



# EIRA

ENERGY INVESTMENT RISK ASSESSMENT

2018

 COMMON RULES FOR **GLOBAL ENERGY SECURITY**





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# ABOUT THE INTERNATIONAL ENERGY CHARTER

In the early 1990s, after the end of the Cold War, the Dutch Prime Minister at the time, Ruud Lubbers, took the initiative to establish cooperation in the field of energy between the East and the West. This paved the way for the *Energy Charter Treaty* (ECT) which was signed in December 1994 at Lisbon and entered into force in April 1998.

The ECT establishes a unique multilateral legal framework for facilitating international energy cooperation. Its key principles, namely, openness of energy markets, investment protection and non-discrimination stimulate foreign direct investment and cross-border trade. As of 1 April 2018, the ECT has 54 Signatories and Contracting Parties (including the European Union and Euratom).

The *International Energy Charter* is the informal working name of the Energy Charter Conference, its subsidiary bodies and the ECS. The name was adopted in 2016 to better reflect the global nature of the Organisation.

The Energy Charter Conference is the governing and decision-making body of the Organisation. Each year its Chairmanship is entrusted to a different Contracting Party of the ECT. In 2018, Romania holds the Chairmanship. The 95 Members and Observers of the Energy Charter Conference represent governments and regional intergovernmental organisations from six continents, including all major energy producing, transit and consuming regions.

The Energy Charter Secretariat is based in Brussels, Belgium. It is headed by Secretary-General Urban Rusnák. The main functions of the Secretariat include:

**Providing administrative support and facilitating the work of the Energy Charter Conference and its subsidiary bodies;**

**Monitoring the implementation of the ECT;**

**Assisting governments in enhancing their investment climate through various instruments;**

**Offering support for dispute settlement and conflict resolution;**

**Developing regulation and model agreements for cross-border energy projects;**

**Organising capacity building and training sessions related to the ECT;**

**Assisting Observer countries with ECT accession.**

# MESSAGE OF THE CONFERENCE CHAIR

Over time, the Energy Charter Process has become an important instrument which provides a sound legal basis for ensuring and promoting stable and sustained investment in the energy sector. The Energy Investment Risk Assessment-EIRA, developed by the Energy Charter Secretariat, is an efficient tool for identifying specific risks that jeopardise investments and for providing helpful insights to eliminate these risks. It intends to help governments create a more stable and transparent investment climate. It also contributes to a legal and regulatory environment which encourages economic progress, alleviates energy poverty worldwide, and fosters social and sustainable development.

In this context, the publication of EIRA has been a priority of the Romanian Chairmanship. I am proud that the first public edition is being launched under our Chairmanship of the Energy Charter Conference. I am pleased to note that 30 countries are participating in EIRA this year. It is my sincere wish that more countries will take part in this assessment in the future. Regular participation can ensure that progress is tracked, risks are avoided and the regulatory environment becomes or remains attractive to investors. Countries should not hesitate to make use of the strengths and areas of improvement described in EIRA.

As the Chair of the Energy Charter Conference, it is my hope that the Energy Charter Secretariat will further develop the publication in order to contribute to the goals of the Energy Charter Treaty and the International Energy Charter political declaration: open markets, ensuring stable energy supply, providing energy access for all, increasing use of clean energy and the further promotion of energy efficiency. I trust that in the coming years EIRA will cover an increased number of countries and that governments and industry will use it to ensure a high degree of access to sustainable forms of energy and increased competitiveness.

**Robert Tudorache**

Chair of the Ministerial  
Energy Charter Conference 2018  
Secretary of State  
Romanian Ministry of Energy

# FOREWORD

In a world witnessing a rapid transition to low carbon technologies, investment is crucial. As energy systems are changing, different types of investment – conventional fuels, renewables, energy efficiency, grids, demand-side management and low-carbon technology – are competing for financial resources. Despite the growing relevance and need for investment in the energy industry, there is a gap between the needed and actual investment. Due to this, governments and energy investors face significant risks. Currently, some critical investment risks in the energy sector are not systematically and coherently examined. These risks are inherent in the legal and regulatory environment of countries. In particular, they relate to the unpredictability of policy changes, discrimination between foreign investors and domestic players and potential breach of State obligations.

Providing practical tools for risk analysis and mitigation is essential for proper investment planning. While this requires sound instruments for assessing market risk, it is equally relevant to evaluate policy, legal and regulatory issues. To deal with these uncertainties, it is important to understand them and to develop robust policies. All market actors need to be confident that the enabling environment for investment will remain attractive enough. At the same time, governments need to ensure that investment projects are realised and they live up to public policy goals. Indeed, such concepts are also enshrined in the 1994 Energy Charter Treaty, which has remained – since its inception – the world’s leading investment treaty dedicated solely to the international energy sector.

