking vision is typically enshrined in strategy documents of governments, which inform investors about the energy goals to be achieved and the timeframes for their achievement. As countries transition to sustainable energy systems, new demands are placed upon regulatory frameworks and existing decision-making structures. Understanding the energy landscape and how it can evolve is a central element of investment planning. Hence, communicating any intended changes in a clear and timely manner contributes to bolstering investor confidence and averting risk. Moreover, the establishment of milestones or short- and medium-term goals indicates to investors the pace of change and the progress made towards the final goals and targeted outcomes.

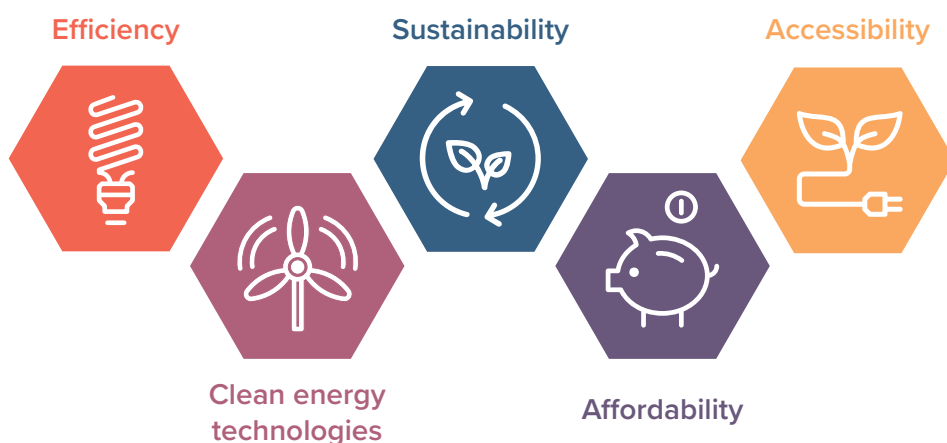
#### SUB-INDICATOR:

##### ROBUSTNESS OF POLICY GOALS AND COMMITMENTS

Good governance and the creation of effective monitoring mechanisms indicate the determination of governments to attain their policy goals. Conversely, a fragmented or weakly implemented monitoring and evaluation framework can significantly reduce the ability of policy makers and investors to track if real progress has been made on the goals.

This sub-indicator focuses on monitoring and evaluating the implementation of the energy goals. Monitoring provides an opportunity to assess the progress towards meeting energy objectives and identifying potential gaps. Furthermore, it allows governments to ensure that policies are periodically updated and amended when necessary. In this context, the establishment of an independent and competent authority with the appropriate monitoring and reporting mechanisms is critical. It gives investors the confidence that policies will be evaluated and improved to achieve the desired outcomes and will not be subject to arbitrary modifications.

Figure I.2 – Energy priorities under the UN Sustainable Development Goal 7



## INDICATOR 2

### Management of decision-making processes

The second indicator addresses the importance of coordinated and transparent policies in eliminating perceived or actual opacity of government initiatives and the exclusion of investors from the planning and decision-making phases. To ensure structured and simplified decision-making processes the role and responsibilities of different governmental levels must be defined. It is also essential that investors are well informed and consulted whenever governments intend to revise laws or regulations. Stakeholder engagement allows foreign investors to participate in decision-making processes actively and take well-informed and timely decisions.

#### SUB-INDICATOR:

##### INSTITUTIONAL GOVERNANCE

Formulating investment and energy policies may involve several levels of government and ministries. Provinces, municipalities as well as regional and local authorities may also participate in framing policies. This can make the process relatively complicated and result in the risk of overlapping decisions. Unless well managed, complex institutional governance may lead to the adoption of sub-optimal choices or conflicting laws and policies.

This sub-indicator measures how well governments coordinate policy-making. While the degree of centralisation in each country may differ significantly, one central body should ultimately be responsible for coordinating across different levels of government and reconciling the diverging perspectives of public agencies. Effective intra-governmental and inter-ministerial management in undertaking policy design and implementation is, therefore, an essential precondition for minimising unpredictability and maintaining an investment-friendly climate.

#### SUB-INDICATOR:

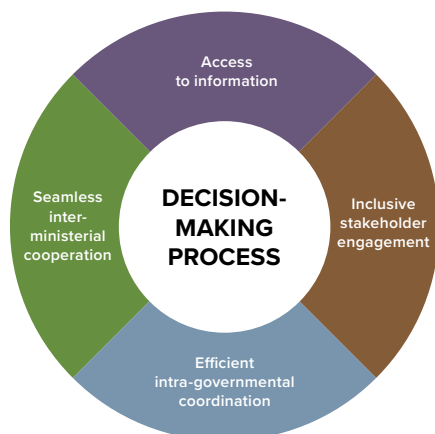
##### TRANSPARENCY

Policy and regulatory changes are always risky for investors. However, if they are systematised and transparent, investors can adapt to them better. Transparency is beneficial to all types of investors, but it is particularly crucial for foreign investors who have to cope with regulatory systems and administrative frameworks that are different from their own. This sub-indicator gauges the openness demonstrated by governments in designing and implementing their laws and policies.

EIRA understands transparency as first, effective communication of information on national laws, regulations and practices that may materially affect investments; and second, prior notification and consultation of regulatory changes that are of interest to investors.

Governments can enhance the quality and predictability of their regulatory framework by reviewing and publishing administrative decisions, codifying legislation, disseminating regulatory materials, and developing registers of existing and proposed regulation. These core transparency measures help to ensure that investors are aware of policies affecting them. Prior consultation on investment and energy-related governmental actions can provide investors with more foreseeable conditions in the host countries. For instance, it may reveal indirect discrimination caused by secondary measures that deviate from the enabling legislation. Moreover, affording interested parties the right to comment may lead legislators and regulatory authorities to reflect carefully before modifying existing laws and consider alternatives.

Figure I.3 – Key aspects of effective decision-making process



## INDICATOR 3

### Regulatory environment and investment conditions

This indicator evaluates the independence exercised by energy regulators in their decision-making and other functions. Independence from national governments and the industry guarantees neutrality and helps to avoid situations where regulatory decisions are constantly revised to the detriment of some market actors and investors. It further examines the extent of restrictions faced by foreign investors in the energy sector. Despite the increasing realisation that international capital flows are crucial for the development of the energy sector, persisting restrictions act as serious deterrents for foreign investors. Key restrictions include screening and local content requirements, as well as limitations on currency and investment-related capital transfer, which tilt the playing field in favour of domestic investors.

#### SUB-INDICATOR:

##### REGULATORY EFFECTIVENESS

Market monitoring by a dedicated and expert institution minimises the risk of biased decision-making, discriminatory market rules and anti-competitive behaviour. Political distance gives the regulatory authority credibility because it limits governmental influence and provides assurance that political events will not interfere with regulatory functions.

This sub-indicator examines the energy regulator's autonomy based on various parameters including whether its duties and powers are embedded in legislation and how they are defined in relation to ministries and government executives. It also scrutinises the regulator's financial autonomy, its accountability as well as the transparency exercised in the selection of its staff.

