EXECUTIVE SUMMARY

EIRA assesses risks to energy investment that can be mitigated by adjusting legal and regulatory frameworks. It benchmarks the performance of countries against international best practices and guides them on how to improve the investment climate.

EIRA evaluates three types of risk: (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, and assists policymakers in designing risk mitigation plans. EIRA recognises that various factors 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 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 sustainable investment in the energy sector. Additionally, it seeks to give the energy industry, investors, and the financial sector insight into the investment climate of 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 and methodology of EIRA 2020 are the same as last year. Like its predecessors, this third 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.

Highlights of EIRA 2020

EIRA 2020 assesses 30 countries spanning Africa, Asia, the Americas, and Europe. 26 of these have participated in the previous editions of the report, and four are new entrants: Colombia, Guyana, Sierra Leone and Tajikistan.

The ECS invited 137 external parties to participate in EIRA 2020 after conducting extensive research on various aspects, such as their expertise, renown, and previous participation in other international publications. 70% of the invited parties agreed to participate in the assessment. All participants volunteered for the project on a pro bono basis.

The EIRA website went online and simplified the data collection process. Government focal points and external parties were able to fill the EIRA questionnaire online and also use it to provide the supporting documents. Those participating in the assessment for the second time could view, copy, and take guidance from last year's answers, as per their needs.

EIRA 2020 attempts to examine the enforcement of laws and regulations in the participating countries. The country profiles highlight the progress made by public authorities in translating commitments to actions and give attention to the implementation of projects, programmes and secondary regulations, between April 2019 to April 2020. The report also contains a new annexe which summarises the actions taken by governments to mitigate the EIRA risks and address the improvements suggested in the previous editions. Depending on the progress made in each country, the annexe categorises the work done as fully implemented, partially implemented, ongoing, or pending.

This year, the country profiles also include new information from Orbis Crossborder Investment on energy projects and deals completed between 2015-2020 in the participating countries. The purpose of this data is to give readers background information on the investment trends in the participating countries, the target industries that received the most attention, the number of projects and deals completed in this timeframe, and their value.

Key findings

For the third consecutive year, unpredictable policy and regulatory change is the highest risk. It is the topmost risk in 15 out of the 30 countries assessed in 2020.

Countries with the lowest risk of unpredictability are **Greece** and **Moldova**. At the other end of the spectrum are **Palestine** and **The Gambia**.

The risk of unpredictable policy and regulatory change has reduced in 18 of the 26 countries that participated in EIRA previously. **Greece** and **Uzbekistan** have shown the most improvement since last year. The risk level in both countries has dropped by 8 points. In **Greece's** case, this is partly due to the adoption of its National Energy Climate Plan (NECP) and the Long-Term Strategy for 2050. The NECP sets a target of phasing out lignite power generation by 2028 – a crucial achievement. **Uzbekistan's** higher score is attributable to the seven new Presidential Decrees adopted on the energy sector. The main areas covered by these Decrees are the transition to a green economy in the period of 2019-2030, measures to improve energy-efficiency, development of nuclear energy, and reform of the electric power industry. **Palestine** has also made efforts to improve its performance. Its risk level reduced by two points compared to last year, following the adoption of the first Work Plan of the 18th Government in 2019. The Plan lists more than 100 interventions, 207 activities and 277 measurement indices for achieving the national targets.

The risk of unpredictability has gone down primarily because countries have performed better on the "foresight of policy and regulatory change" indicator. In five countries, the indicator score has improved due to the adoption of new long-term energy strategies spanning the period from 2030 to 2050 (**Belarus**, **Croatia**, **Jordan**, **Senegal** and **Uzbekistan**). **Croatia** deserves special mention for its recently adopted climate change adaptation strategy that covers the period until 2040, with a further view to 2070. Ten countries have implemented past recommendations related to this indicator (**Albania**, **Bosnia and Herzegovina**, **Croatia**, **Georgia**, **Greece**, **Jordan**, **Kyrgyzstan**, **Senegal**, **Uganda** and **Uzbekistan**). The most significant actions taken in this regard are the setting of short- and long-term sectoral targets, adoption of policy monitoring and evaluation frameworks, and ratification of critical international agreements. Ten countries, (**Albania**, **Armenia**, **Belarus**, **Benin**, **Georgia**, **Kyrgyzstan**, **Montenegro**, **Panama**, **Rwanda** and **Uganda**) published new action plans, approved government decrees, or enacted laws to implement the national energy priorities. In particular, **Kyrgyzstan** is acknowledged for enacting the law ratifying the Paris Agreement.