In light of the above, I am pleased to introduce the Energy Investment Risk Assessment-EIRA developed by my colleagues at the Energy Charter Secretariat. EIRA 2018 represents our efforts to assist both governments and investors in reducing the level of risk in the international energy sector and thereby unlocking investment for a sustainable energy future. EIRA addresses a set of specific policy, legal and regulatory risks, in the energy sector of the assessed countries, which can be managed and mitigated through effective decision-making. In this context, it acts as a benchmark for risk assessment and identification in the regulation underpinning the energy markets of select countries, as well as a confidence-building instrument which helps governments and investors reach a mutual understanding on investment policies.

I express my sincere gratitude to the countries participating in EIRA 2018. It is my wish, and my hope, that more countries will subscribe to EIRA in the future years so that this publication will aid our efforts to ensure energy supply, provide access to energy for all and fuel the energy transition.

**Urban Rusnák**

Secretary-General  
Energy Charter Secretariat  
Brussels

# ACKNOWLEDGEMENTS

EIRA 2018 was initiated and guided by Urban Rusnák, Secretary-General of the ECS. The Report was prepared by the Investment Unit of the ECS, in the Office of the Assistant Secretary-General Masami Nakata.

The core analysis and drafting team comprised: David Kramer, Tomasz Bąk, Ishita Pant, Danai Oikonomakou and Anna Pitaraki. Assistance was provided to the project by: Sarah Keay-Bright, Ruslan Galkanov, Theresia Betty Sumarno, Can Öğütçü, Monica Emmanuel, Vitali Hiarlouski, Olga Gerasimchuk and Angilbert Martins.

Gratitude is expressed to more than 110 government officials who provided input on behalf of the participating countries, Afghanistan, Albania, Armenia, Bangladesh, Belarus, Bosnia and Herzegovina, Chad, Croatia, Eswatini, The Gambia, Georgia, Greece, Hungary, Jordan, Kazakhstan, Kenya, Kyrgyzstan, Latvia, Liechtenstein, Mongolia, Montenegro, Nigeria, Norway, the Republic of Moldova, Romania, Rwanda, Senegal, Slovakia, Uganda and Ukraine. A special word of thanks goes to Bosnia and Herzegovina, Croatia, Jordan, Kenya, Nigeria, the Republic of Moldova and Senegal for hosting fact-finding missions.

The ECS would also like to thank the external contributors in each country, who provided in-depth, on-the-ground information. In total, more than 230 individual experts contributed to EIRA 2018. The names of the contributing parties who wish to be acknowledged are listed in the Contributors section of the Report.

The foundation for EIRA 2018 was laid in 2016 and 2017. During this pilot stage the project benefitted from the inputs of the Energy Charter Strategy Group and the Energy Charter Implementation Group delegates, the peer reviewers and the Energy Charter Industry Advisory Panel.



# ABBREVIATIONS

BIT	Bilateral Investment Treaty
ECS	Energy Charter Secretariat
ECT	Energy Charter Treaty
EIRA	Energy Investment Risk Assessment
EU	European Union
FDI	Foreign Direct Investment
GDP	Gross Domestic Product
IEA	International Energy Agency
INDC	Intended Nationally Determined Contributions
NDC	Nationally Determined Contributions
OECD	Organisation for Economic Co-operation and Development
OHADA	Organization for the Harmonization of Business Law in Africa
SE4ALL	Sustainable Energy for All
TPES	Total Primary Energy Supply
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
WTO	World Trade Organization

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# **INTRODUCTION TO EIRA 2018**



Energy is an issue of global dimension. It is at the core of economic and social activities across the world. The energy sector contributes to economic growth by creating job opportunities, promoting technological innovation and improving the overall infrastructure of countries.

Unique characteristics of energy projects, such as the long lifespan of assets, extended time horizons and significant upfront costs create risks for investors. Capital is locked in for long periods during which governments may bring new political ideology to policy-making or public policy priorities may change. For instance, the adoption of the Paris Agreement has brought investors greater certainty as the global commitment to reduce CO<sub>2</sub> emissions has significantly strengthened. However, more clarity is required on the reductions expected to come from the energy sector.