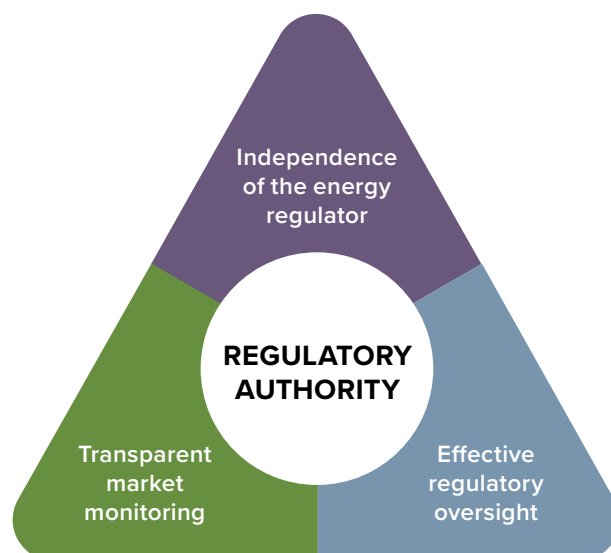
#### SUB-INDICATOR:

##### RESTRICTIONS ON FOREIGN DIRECT INVESTMENT

Overt policy and regulatory measures that discriminate between domestic and foreign firms can have a restrictive effect on inward investment flows. They can obstruct foreign investments or make the cost of operation unbearable. Some of the typical restrictive measures foreign investors may face are mandatory screening and approval procedures, regional investment restrictions, and operational controls.

This sub-indicator assesses the countries' commitment not to discriminate in the treatment afforded to domestic and foreign investors. It evaluates whether they receive equal treatment in the application of laws and regulations. Particular attention is given to the national treatment of foreign investment including sectoral restrictions, limits on the transfer of profit and repatriation of capital abroad, and onerous local content requirements.

Figure I.4 – Regulatory environment and investment conditions



## INDICATOR 4

### Rule of law (compliance with national and international obligations)

EIRA relies on the ‘rule of law’ definition presented in the UN Report “The rule of law and transitional justice in conflict and post-conflict societies”<sup>1</sup>. It focuses on three aspects of this definition. First, fair and effective implementation of national laws and international commitments arising from treaties and international agreements; second, settlement of investor-State disputes promptly and according to due process; and third, respect for the property rights of foreign investors. Peace, security and human rights are outside the purview of EIRA.

#### SUB-INDICATOR:

##### MANAGEMENT AND SETTLEMENT OF INVESTOR-STATE DISPUTES

This sub-indicator measures the efficiency of case-management and settlement procedures within the assessed countries. Foreign investors place a premium on adherence by the host countries of their obligations to: provide accessible, clear and predictable legislation, avoid retrospective changes to legal acts, ensure equality before the law, resolve disputes without undue cost or delay, and comply with their commitments under international, as well as national laws.

Well-organised judicial procedures help to foster investor-State trust. Effective enforcement of foreign judgments and awards reduces uncertainty because investors are assured that the domestic courts will safeguard their rights. Similarly, the existence of appeal mechanisms and domestic dispute mitigation instruments, such as an investment ombudsman and mediation, provide additional avenues for resolving conflicts between investors and States. Beyond the national legal system, governments must provide an extra layer of protection to investors by granting them recourse to dispute-settlement mechanisms under international law. They may give foreign investors this benefit either through BITs or on a case-by-case basis.

#### SUB-INDICATOR:

##### RESPECT FOR PROPERTY RIGHTS

This sub-indicator assesses the risk to investors of losing ownership or control due to governmental actions or restrictions. These actions can also lead to the additional risk of discrimination when foreign investors in particular suffer such loss.

Under this sub-indicator, the term ‘investment’ refers to tangible and intangible assets, including intellectual property rights. It does not delve into the forms of expropriation. Instead, it focuses

on whether expropriation, nationalisation or confiscation (or any action tantamount to these) was undertaken for a legitimate public purpose, following the due process of law, in a non-discriminatory manner and with adequate compensation.

Some steps governments may take to reduce the risk of perceived arbitrariness are first, defining expropriation in their domestic laws; second, describing the process for the determination of compensation; and third, setting the timeframe for the payment of compensation. This gives increased security to foreign investors operating under the existing BITs and also protects investors that are not covered under these treaties. In turn, investors can also assess whether the host country’s laws, mechanisms and guarantees are in line with international practice and investment-related agreements. This adds to the reliability and enforceability of property rights against arbitrary expropriation. By determining the circumstances under which expropriation may take place, foreign investors can take measures to fortify their investments.

Figure I.5 – Rule of law elements covered by EIRA



<sup>1</sup> EIRA interprets ‘rule of law’ as “a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.” United Nations, Report of the Secretary-General, *The rule of law and transitional justice in conflict and post-conflict societies (2004)*. UN Member States reaffirmed their commitment to uphold “rule of law” in the United Nations, *Declaration of the High-level Meeting of the UN General Assembly on the Rule of Law at the National and International Levels*, A/RES/67/1 (30 November 2012).



# **EIRA METHODOLOGY**



EIRA assesses three types of risk to energy investment. It applies four indicators to (1) identify the actions needed to address these risks and (2) highlight the corrective measures countries may take to mitigate them.

The risks are evaluated by examining whether necessary laws, policies and actions have been adopted by countries. However, legislation and policy measures will have maximum impact when they are enforced. EIRA 2019 recognises this and tries to give a clearer picture regarding the application of laws and policies. This year, the country profiles have been structured to better reflect the implementation of the existing policy framework and highlight the progress made by countries in translating their commitments to actions.

No variations have been made to the methodology since last year. The indicators are based on a questionnaire developed by the ECS over a period of two years. The questionnaire is designed to ensure it is comprehensible to respondents and that information obtained is easily verifiable. It allows comparability across energy sub-sectors and captures trends over time. Most questions are binary, requiring simple “Yes” or “No” answers. Granular options are provided in some cases to obtain more detailed information. Moreover, respondents have the opportunity to offer additional remarks and brief descriptions of policy programmes (these questions are not scored).

## How are the respondents for EIRA selected?

The EIRA questionnaire is provided to the governments of the participating countries. To counter the perception of self-assessment and secure an objective viewpoint, it was also sent to selected external parties in the assessed countries.

The unit of analysis for EIRA is a country. The policies taken into consideration are those framed and implemented at the national level. In federal arrangements, the central government is designated as a single point of contact responsible for collecting and processing inputs from relevant ministries/departments at State and municipal level.

External parties are chosen from a pool of experts comprising local and international law firms, legal practitioners, business councils, accounting and consulting firms, think-tanks, energy associations, chambers of commerce, international institutions and non-governmental organisations operating in the assessed countries. In 2019, over 550 external parties were contacted of which 21 per cent were selected based on their expertise, availability, and willingness to participate. Extensive research was conducted before the final decision.

The main parameters for selecting the external parties are:

**Expertise in the energy sector:** Active involvement in different stages of energy projects, and experience of providing consulting services in multiple energy sub-sectors and on regulatory issues.

**Diversity of clients and neutrality:** Vast experience working with governmental entities as well as private investors. This ensures the external party has a holistic understanding of issues in the energy sector and contributes to a more balanced approach.

**Reputation:** Parties with extensive global reach or local partner groups. For law firms, international guides identifying leading providers of legal services (local and global) in each country are consulted.

## What is the data collection and validation process for EIRA?

Data for EIRA is collected in a standardised manner. For the 2019 edition, responses from the participating countries and external parties were collected over a period of five months. The respondents provided copies of the source documentation and translations (if required) that supported their responses. The data provided was accepted only to the extent that it was premised on original laws, regulations, national plans and strategies. Legislative initiatives and regulatory reforms not legally in force on 1 April 2019 were not taken into consideration.