The motivation to take risk mitigation measures and improve policy predictability is different for each country. In the sub-Saharan countries **Benin**, **Nigeria**, **Rwanda**, **Senegal**, **Sierra Leone**, and **Uganda**, misalignment of generated electricity and demand load is creating unpredictability for incumbent investors. As a result, these countries have commenced new projects and taken actions that prioritise supply-side management. They are working to attract private investment in the construction and rehabilitation of transmission and distribution lines, reinforcement of the national grid, and decentralised renewable power generation. For example, **Rwanda** has launched the Least Cost Power Development Plan 2019-2040 to tackle high electricity costs and the supply-demand mismatch. **Benin** is undertaking an electricity network restructuring and extension project which involves the construction of 63/20 kV substations and a 63 kV underground link. **Uganda** is developing a policy framework for private sector participation in the electricity transmission segment.

The absence of cost-reflective tariffs poses a substantial regulatory risk in 12 developing and transition economies (**Bangladesh**, **Belarus**, **Eswatini**, **The Gambia**, **Jordan**, **Kazakhstan**, **Kyrgyzstan**, **Nigeria**, **Senegal**, **Sierra Leone**, **Tajikistan** and **Uzbekistan**). These countries are now revising regulations to introduce tariffs which support electrification, cost recovery, and the efficient use of the electricity grid. In some countries, like **Bangladesh**, **Jordan**, **The Gambia**, **Nigeria**, **Senegal**, **Sierra Leone** and **Tajikistan**, transparent tariff methodology guidelines, calculations, and adjustments will also help to lower the revenue deficit of energy utilities and ensure the long-term financial viability of other market players.

Improving grid reliability will undoubtedly facilitate the ease of doing business and boost investment retention. However, most of the developing and transition economies mentioned above intend to integrate variable renewable energy into the grid further - a move that will likely increase fluctuation in electricity production. Policymakers should, therefore, already develop proper demand response and reserve management measures to navigate the associated financial and physical risks. Demand response schemes will be effective in mitigating grid congestion, reducing peak load, and shifting the time of peak demand. Also, countries looking to increase electricity tariffs or eliminate cross-subsidies may be able to encourage

efficient use of existing national power systems by introducing demand-side flexibility through time-of-use tariffs, incentive payments for peak load reduction, and programmes to stimulate efficient energy use.

Countries with low energy access, limited conventional resources, and high energy dependency are prioritising electricity generation from domestic renewable sources. By expanding on-grid and off-grid renewable power generation, these countries are not only tackling low energy access and energy dependency but also making a well-planned transition to clean energy. More than one third of the participating countries fall into this group (**Afghanistan**, **Armenia**, **Eswatini**, **The Gambia**, **Georgia**, **Jordan**, **Guyana**, **Kenya**, **Palestine**, **Rwanda**, **Senegal** and **Tajikistan**).

Higher economic growth, job creation, and other national development agendas are shaping the policy trajectory of some developing and transition economies. In these cases, the pledge to increase the share of clean energy has not significantly impacted plans to step up fossil-based power generation. This group includes **Afghanistan**, **Bangladesh**, **Benin**, **Colombia**, **Guyana**, **Kazakhstan**, **Nigeria**, **Senegal**, **Sierra Leone**, **Uganda** and **Ukraine**. In the last year, these countries introduced long-term policies to steer more investment in the extractives sector, signed concession contracts for coal mining, published new model production sharing contracts, or organised tenders for oil and gas blocks.

With the clean energy transition in full momentum, development pathways that depend on carbon-intensive resources should be reconsidered. Countries relying heavily on fuel-export revenues are particularly vulnerable, so their economic growth forecasts and investment plans should anticipate the declining demand in their primary markets. Policymakers must also identify and support alternative occupations that allow communities dependent on the extractives sector to find other sustainable trades.