Today national governments face substantial challenges as new priorities are gaining prominence. Climate change is impacting energy infrastructure in a way that resilience is already a priority in low-lying hurricane-prone States. Digitalisation of the energy sector is underway, and countries are working out how to maximise benefits for energy consumers while dealing with cybersecurity and data protection issues. Governments must design and implement effective policies that exploit synergies and manage trade-offs. Scaling up investments in sustainable energy resources and new technologies is critical. At the same time, the existing infrastructure and conventional energy resources must be maintained and developed to avoid stranded investments.

To navigate these multiple objectives and inevitable changes, governments will need to encourage and create stable, equitable and transparent investment conditions. A rules-based regime that is credible, inclusive and has broad institutional support can help reduce uncertainty and improve investor-State relations. Similarly, a well-designed and efficiently implemented legal and regulatory framework will signal to the world that private investment is welcome. It will also minimise the risk of disputes and reduced investment inflow.

EIRA intends to help countries make smart regulatory choices and develop effective strategies that ensure investor confidence is established and retained over time. It is premised on best practices and measures that enable a resilient investment environment, including a level playing field for domestic and foreign investors.

## Concept and aim

EIRA evaluates specific risks affecting energy investment that can be mitigated through adjustments to policy, legal and regulatory frameworks. It aims to identify gaps, provide learning opportunities, and stimulate reforms which make the investment climate of countries more robust and reduce the possibility of investor-State disputes.

The target audience of EIRA are policymakers. Its primary objective is to assist them in recognising policy and regulatory gaps and, in turn, render their energy sectors more conducive to foreign

investment. Additionally, it seeks to provide the energy industry, investors and the financial sector insight into particular aspects of the regulatory environment in the assessed countries. That said, the findings presented are not an alternative to the due diligence that private investors are expected to conduct before they decide to invest in the energy sector of these countries.

Various analyses and publications by other international organisations and multinational agencies examine aspects of foreign investment and energy. Some of these aspects are energy

economics, energy technologies and resources, generic investment climate rankings, and FDI flows. EIRA adds to this literature by focusing on specific risk areas related to policy change, discrimination between foreign and domestic investors and governments' breach of obligations. Other types of risks, such as those related to corruption, energy market structure, financial stability can also be mitigated by policy adjustments or governmental action. However, they are not evaluated here because different international organisations are already analysing them.

EIRA does not delve into commercial, security, geopolitical and other risks associated with technological advancements or exploration activities. While these issues fall outside its scope, EIRA's application is very comprehensive covering investment across the entire spectrum of the energy sector. It has been tailored to serve best the identified needs of the International Energy Charter constituency with the aim to help governments identify and reduce the risks, as well as improve investment conditions.

In summary, EIRA aspires to deliver a range of practical benefits for countries and the international investment community. These benefits include:

**Helping governments to diagnose key strengths and weakness in their policies, laws and regulations, and develop strategies that will reduce the risks examined by EIRA;**

**Reviewing the performance of the assessed countries periodically and, over time, tracking progress in the regulatory environment and reduction of the associated risks;**

**Promoting a robust and resilient investment environment, including a level playing field for domestic and foreign investors in the energy sector;**

**Providing potential investors with an overview of the regulatory risk level in the participating countries.**

In 2017, the ECS tested and fine-tuned the EIRA methodology. The first non-public version of the Report was presented during the Energy Charter Conference in Ashgabat, Turkmenistan, 28-29 November 2017.

Since its inception, participation in EIRA has grown considerably – 3 countries participated in 2016 (Belarus, Colombia, and Mauritania), 9 in 2017 (Armenia, Belarus, Iran, Kazakhstan, Mauritania, Mongolia, Nigeria, Romania, and Ukraine), and 30 countries in the 2018 edition (Afghanistan, Albania, Armenia, Bangladesh, Belarus, Bosnia and Herzegovina, Chad, Croatia, Eswatini, The Gambia, Georgia, Greece, Hungary, Jordan, Kazakhstan, Kenya, Kyrgyzstan, Latvia, Liechtenstein, Mongolia, Montenegro, Nigeria, Norway, the Republic of Moldova, Romania, Rwanda, Senegal, Slovakia, Uganda, and Ukraine).

The ultimate goal is to have a recurring, full-fledged report with worldwide coverage. Through periodicity, EIRA will be able to reflect changes over time to the energy investment regulation of the assessed countries and become a useful instrument for countries to initiate and sustain reforms.

# **RISK AREAS AND INDICATORS FOR EIRA**



EIRA is primarily an instrument for governments and policymakers. Its purpose is to assess risks which can be managed and mitigated by countries through effective decision-making in their policy space. Moreover, it attempts to guide countries on how to reinforce investor rights and develop their inward investment strategies.