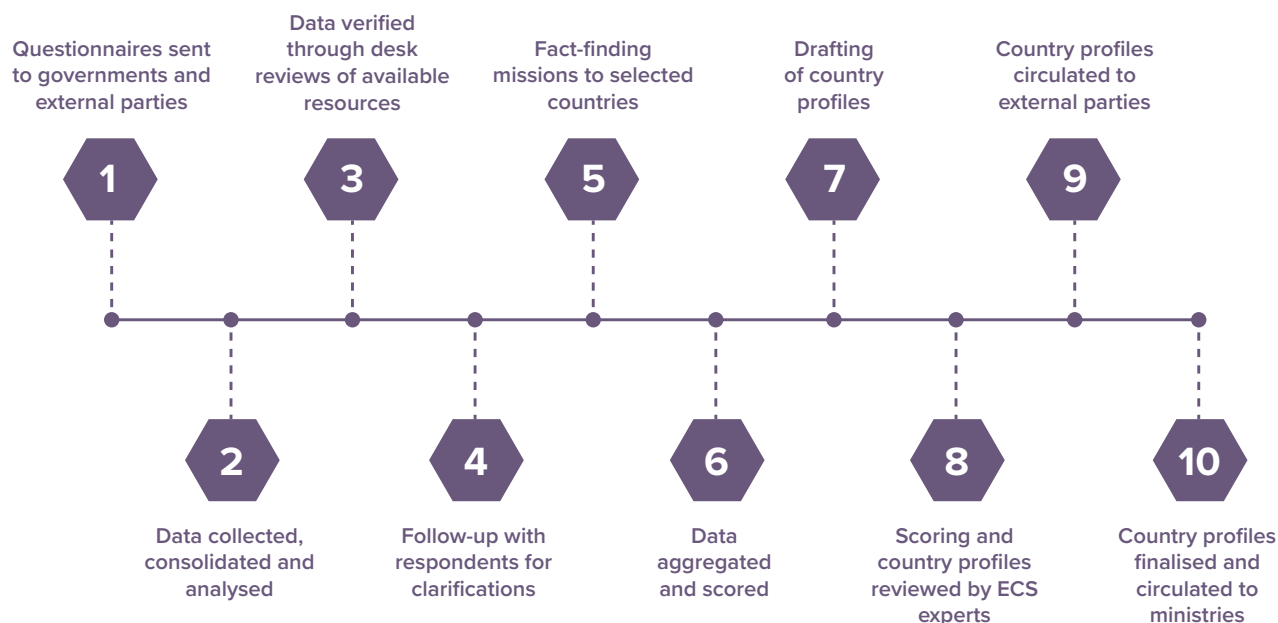
Upon receipt of the questionnaires, the ECS in-house investment, legal, regulatory and energy efficiency experts engaged in an extensive process of validating information provided during the survey. In particular, it was confirmed that each question was correctly understood by the respondents and that the documentation submitted supported the response given. In the absence of documents, or in the case of conflicting answers, clarifications were sought through correspondence and phone

interviews with government officials and external parties. Answers obtained were once again reviewed and cross-checked for consistency with known elements of each country's investment policies and energy sector.

Efforts were made to address the issue of low data availability in certain countries. As an exceptional case, due to the lack of external parties, the country profile of Burkina Faso was based on the information provided by the Government and the desk research conducted by the ECS in-house experts. In selected countries, fact-finding missions were also undertaken to obtain hands-on information. The purpose was to gain insight into their regulatory and investment environment as well as obtain the views of different stakeholders in the energy sector.

Overall, the process of data collection and validation lasted eight months, from December 2018 to July 2019.

Figure I.6 – Data collection and validation process



# How are risks assessed in EIRA?

EIRA relies on a blend of quantitative and qualitative analysis. The quantitative analysis is performed using a scoring system that conveys the performance of the countries on the indicators. The more complex dynamics of the assessment are represented through qualitative country profiles that identify areas for improvement using narrative and visuals.

## Scoring system

All indicators carry equal weight. The total for each indicator is the average of its component

sub-indicators. Each sub-indicator is similarly calculated through a set of questions. The questions are scored between 0 and 100 and are equally weighted. The highest achievable score for each question is 100. All the scores have been rounded off for the risk areas and the indicators. The overall performance across each indicator is defined as the average of first, the score received in the government questionnaire; and second, the combined average of the external party scores.

Figure I.7 – Scoring an indicator for individual respondents

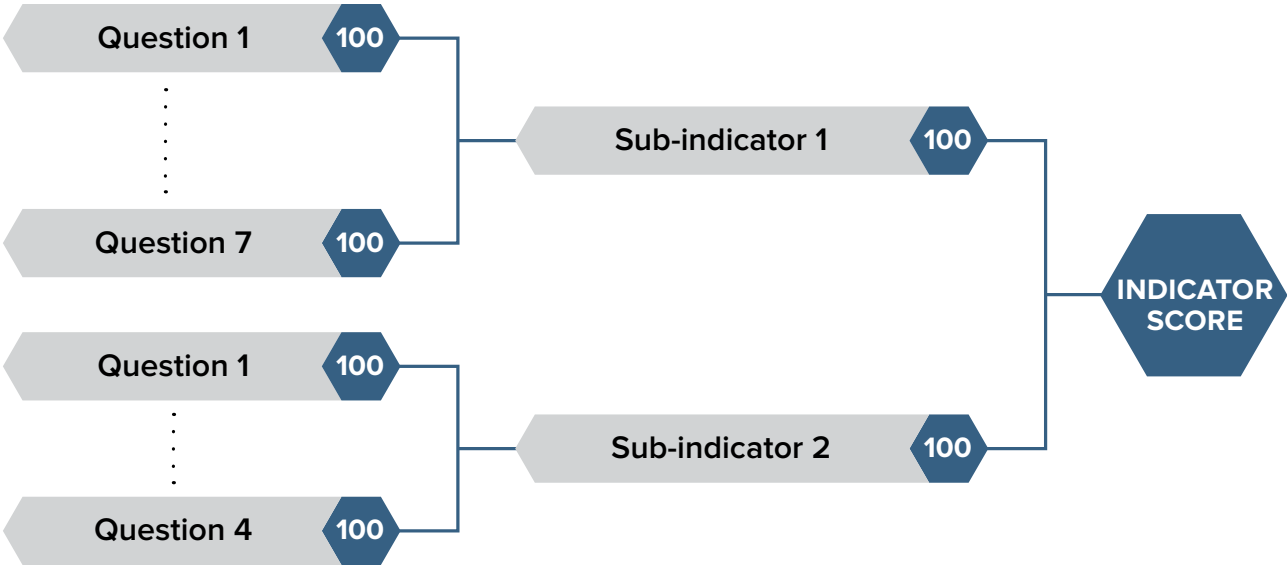
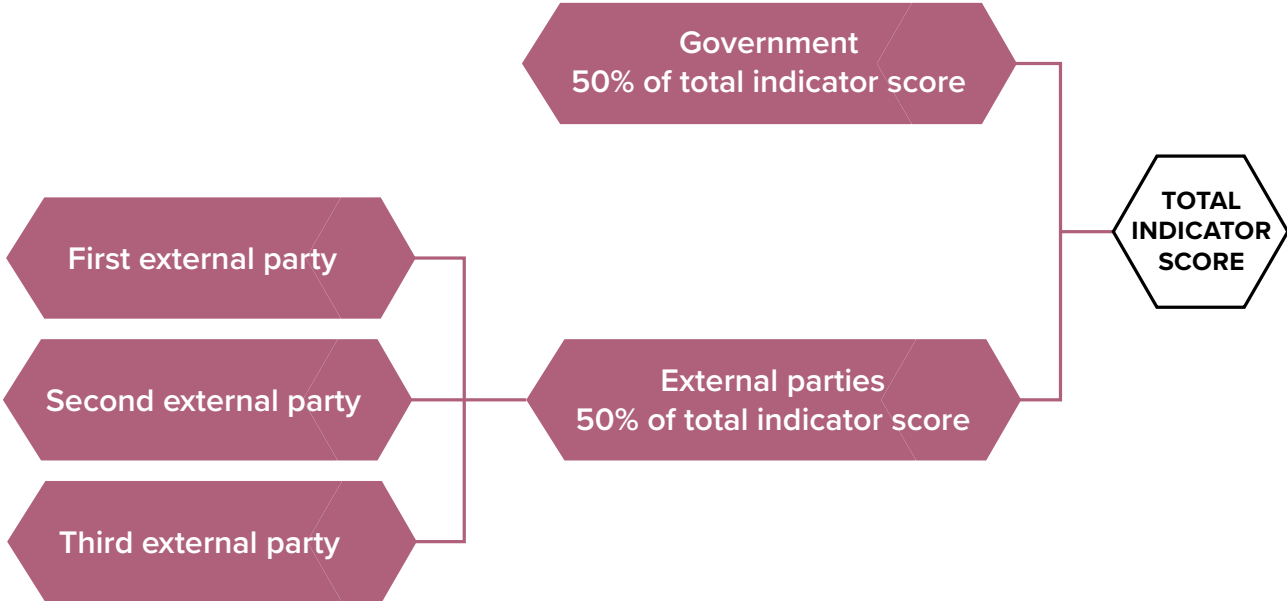