Proper policy planning is critical to mitigating unpredictable policy and regulatory change. Key concomitants of policy planning are robust monitoring and evaluation processes, and institutions. When it comes to this aspect, there is a wide gap between theory and practice in the EIRA 2020 countries.

All 30 countries examined this year have outlined procedures to monitor the performance indicators of the energy sector. Despite this, in 26 countries, little information is available on the human and technical capacity of the monitoring authorities, the inclusion of stakeholders in the evaluation process, and the utilisation of the monitoring and evaluation results.

In 2018 and 2019, 16 countries received recommendations to strengthen the independence, institutional capacity, and financial resources of the policy monitoring and assessment authorities. Of these, only six (**Armenia**, **Bangladesh**, **Greece**, **Kenya**, **Moldova** and **Rwanda**) worked towards implementing the suggested improvements.

Eleven countries received recommendations to set legally binding policy monitoring and evaluation processes and to publish progress evaluation reports. These recommendations were addressed adequately only by **Georgia**. Work is ongoing in six countries (**Bangladesh**, **Eswatini**, **Nigeria**, **Palestine**, **Rwanda** and **Senegal**), and there has been no progress made in four (**Afghanistan**, **Benin**, **The Gambia** and **Kyrgyzstan**).

Breach of State obligations is the next most significant risk area – highest in nine countries.

Georgia, **Rwanda** and **Moldova** have the least risk in this area as opposed to **Palestine**, **Eswatini** and **Bangladesh** which have recorded the most.

Five countries have a “very good” score on the underlying indicator “rule of law”, fifteen have a “good” score, and ten are in the “moderate” zone.

Although the risk of breaching State obligations did not increase in any country compared to last year, it did not undergo any remarkable reduction either. The risk level remained the same in 21 of the 26 countries participating in EIRA for the second consecutive year.

20 out of the 30 countries evaluated this year are undertaking judicial reforms, but in most instances, these have not come to fruition yet. The reforms are geared towards improving case management systems, providing high-quality judicial services, and promoting alternative dispute resolution mechanisms. Top performer **Georgia** signed the Singapore Mediation Convention in August 2019 and adopted a new mediation law establishing the Georgian Association of Mediators. Similarly, the proactive efforts of the **Rwandese** Government towards making the country a regional arbitration hub led the Kigali International Arbitration Centre to register its 100th arbitration in 2019.

Countries made least progress in implementing the recommendations related to the “respect for property rights” sub-indicator. Of the 20 countries that received recommendations in this respect, only two addressed them. **Afghanistan** introduced in its domestic law a criteria to determine the amount of compensation for expropriation. On the other

hand, **Belarus** introduced such a process in a BIT it recently signed with **Uzbekistan**.

Although seven countries received recommendations to strengthen IP rights (**Afghanistan**, **Bosnia and Herzegovina**, **Eswatini**, **Georgia**, **Palestine**, **Greece** and **Nigeria**), only **Eswatini** implemented these by updating the Intellectual Property Tribunal Act, the Patent Act, and the Copyrights and Neighbouring Rights Act.

Another area that has received little attention is the establishment of a single point of reference for conflict resolution between investors and the State. Most of the countries have investment promotion and aftercare programmes. However, few have designated an authority that can resolve problems arising in the course of projects and prevent the escalation of grievances to disputes. Between 2018 and 2020, EIRA recommended to over 15 countries the establishment of an investment ombudsman or similar institution that can resolve investor-State conflicts. However, no progress was made by the countries in this respect.

In six countries, discrimination between foreign and domestic investors is a more substantial risk than unpredictable policy and regulatory change and breach of State obligations.

Greece, **Moldova**, **Montenegro**, **Georgia** and **Rwanda** have the least risk in this area, whereas **Palestine**, **Tajikistan** and **Eswatini** are the most exposed. Overall, six countries are in the "very low" risk zone. 14 are in the "low" risk zone, and ten in the "moderate" risk zone.