As countries are transitioning to sustainable energy systems, new demands are being placed upon regulatory structures. This involves introducing clear targets that encourage the transition to low carbon energy resources and technology. However, even when objectives are defined, their actual translation into practice is far from straightforward. Energy transition is brought about by structural changes that are lengthy and often non-linear. Policies have to be well-communicated and predictable enough to deal with the uncertainties linked to such a transition, while at the same time reducing problems for investors. To this end, the risk areas targeted in EIRA are unpredictable policy and regulatory changes, discrimination between domestic and foreign investors, and breach of national and international commitments by States.

The performance of countries against the assessed risks is evaluated through selected 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 processes, 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 authority to adopt and maintain measures necessary to pursue legitimate public policy objectives. Nevertheless, unsystematic and arbitrary modifications can sometimes 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 even reconsider investing in the country or relocate the investment. As a result, countries may face an elevated risk of underinvestment in the energy sector, or of disputes brought against them by foreign investors. 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 exclusively 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**

EIRA examines situations arising from a breach by governments of their domestic laws, as well as commitments stemming from international agreements. 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.

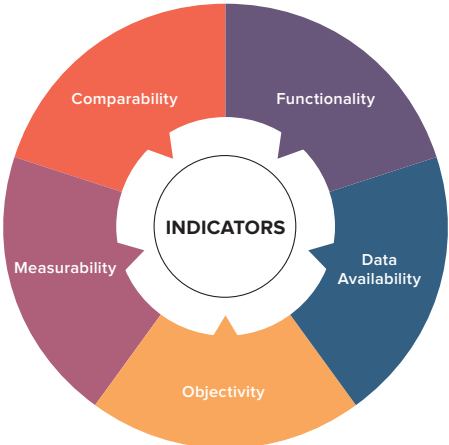


# How are the EIRA indicators selected?

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 which are under the control of governments.

**Availability of data** – Data for indicators are available from sources that are reputable and reliable. Indicators are based on data that are 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. Together, 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.

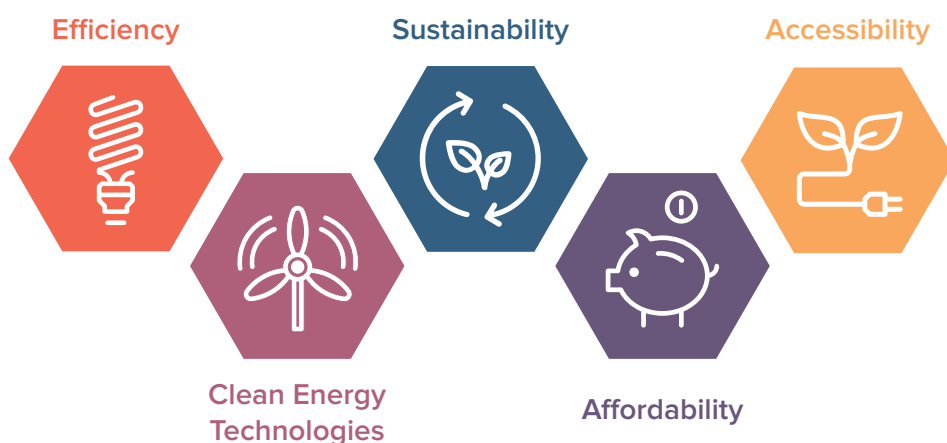
#### SUB-INDICATOR:

##### ROBUSTNESS OF POLICY GOALS AND COMMITMENTS

Robustness of policy goals is manifested not only by their existence and design but also their actual implementation. Good governance and the creation of monitoring mechanisms indicate the determination of governments to attain these goals. Conversely, a fragmented or weakly implemented regulatory framework can have a destabilising effect on the private sector, particularly on foreign investors.

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 investment 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

Decision-making structures can directly or indirectly affect the investment climate of a country. 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. This is especially the case in cross-cutting areas such as energy and investment. It is also essential that investors are well informed and consulted whenever governments intend to revise their legal and regulatory framework. 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.

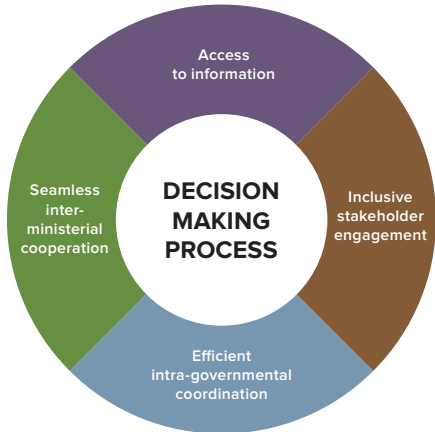
**SUB-INDICATOR:**  
**TRANSPARENCY**

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 considering 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 restriction 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 the 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.