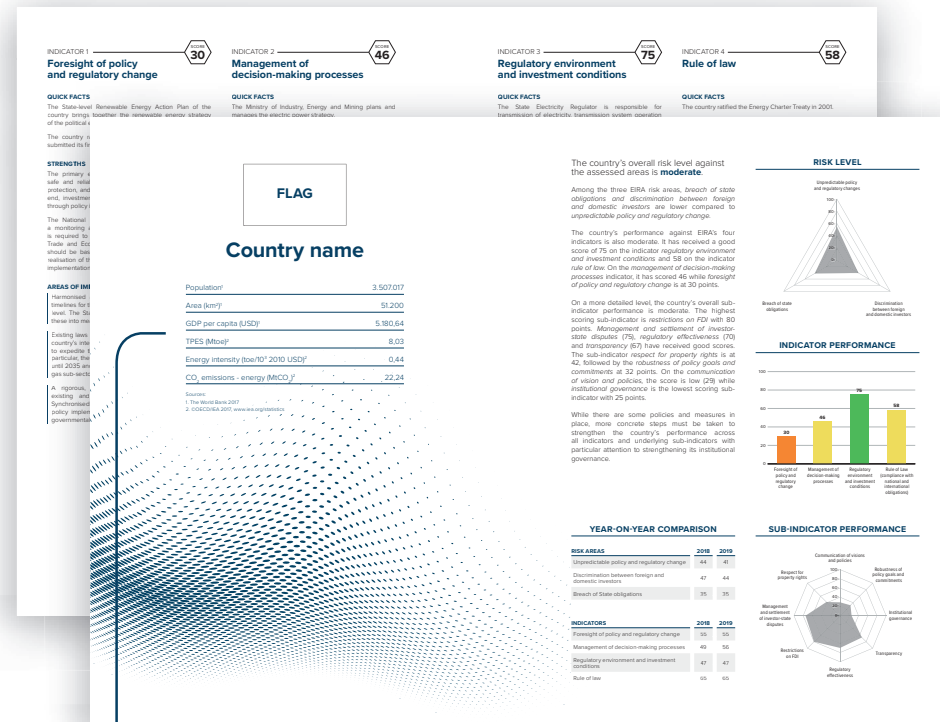
Figure I.8 – Total score for an indicator



## Country profile outline

The qualitative assessment for each country is visualised through a four-page profile. The initial two pages provide an overview of the country. They feature a table of the country's key metrics and three charts. The metrics include demographic, economic and energy information and give a background to the country's profile. The first chart illustrates the risk level across the assessed areas. It is followed by a bar chart that shows the performance of the countries on each of the four indicators. A 5-colour coding approach is used for this purpose. Dark green represents the highest

band of scores while red represents the lowest. The third chart breaks down the country's performance across the sub-indicators, where 0 denotes the weakest and 100 the strongest performance. The remaining pages of the profile offer a detailed analysis of the country's performance on each indicator. They present the overall score for each indicator and summarise the key strengths and areas for improvement. Profiles of the recurrent countries now have a table that reflects the change in their performance vis-a-vis 2018 on (1) the risk areas and (2) the indicators.



## KEY METRICS

**Population and surface area:** Data refers to year 2017. *The World Bank 2017, World Development Indicators, World Bank national accounts data and OECD National Accounts data files, <https://data.worldbank.org/> (accessed on 10 July 2019)\**

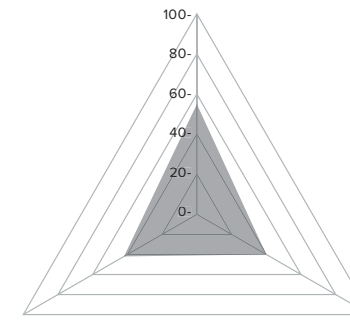
**GDP per capita (current US\$):** Data refers to year 2017. *The World Bank 2017, World Development Indicators, World Bank national accounts data and OECD National Accounts data files, <https://data.worldbank.org/> (accessed on 10 July 2019)\**

**Total primary energy supply (TPES):** TPES represents inland demand only and, except for world energy demand, excludes international marine and aviation bunkers. Data refers to year 2016. *OECD/IEA 2018, [www.iea.org/statistics](http://www.iea.org/statistics)\**

**Energy Intensity:** This is a measure of total primary energy use per unit of gross domestic product. Data refers to year 2016. *OECD/IEA 2018, [www.iea.org/statistics](http://www.iea.org/statistics)\**

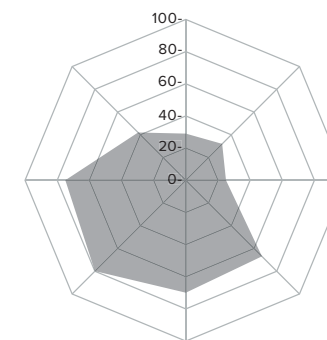
**CO<sub>2</sub> emissions from fuel combustion:** Data refers to year 2016. *OECD/IEA 2018, [www.iea.org/statistics](http://www.iea.org/statistics)\**

\*N/A means data is not available for this metric



## RISK LEVEL

The risk level is displayed by the grey triangle. Each axis represents a risk area. The smaller the size of the grey triangle, the lower the level of risk.



## SUB-INDICATOR PERFORMANCE

Each axis represents a sub-indicator. The larger the size of the grey area, the better the country's performance.

## INDICATOR AND SUB-INDICATOR CORRELATION

### Indicator 1

1. Communication of vision and policies
2. Robustness of policy goals and commitments

### Indicator 2

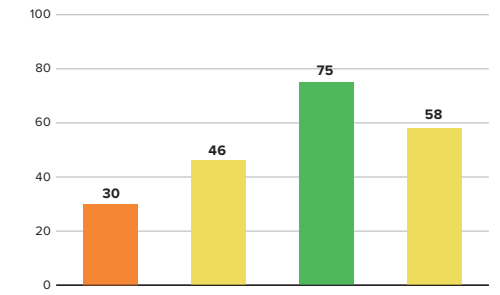
1. Institutional governance
2. Transparency