The risk level has reduced in 12 out of 26 recurrent participants, with **Greece** and **Kazakhstan** showing the most improvement. Only **Benin** has a higher risk level compared to last year because of the recently enacted Petroleum Code, which imposes new local content requirements and mandates prior Government authorisation for all petroleum operations.

In three countries the risk level decreased as a result of higher scores on the "management of decision-making processes" indicator. **Armenia's** score increased due to the establishment of a new Investment Support Center which also acts as a single-window for potential investors. A government restructuring exercise improved **Uzbekistan's** score. In 2019, the new Ministry of Investment and Foreign Trade was formed through the merger of the State Committee for Investment and the Ministry of Foreign Trade. The recently enacted investment law designates this new Ministry as the authorised State body for regulating investment activities.

Interestingly, the countries promoting investment in extractives are more proactive than others when it comes to improving transparency and public accountability. In some cases, they have complemented long-term plans with sustainable transparency solutions.

Afghanistan is taking measures to revalidate its EITI membership. Among others, it has launched the online Transparency Portal and published information on the beneficial ownership of mineral rights. In 2019, **Kazakhstan** also disclosed beneficial ownership data for the first time, and **Nigeria** launched the Beneficial Ownership Register for extractive companies.

Colombia's accession to the OECD and **Uganda's** membership of the EITI are commendable and likely to improve citizen participation in the decision-making processes of these countries.

A number of countries enacted new laws or introduced legislative bills to improve transparency and stakeholder engagement. **Guyana** passed the Natural Resource Fund Act in January 2019, and the President of **Sierra Leone** granted assent to the Anti-Corruption (Amendment Act) in December 2019. In **Kenya**, the Public Participation Bill of 2019 is currently undergoing discussion in the Parliament. The President of **Ukraine** has signed the tax reform law which sets out three-tiered transfer pricing reporting requirements, general anti-abuse rules and new controlled foreign company rules. In 2019, **Uzbekistan's** State-owned Uzbekneftegaz disclosed its production statistics that were classified as State secrets until last year.

In some countries, the risk of discrimination between foreign and domestic investors decreased because of higher scores on the "regulatory environment and investment conditions" indicator. **Georgia**, for example, benefitted from the enactment of the Law on Energy and Water Supply, which unbundles and grants certification to transmission and distribution system operators. The law introduces new market players and empowers the Georgian National Energy and Water Supply Regulatory Commission to approve the market rules. **Kenya** enacted a law to regulate atomic energy and nuclear technology, which provides for the establishment and financing of the new Nuclear Regulatory Authority as well as the appointment of its board members.

Although 24 of the 30 countries participating in EIRA 2020 have enacted robust legal frameworks establishing independent regulators, there is room for improvement when it comes to practice. The last two editions of EIRA gave 16 countries recommendations in this respect. Countries where the government regulates the energy sector

were advised to establish independent national energy regulatory authorities. Others were encouraged to limit the role of the government in making tariff determinations, reinforce the budgetary and functional autonomy of the national energy regulator and ensure that it has adequate staff and finances, and bring more transparency in the appointment of the regulatory boards and commissions.

None of the 16 countries have implemented the EIRA recommendations in this respect, although work is ongoing in half of them (**Afghanistan**, **Bangladesh**, **Benin**, **Eswatini**, **Georgia**, **Kenya**, **Ukraine** and **Uzbekistan**). For example, in February 2020 **Afghanistan** dissolved its Ministry of Energy and Water to form two new bodies, the Afghan Energy Authority and the Water Affairs National Regulatory Authority, which will function as independent budgetary units. Similarly, **Uzbekistan** plans to enact new laws in 2020-2021 on electric energy and the establishment of an independent energy regulator. The new energy market regulator will be a financially independent body accountable to the President and the Parliament of Uzbekistan.

In summary, analysis of the indicators shows that unpredictable policy and regulatory change is the most prominent risk in the assessed countries. It is also the area that has seen the most improvement and progress in terms of risk mitigation. Most countries fall in the “low” to “moderate” risk zone on the two other risk areas, namely, discrimination between domestic and foreign investors and breach of State obligations. While there have been some mitigation measures taken in relation to these areas, most of the actions are still in the pipeline and yet to produce results.