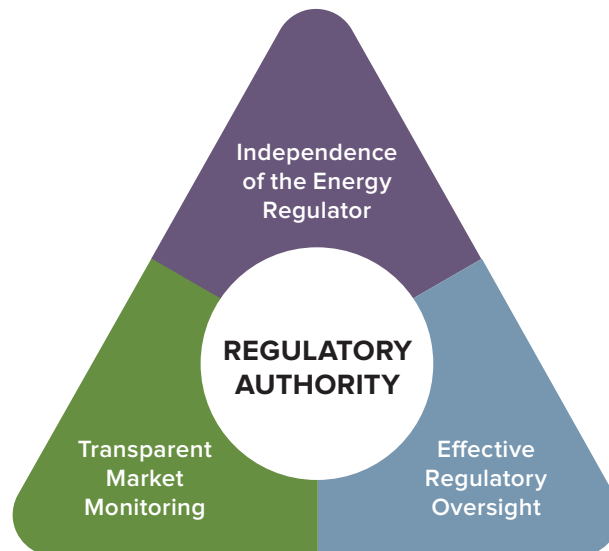
#### SUB-INDICATOR:

##### 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 bilateral investment treaties (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. Such actions can also lead to the additional risk of discrimination when foreign investors typically 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 time frame for the payment of compensation. This gives added 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. It 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> According to this Report, the ‘rule of law’ should be interpreted 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 evaluates three types of risks pertinent to energy investment. Four ‘reform-oriented’ indicators have been constructed to (1) identify the actions needed for addressing these risks, and (2) highlight the corrective measures countries may take to mitigate them.

The EIRA indicators are primarily de jure. They are framed to evaluate whether specific laws and policy documents exist to support the country’s legal and regulatory framework. De facto indicators, which are typically outcome-oriented, have not been considered. While evaluating the relationship between de jure and de facto measures can be valuable, de jure indicators have an overarching policy perspective and are deemed more suitable for this year’s edition.

The indicators are based on a questionnaire developed by the ECS over a period of 2 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 programs (these questions are not scored).

Pilot tests were undertaken to determine the soundness and interpretability of the indicators and the underlying questions. The draft questionnaire was administered to national experts, from different countries, seconded at the ECS. It was also shared with the Industry Advisory Panel of the ECS, various business councils, chambers of commerce, and law firms. Based on the feedback and opinions received, as well as the reaction of the actual respondents that participated in the 2017 EIRA edition, the questionnaire was significantly refined to enhance its quality.

## 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 formulated 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 on the State and municipal level.

Between two to three external parties per country 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 2018, over 480 external parties were contacted of which 21 per cent were short-listed. These individuals and institutions were

selected on account of their expertise, availability, and willingness to participate in the survey. 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, the experience of providing consulting services in multiple energy sub-sectors and 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 referred.