### Indicator 3

1. Regulatory effectiveness
2. Restrictions on FDI

### Indicator 4

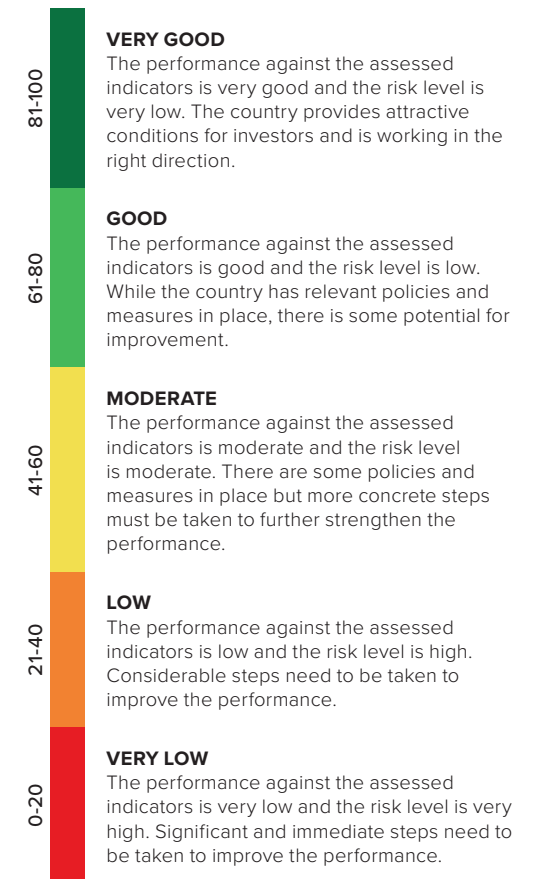
1. Management and settlement of investor-State disputes
2. Respect for property rights



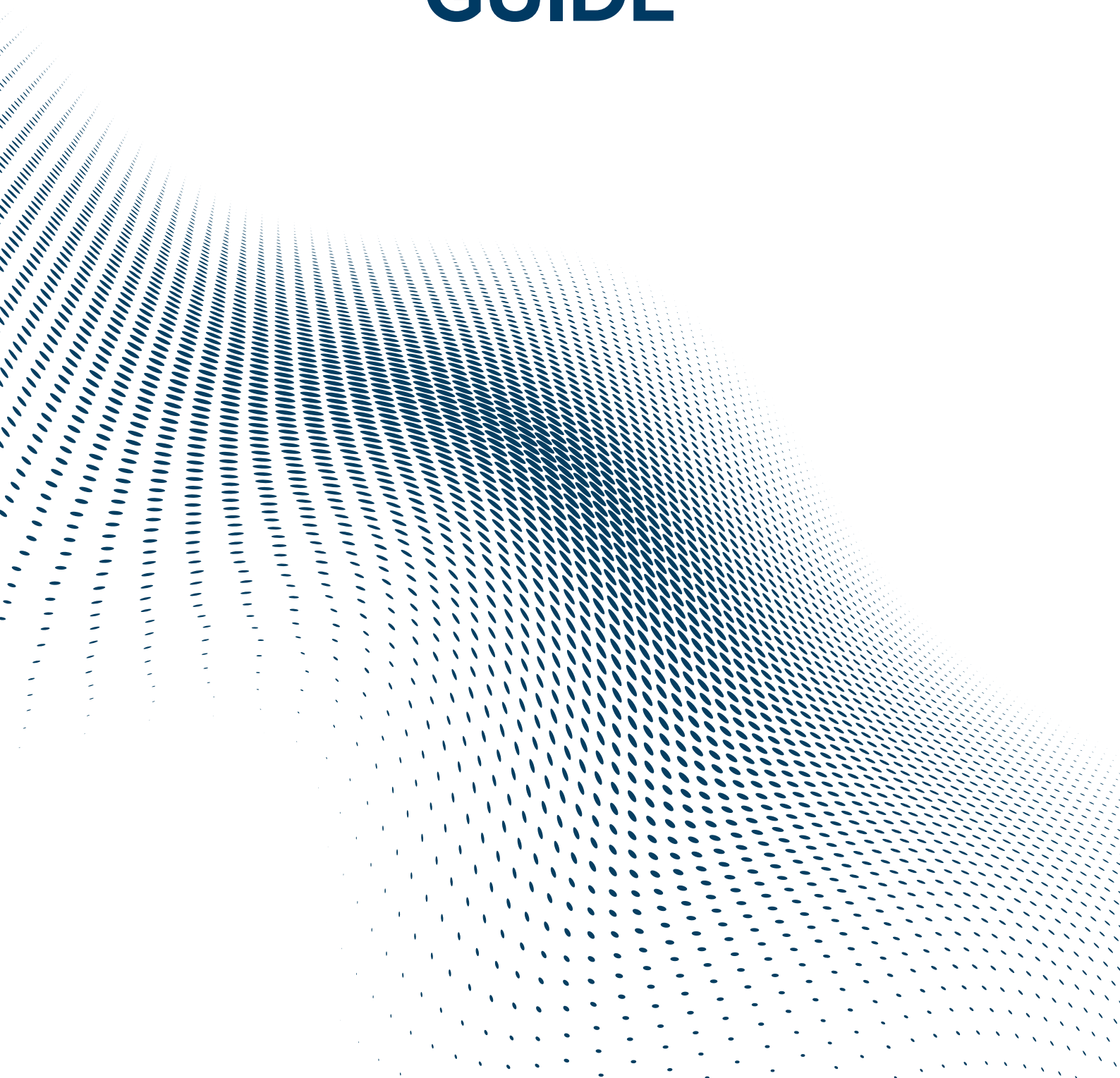
## INDICATOR PERFORMANCE

The indicators affect the risk areas differently. For example, rule of law has the highest impact since it influences all three risk areas. For details on the correlation between the indicators and the risk areas, see Table I.1 on page 9.

The bars are colour-coded. Each colour corresponds to a performance level.



# SCORING GUIDE



The score for each indicator is the average of its component sub-indicators. The score of each sub-indicator is the average of its underlying questions. The scoring rules for different types of questions are as follows:

### 1. Questions with proportionate scores

This category is scored based on the number of energy policy goals set by the country. In the example given below, the first sub-indicator of Indicator 1 allows the respondents to list the energy priorities of the country. Under the first question, there are nine identified options for respondents to select. Additionally, they are given the opportunity to specify other priorities considered relevant to their respective energy sectors. The response to the first question sets the premise on which the following questions will be answered and scored. For example, a country has set 5 goals. As a result, 20 points are attributed to each of the selected goals for the scoring of the next questions. Subsequently, the respondent identifies an energy strategy document for three out of the five selected goals, and the country receives 60 points on that question. The scores for the third and the fourth questions are calculated likewise. The final score of this sub-indicator is the average scores of its component questions, which in this case is 66.7.

#### Sample Question Type 1

INDICATOR 1: FORESIGHT OF POLICY AND REGULATORY CHANGE	SCORING	RESPONSE	SCORE
<b>Sub-indicator 1: Communication of vision and policies</b>			<b>66.7</b>
<b>1. What are the key priorities or goals of the energy sector policy?</b> <b>a. Energy security [Y/N]</b> <b>b. Power reliability [Y/N]</b> <b>c. Affordability – energy poverty [Y/N]</b> <b>d. Access to energy [Y/N]</b> <b>e. Investment in the energy sector [Y/N]</b> <b>f. CO<sub>2</sub> reduction [Y/N]</b> <b>g. Renewable energy [Y/N]</b> <b>h. Energy efficiency [Y/N]</b> <b>i. Innovation [Y/N]</b> <b>j. Others issues related to the energy sector (like air quality, water quality job creation etc). Please specify.</b>	Not Scored	5 goals selected: Energy security; power reliability; access to energy; CO <sub>2</sub> reduction; and Innovation  (100/5=20 for each goal in the related questions)	–
<b>2. Does the country have an energy strategy document for the key priority areas selected above (e.g. a Vision document/ Roadmap etc.)? [Y/N]</b>	Based on the number of goals selected in the previous question proportionate scores are allocated	Energy strategy document for 3 goals: Energy security; CO <sub>2</sub> reduction; and innovation	3x20=60

## 2. Binary questions

These questions can be answered with a simple “yes” or “no”. In the example below, the respondent must answer “yes” to all three questions to obtain the highest score. However, the respondent gives two positive answers and a negative one. As a result, the score for the sub-indicator is 66.7.