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

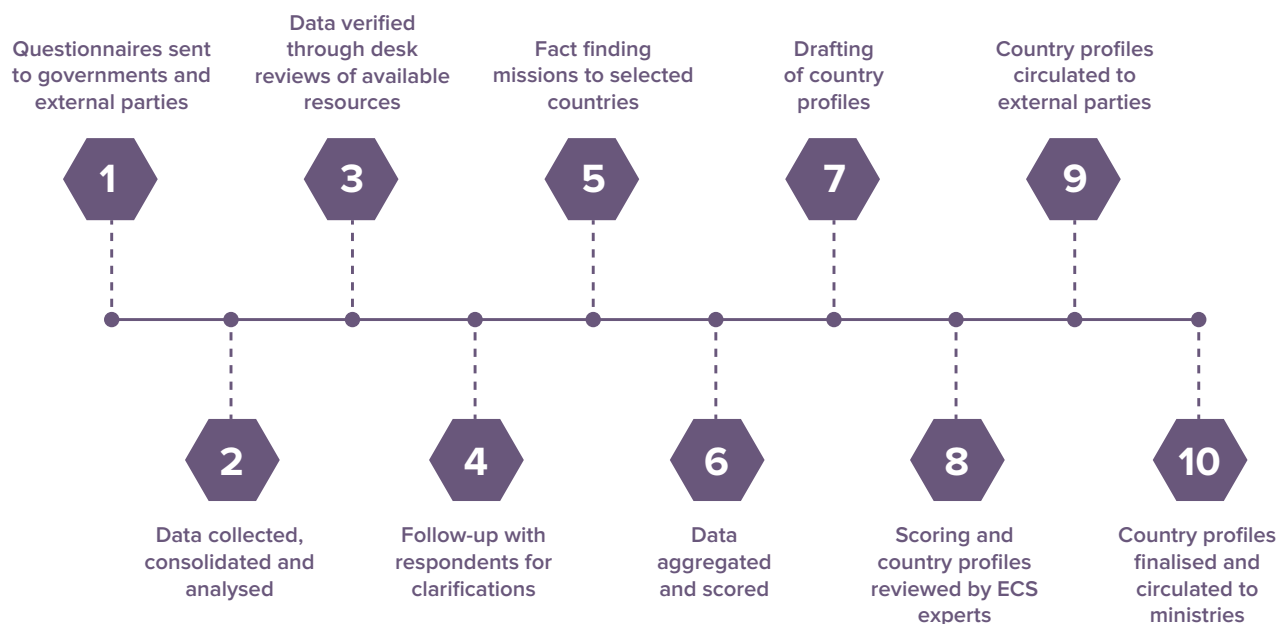
Data for EIRA are collected in a standardised manner. For the 2018 edition, responses from the participating countries and external parties were collected over a period of 3 months. The respondents furnished copies of the source documentation and translation (if required) that supported their responses. The data provided were accepted only to the extent that they were premised on original laws, regulations, national plans and strategies. Legislative initiatives and regulatory reforms not legally in force as on 1 April 2018 were not taken into consideration.

Upon the 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 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.

To obtain hands-on information fact-finding missions were undertaken to selected countries. 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 7 months, from January to August 2018.

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 depiction of quantitative analysis is through a scoring system which conveys the performance of the countries on the indicators. The more complex dynamics of the assessment are represented through qualitative country profiles which 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. 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

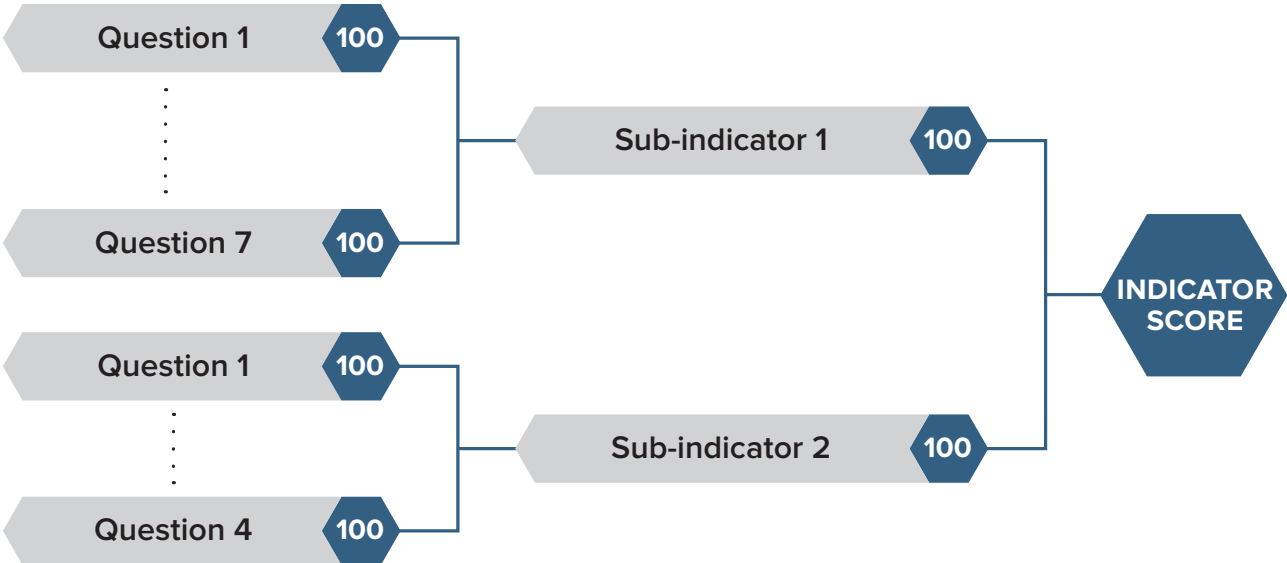
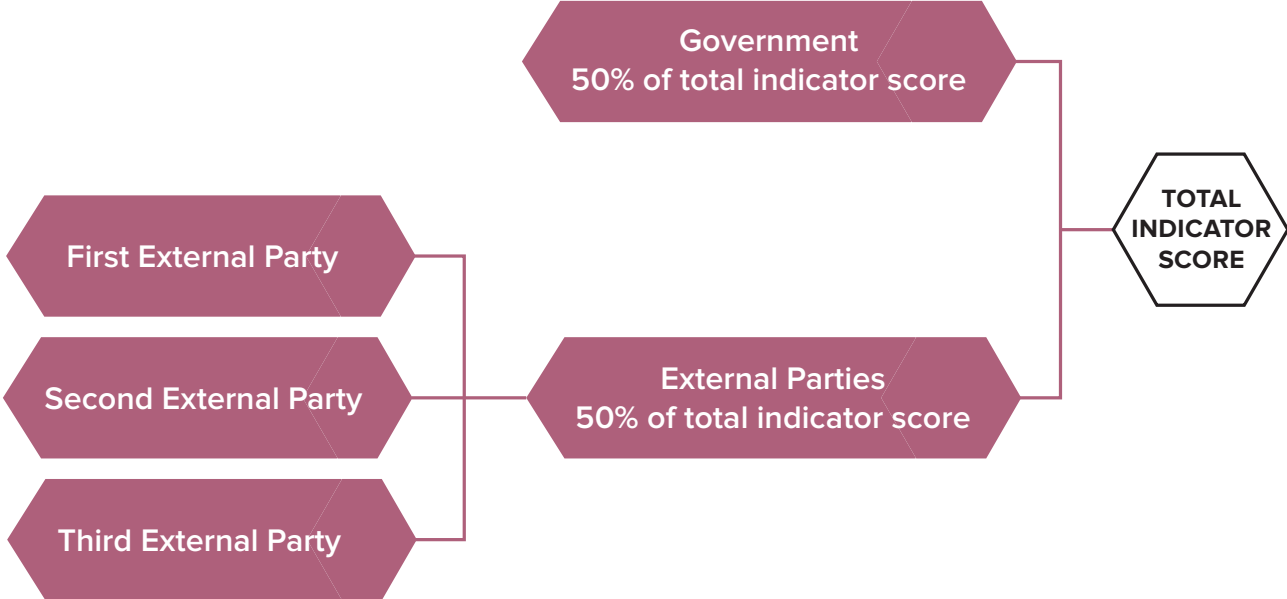


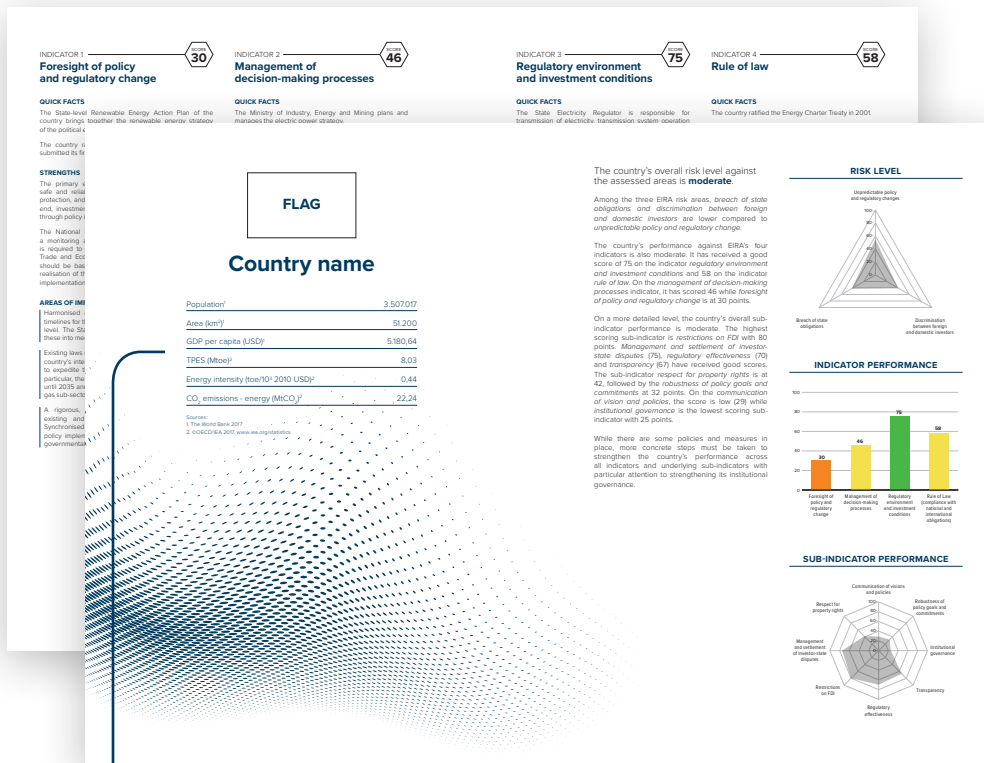
Figure I.8 – Total score for an indicator



## 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 under 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 under each indicator. They present the overall score for each indicator and summarise the key strengths and areas of improvement.