### Sample Question Type 2a

INDICATOR 3: REGULATORY ENVIRONMENT AND INVESTMENT CONDITIONS	SCORING	RESPONSE	SCORE
<b>Sub-indicator 1: Regulatory effectiveness</b>			<b>66.7</b>
<b>1. Does the energy regulator derive its authority from a law? [Y/N]</b>	Yes-100 No-0	Yes	100
<b>2. Are the functions and obligations of the energy regulator stated in a law? [Y/N]</b>	Yes-100 No-0	No	0
<b>3. Does the energy regulator have a budget that is separate from the government’s budget? [Y/N]</b>	Yes-100 No-0	Yes	100

In some cases, a negative response may yield a high score while a positive answer may be scored 0. In the following example, the respondent must answer “no” to all the questions to obtain the highest score. However, the respondent gives one negative and one positive answer. As a result, the score for the sub-indicator is 50.

### Sample Question Type 2b

INDICATOR 3: REGULATORY ENVIRONMENT AND INVESTMENT CONDITIONS	SCORING	RESPONSE	SCORE
<b>Sub-indicator 2: Restrictions on FDI</b>			<b>50</b>
<b>1. Are foreign investors required by law to partner with State/ State-owned enterprises or local enterprises before undertaking projects in the energy sector? [Y/N]</b>	Yes-0 No-100	No	100
<b>2. Are foreign investors required to purchase a certain percentage/ value/quantity of products or services from local suppliers? [Y/N]</b>	Yes-0 No-100	Yes	0



### 3. Questions with alternative responses and granulated scores

In some cases, the respondent is asked to select an answer from a group of alternatives. The answer reflecting best practice is scored 100, whereas the score for the rest of the options is granulated. In the table below, the respondent states that only some legal and regulatory information is made available. This alternative is not considered optimal and, thus, yields only 50 points. In the following question, the respondent states that laws and regulations are accessible both electronically and in print. This is considered best practice and gets a score of 100. Similarly, the respondent answers that the energy regulator makes available all its decision to the public, which again is considered best practice and gets 100. The overall score for this sub-indicator is 83.3.

Sample Question Type 3

INDICATOR 2: MANAGEMENT OF DECISION-MAKING PROCESSES	SCORING	RESPONSE	SCORE
<b>Sub-indicator 1: Transparency</b>			<b>83.3</b>
<b>1. Does the country make available legal and regulatory information to the public?</b>		1-b	50
a. Yes, all information is made available	100		
b. Only some information is available	50		
c. No information is available	0		
<b>2. How are laws and regulations made accessible to public?</b>		2-a	100
a. Both electronically and in print	100		
b. Only electronically	66.7		
c. Only in print	33.3		
d. Available only upon request/or payment of fee	0		
<b>3. Does the energy regulator make available its decisions (on tariffs, tariff methodology, market access etc.) to the public?</b>		3-a	100
a. Yes, all decisions are made available	100		
b. Only some decisions are made available	50		
c. No decisions are made available	0		

## 4. Questions with alternative sub-questions

This type of question provides alternatives to the respondents, in case a negative answer to the main question is compensated by other measures. In the example provided below, the respondent claims that investors need authorisation before investing in the energy sector. Since this imposes a restriction on investors, the answer to the main question gets a 0. Where the prior authorisation requirement results in restrictiveness but is not discriminatory in nature, 50 points are 'recovered' by answering "yes" to question 1a.

### Sample Question Type 4

INDICATOR 3: REGULATORY ENVIRONMENT AND INVESTMENT CONDITIONS	SCORING	RESPONSE	SCORE
<b>Sub-indicator 2: Restrictions on FDI</b>			<b>50</b>
<b>1. Is there a pre-screening or prior-authorization requirement for investing in the energy sector? [Y/N]</b>	Yes-0 No-100	Yes	0
<b>If yes:</b>			
<b>1a. Is pre-screening applicable to both domestic and foreign investors? [Y/N]</b>	Yes-50 No-0	Yes	50

## 5. Divided questions

For some sub-indicators the main question is bifurcated into sub-questions, which are awarded identical scores since they are equally important. The sub-questions develop a joint perfect score of 100, when answered positively. In the example below, the country scores 50 because it is a Contracting Party only to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

### Sample Question Type 5

INDICATOR 4: RULE OF LAW (COMPLIANCE WITH NATIONAL AND INTERNATIONAL OBLIGATIONS)	SCORING	RESPONSE	SCORE
<b>Sub-indicator 1: Management and settlement of investor-State disputes</b>			<b>50</b>
<b>1. Is the country a Contracting Party to:</b>			
<b>1a. The Convention on the Settlement of Investment Disputes Between States and Nationals of Other States? [Y/N]</b>	Yes-50 No-0	Yes	50
<b>1b. The Convention on the Recognition and Enforcement of Foreign Arbitral Awards? [Y/N]</b>	Yes-50 No-0	No	0

# **EIRA QUESTIONNAIRE 2019**



# Indicator 1: Foresight of policy and regulatory change

QUESTIONS	CLARIFICATIONS TO QUESTIONS	SCORING
<b>Sub-indicator 1.1: Communication of vision and policies</b>		
<p><b>1.1.1 What are the key priorities or goals of the energy sector policy?</b></p> <p>a. Energy security [Y/N]            b. Power reliability [Y/N]            c. Affordability – energy poverty [Y/N]            d. Access to energy [Y/N]            e. Investment in the energy sector [Y/N]            f. CO<sub>2</sub> reduction [Y/N]            g. Renewable energy [Y/N]            h. Energy efficiency [Y/N]            i. Innovation [Y/N]            j. Others issues related to the energy sector (like air quality, water quality job creation etc). Please specify.</p>	<p>This is not an exhaustive list and countries are only expected to tick the boxes relevant to them. Countries may add priorities or goals not listed.</p>	<p>Not scored</p>
<p><b>1.1.2 Does the country have an energy strategy document for the key priority areas selected above (e.g. a Vision document/Roadmap)? [Y/N]</b></p>	<p>Kindly provide details of the energy strategy (such as date when the document was endorsed). Please also provide a link to the document or send the pdf version.</p>	<p>Based on the number of goals selected</p>
<p><b>1.1.3 Has the country set any short-, medium- term targets for the priority areas selected above? [Y/N]</b></p>	<p>This may include any specific short-, medium-term outcomes/targets for the energy sub-sectors.</p>	<p>Based on the number of goals selected</p>
<p><b>1.1.4 Has the country set any ultimate/final outcomes for the priority areas selected above? [Y/N]</b></p>	<p>This may include any specific final outcomes or end game for the energy sub-sectors.</p>	<p>Based on the number of goals selected</p>
<p><b>1.1.5 Is there a timeframe for achieving the ultimate/final outcomes for the priority areas selected above? [Y/N]</b></p>		<p>Based on the number of goals selected</p>
<p><b>1.1.6 Is there a binding national action plan in place for implementing the priorities selected above? [Y/N]</b></p>		<p>Based on the number of goals selected</p>
<p><b>1.1.7a Is the country a party to the United Nations Paris Climate Agreement? [Y/N]</b></p>		<p>Yes-50 No-0</p>
<p><b>1.1.7b If yes, does the country's NDC contain details on energy sector CO<sub>2</sub> contribution? [Y/N]</b></p>		<p>Yes-50 No-0</p>
<b>Sub-indicator 1.2: Robustness of policy goals and commitments</b>		
<p><b>1.2.1 Is there a body responsible for monitoring the implementation of each energy priority? [Y/N]</b></p>		<p>Based on the number of goals selected</p>
<p><b>1.2.2 Is the monitoring body independent of the authority/ministry responsible for implementing the energy priorities selected above? [Y/N]</b></p>	<p>For instance a technical/statistics body.</p>	<p>Based on the number of monitoring bodies</p>
<p><b>1.2.3 Is the monitoring body required to provide feedback to the authority/ministry responsible for implementing the energy priorities selected above? [Y/N]</b></p>		<p>Based on the number of monitoring bodies</p>
<p><b>1.2.4 Is there a legal provision that allows the government to review the energy priorities selected above, and sets out the process in which the review should be performed? [Y/N]</b></p>	<p>Please provide relevant legal acts/provisions.</p>	<p>Yes-100 No-0</p>
<p><b>Additional remarks:</b>            Are there any regulatory measures/legal changes that you anticipate in the coming year? <i>Please describe.</i></p>		

## Indicator 2: Management of decision-making processes

QUESTIONS	CLARIFICATIONS TO QUESTIONS	SCORING
<b>Sub-indicator 2.1: Institutional governance</b>		
<b>2.1.1 Indicate the levels of government involved in framing energy legislation:</b> a. Central government [Y/N] b. Provincial [Y/N] c. Municipal [Y/N] d. More than 3 [Y/N] e. How many levels are involved in total?		For one level 100 For two levels 50 For three levels 25 For more than three levels 0
<b>2.1.2 Is there a central authority responsible for the overall energy policy formulation process? [Y/N]</b>	Please provide the name of the institution and its website.	Yes-100 No-0
<b>2.1.3 Is there a central authority responsible for the overall investment policy formulation process? [Y/N]</b>	Please provide the name of the institution and its website.	Yes 100 No-0
<b>2.1.4 Do the energy and investment authorities consult each other while formulating policies related to their respective sectors? [Y/N]</b>	This includes consultation within working groups, etc.	Yes-100 No-0
<b>2.1.5 Is there an authority responsible for the overall implementation and monitoring of the country's NDC? [Y/N]</b>	Please provide the name of the institution and its website.	Yes-100 No-0
<b>2.1.6 Is there a process that requires the government to periodically review the implementation of its NDC? [Y/N]</b>		Yes-100 No-0
<b>2.1.7a Has the country established a one-stop shop investment approval authority? [Y/N]</b>	Please provide the name of the institution and its website.	Yes-50 No-0
<b>2.1.7b If yes, does it also give approval for the energy sector? [Y/N]</b>		Yes-50 No-0
<b>2.1.8a Is there a single window for all enquiries concerning investment policies and applications? [Y/N]</b>	Please provide the name of the institution and its website.	Yes-50 No-0
<b>2.1.8b If yes, does it also give information for the energy sector? [Y/N]</b>		Yes-50 No-0
<b>Sub-indicator 2.2: Transparency</b>		
<b>2.2.1 Does the country have a law on transparency? [Y/N]</b>		Yes-100 No-0
<b>2.2.2a Do exceptions to transparency rules exist? [Y/N]</b>	Such exceptions can include national security, public interest, law and order etc.	Yes-0 No-100
<b>2.2.2b If yes, are these exceptions clearly defined in law or regulation? [Y/N]</b>		Yes-100 No-0
<b>2.2.3 Does the country make available legal and regulatory information to the public?</b> a. Yes, all the information is made available b. Only some of information is made available c. No information is made available	Legal and regulatory information includes enacted laws, draft laws, regulations, draft regulations. If the information is limited, please state reasons for this answer.	100 50 0
<b>2.2.4 How is law and regulation made accessible to the public? [Y/N]</b> a. Both electronically and in print b. Only Electronically c. Only in print d. Available only upon request or payment of fee	On request means investors can approach public authorities for hard copies.	100 66.7 33.3 0
<b>2.2.5 Does the energy regulator make available its decisions (on tariffs, tariff methodology, market access etc.) to the public?</b> a. Yes, all the decisions are made available b. Only some decisions are made available c. No decisions are made available		100 50 0

QUESTIONS	CLARIFICATIONS TO QUESTIONS	SCORING
<b>2.2.6 Are energy strategy documents and national plans available in any of the UN languages? [Y/N]</b>	The UN languages are Arabic, Chinese, English, French, Russian and Spanish. For the purpose of this question, unofficial translations are not relevant.	Yes-100 No-0
<b>2.2.7 Are enacted laws available in any of the UN languages? [Y/N]</b>	The UN languages are Arabic, Chinese, English, French, Russian and Spanish. For the purpose of this question, unofficial translations are not relevant.	Yes-100 No-0
<b>2.2.8 Do the bodies responsible for monitoring and implementing energy priorities/objectives publish their data? [Y/N]</b>	This question refers to monitoring bodies mentioned in question 1.2.1.	Yes-100 No-0
<b>2.2.9 Is legal information centralised?</b> a. In an electronic centralised registry of laws and regulations b. Centralised registry/official gazette in print c. No centralisation of laws and regulations		100 50 0
<b>2.2.10 Is consultation between the government and the stakeholders required under any law/regulation/rule? [Y/N]</b>	Stakeholders may include affected public and private investors, energy agencies, local government administration, non-governmental organisations, and wider community.	Yes-100 No-0
<b>2.2.11 Is consultation between the energy regulator and the stakeholders required under any law/regulation/rule? [Y/N]</b>		Yes-100 No-0
<b>2.2.12 Are stakeholders notified and consulted in advance when new laws and regulations are enacted? [Y/N]</b> a. Notified and consulted in advance b. Notified but not consulted c. Not notified or consulted		100 0 0
<b>Additional remarks:</b> Are there any concerns regarding the transparency in the country or its decision making that you wish to highlight? <i>Please describe.</i>		

## Indicator 3: Regulatory environment and investment conditions

QUESTIONS	CLARIFICATIONS TO QUESTIONS	SCORING
<b>Sub-indicator 3.1: Regulatory effectiveness</b>		
<b>3.1.1 Which institution is responsible for regulating the energy sector?</b> a. A separate energy regulatory body b. An agency under the control of the Ministry c. A Ministry d. Multiple ministries/agencies regulating sub-sectors separately	Hereafter referred to as 'the energy regulator'.	Not scored
<b>3.1.2* Does the energy regulator derive its authority from a law? [Y/N]</b>	Please provide the name of the legal act which establishes the energy regulator.	Yes-100 No-0
<b>3.1.3* Are the functions and obligations of the energy regulator stated in a law? [Y/N]</b>	Please provide the name of the legal act which specifies the obligations of the energy regulator.	Yes 100 No-0
<b>3.1.4* Is the energy regulator subject to the public control conducted by other institutions?</b> a. Supreme Audit Office which is independent from the central government and/or Parliament b. Governmental institution c. None of the above		100 0 0
<b>3.1.5* Does the energy regulator have a budget that is separate from the government's budget? [Y/N]</b>	This means the budget is not determined by the government.	Yes-100 No-0
<b>3.1.6* Does the energy regulator have a dedicated budget for itself? [Y/N]</b>	Dedicated budget means that the energy regulator is not required to transfer or share its funds with any other governmental entities.	Yes-100 No-0
<b>3.1.7* Does the energy regulator have the right to allocate its budget?</b> a. Yes, it has full right to do so b. Yes, but it needs approval from the governmental/ministry c. No, it cannot allocate the budget on its own		100 50 0
<b>3.1.8a* Is there a fixed term appointment for the board of the energy regulator? [Y/N]</b>		Yes-50 No-0
<b>3.1.8b* If so, is the term renewable more than once? [Y/N]</b>		Yes-0 No-50
<b>3.1.9* Is the selection procedure of the board and its finalisation publically announced? [Y/N]</b>		Yes-100 No-0
<b>3.1.10a Does the energy regulator deal with competition issues? [Y/N]</b>		Yes-100 No-0
<b>3.1.10b If no, is there a separate governmental body dealing with competition issues, including the energy sector? [Y/N]</b>		Yes-100 No-0
<b>Sub-indicator 3.2: Restrictions on FDI</b>		
<b>3.2.1a Does the country give equal treatment to domestic and foreign investors? [Y/N]</b>	Please provide legal acts which grant equal treatment to domestic and foreign investors.	Yes-50 No-0
<b>3.2.1b If yes, is this equal treatment established in law? [Y/N]</b>		Yes-50 No-0
<b>3.2.2a Are investors in the energy sector allowed to invest in all zones or regions within the country? [Y/N]</b>	This can include restrictions on undertaking activities in the Exclusive Economic Zones, special economic zones, free trade zones.	Yes-100 No-0
<b>3.2.2b If no, is this applicable to domestic and foreign investors alike? [Y/N]</b>		Yes-50 No-0

\* For electricity and hydrocarbon regulators

QUESTIONS	CLARIFICATIONS TO QUESTIONS	SCORING
<b>3.2.3a Is there a pre-screening or prior-authorization requirement for foreign investors in the energy sector? [Y/N]</b>	Screening mechanisms include requiring the foreign investors to show that the project is in the national interest of the Host State. However, in some cases, they are automatic and amount to a simple pre-notification requirement for investors.	Yes-0 No-100
<b>3.2.3b If yes, is it only a notification requirement? [Y/N]</b>		Yes-50 No-0
<b>3.2.4 Are foreign companies legally allowed to hold a majority stake in energy projects? [Y/N]</b>		Yes-100 No-0
<b>3.2.5 Are foreign investors required by law to partner with the State/State-owned enterprises or local enterprises before undertaking projects in the energy sector? [Y/N]</b>		Yes-0 No-100
<b>3.2.6 Are there limitations on the employment of foreign personnel?</b> a. There are no limitations [Y/N] b. Limitation by percentage [Y/N] c. Limitation on the number of times work permit/visa can be renewed [Y/N]		100 0 0
<b>3.2.7 Are foreign investors required to employ specific percentages of local work force?</b> a. There are no such requirements [Y/N] b. Yes, for the managerial level (board of directors etc.) [Y/N] c. Yes, for the unskilled labour and non-technical/administrative staff [Y/N]		100 0 0
<b>3.2.8 Are foreign investors required to purchase a certain percentage/value/quantity of products or services from local suppliers? [Y/N]</b>	Local content provisions require foreign investors to purchase a minimum threshold of goods (e.g. raw materials) and services (e.g. human resources) locally.	Yes-0 No-100
<b>3.2.9a Are there any currency restrictions and/or foreign exchange controls applied to foreign investors under a law or regulation? [Y/N]</b>		Yes-0 No-100
<b>3.2.9b If yes, do these exchange controls include:</b> a. Banning use of foreign currency? [Y/N] b. Limiting currency exchange to government approved exchangers? [Y/N] c. Fixed exchange rates? [Y/N]		
<b>3.2.10a Do restrictions on the transfer of investment related capital, payments and profits exist?</b>	e.g. profits, dividends, interest and royalty receipts, original capital, capital appreciation, proceeds from liquidation, payments received as compensation for property expropriation, settlement of disputes etc., and earnings of personnel engaged from abroad in connection with an investment.	Yes-0 No-100
<b>3.2.10b If yes, do they apply equally on foreign and domestic investor?</b>		Yes-50 No-0
<b>Additional remarks:</b> Are there any measures by the regulator or restrictions on investment you wish to highlight? <i>Please describe.</i>		



## Indicator 4: Rule of Law (compliance with national and international obligations)

QUESTIONS	CLARIFICATIONS TO QUESTIONS	SCORING
<b>Sub-indicator 4.1: Management and settlement of investor-State disputes</b>		
<b>4.1.1 Is the jurisdiction for hearing contractual disputes with foreign investors defined in the domestic law? [Y/N]</b>		Yes-100 No-0
<b>4.1.2 Is there a separate mechanism for appealing against regulatory decisions?</b> a. Yes, appeals can be heard by the regulator in the first instance b. Appeals can only be heard by general courts c. There is no appeal process		100 50 0
<b>4.1.3 Are national courts and administrative tribunals required by law to deliver decisions within a defined time limit? [Y/N]</b>		Yes 100 No-0
<b>4.1.4 Is arbitration included in:</b> a. An investment law b. A separate arbitration law c. As a chapter/section in the code of civil procedure d. There is no law that refers to arbitration		100 100 100 0
<b>4.1.5 Is voluntary mediation, conciliation or both included in:</b> a. An investment law b. Arbitration and mediation law c. As a chapter/section in the code of civil procedure d. There is no law that refers to mediation and/or conciliation		100 100 100 0
<b>4.1.6 Is there an investment ombudsman to whom foreign investors can refer disputes with the government? [Y/N]</b>	Please provide the name of the institution and its website.	Yes-100 No-0
<b>4.1.7a Do national laws allow the recognition and enforcement of foreign judgments? [Y/N]</b>		Yes-50 No-0
<b>4.1.7b If yes, then are these laws equally applicable to different jurisdictions? [Y/N]</b>		Yes-50 No-0
<b>4.1.8 Do national laws and/or International Investment Agreements require exhaustion of local remedies (e.g. domestic courts) before recourse to international arbitration? [Y/N]</b>	Foreign investors are required to go through the administrative and judicial system of the State before initiating international proceedings directly against the State.	Yes-0 No-100
<b>4.1.9 Has the country made retroactive changes to its laws in the past 5 years? [Y/N]</b>		Yes-0 No-100
<b>4.1.10 Is the country a Contracting Party to:</b> a. The Convention on the Settlement of Investment Disputes Between States and Nationals of Other States? [Y/N] b. The Convention on the Recognition and Enforcement of Foreign Arbitral Awards? [Y/N]		Yes-50 No-0 Yes-50 No-0
<b>Sub-indicator 4.2: Respect for property rights</b>		
<b>4.2.1 Are the criteria for 'public interest' as grounds for expropriation clearly stated? [Y/N]</b>	Please provide the legal act that specifies these criteria.	Yes-100 No-0
<b>4.2.2 Does the State provide in its laws and/or its International Investment Agreements a process for determining compensation in the event of expropriation in the energy sector? [Y/N]</b>	e.g., determination of compensation by independent auditors.	Yes-100 No-0
<b>4.2.3 Does the State provide in its laws and/or its International Investment Agreements a time frame within which compensation needs to be paid? [Y/N]</b>	Please provide the law which states this time frame.	Yes-100 No-0

QUESTIONS	CLARIFICATIONS TO QUESTIONS	SCORING
<b>4.2.4a Does the State include in its laws and/or International Investment Agreements protection against the expropriation of intellectual property rights? [Y/N]</b>		Yes-50 No-0
<b>4.2.4b Is the country a Member State of the World Intellectual Property Organization? [Y/N]</b>		Yes-50 No-0
<b>4.2.5 Does the State have in its laws and/or International Investment Agreements any provisions restricting the transfer of technology in the energy sector? [Y/N]</b>	Please provide the law which states this restriction.	Yes-0 No-100
<b>4.2.6 Is the country a Member State/Contracting Party to:</b> a. The World Trade Organization? [Y/N] b. The Energy Charter Treaty? [Y/N]		Yes-50 No-0 Yes-50 No-0

**Additional remarks:**

Are there any risks related to investor state disputes in the energy sector which you anticipate? *Please describe.*