## 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 5 July 2018)*

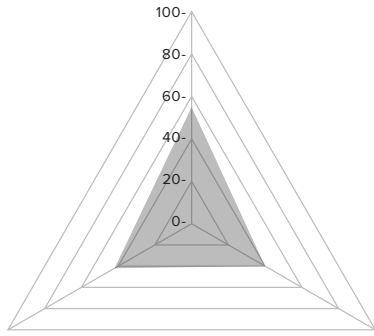
**GDP per capita (current US\$):** Data refers to year 2017. *The World Bank 2017, World Development Indicators, World Bank national accounts data and OECD National Accounts data files, <https://data.worldbank.org/> (accessed on 5 July 2018)*

**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 2015. *OECD/IEA 2017, [www.iea.org/statistics](http://www.iea.org/statistics)\**

**Energy Intensity:** It is a measure of total primary energy use per unit of gross domestic product. Data refers to year 2015. *OECD/IEA 2017, [www.iea.org/statistics](http://www.iea.org/statistics)\**

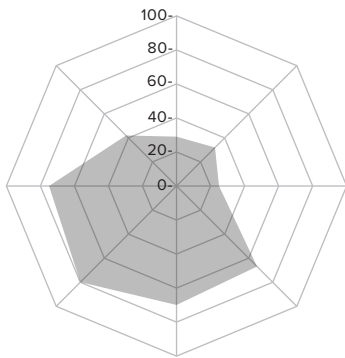
**CO<sub>2</sub> emissions from fuel combustion:** Data refers to year 2015. *OECD/IEA 2017, [www.iea.org/statistics](http://www.iea.org/statistics)\**

\*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, lower is 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

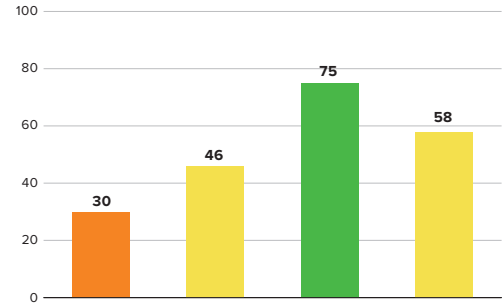
1. Institutional governance
2. Transparency

##### Indicator 3

1. Regulatory effectiveness
2. Restrictions on FDI

##### Indicator 4

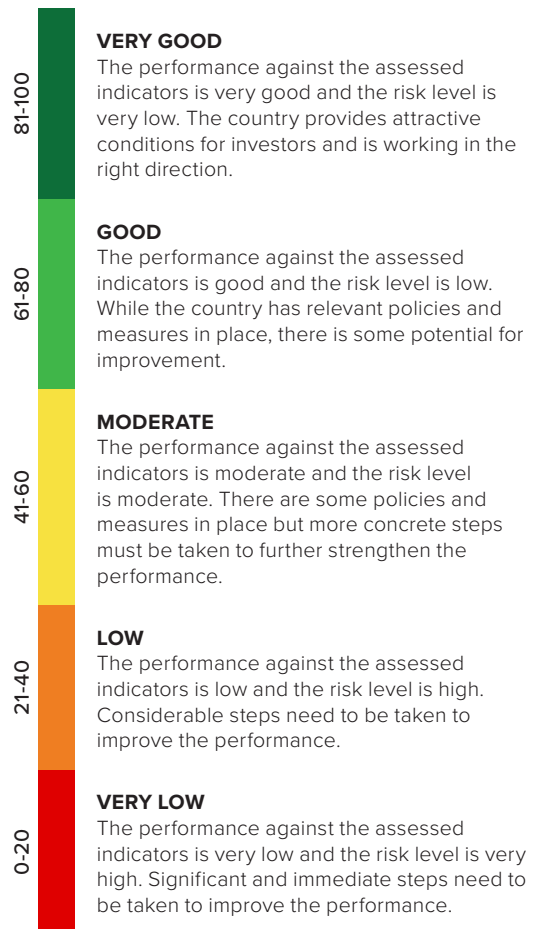
1. Management and settlement of investor-State disputes
2. Respect for property rights

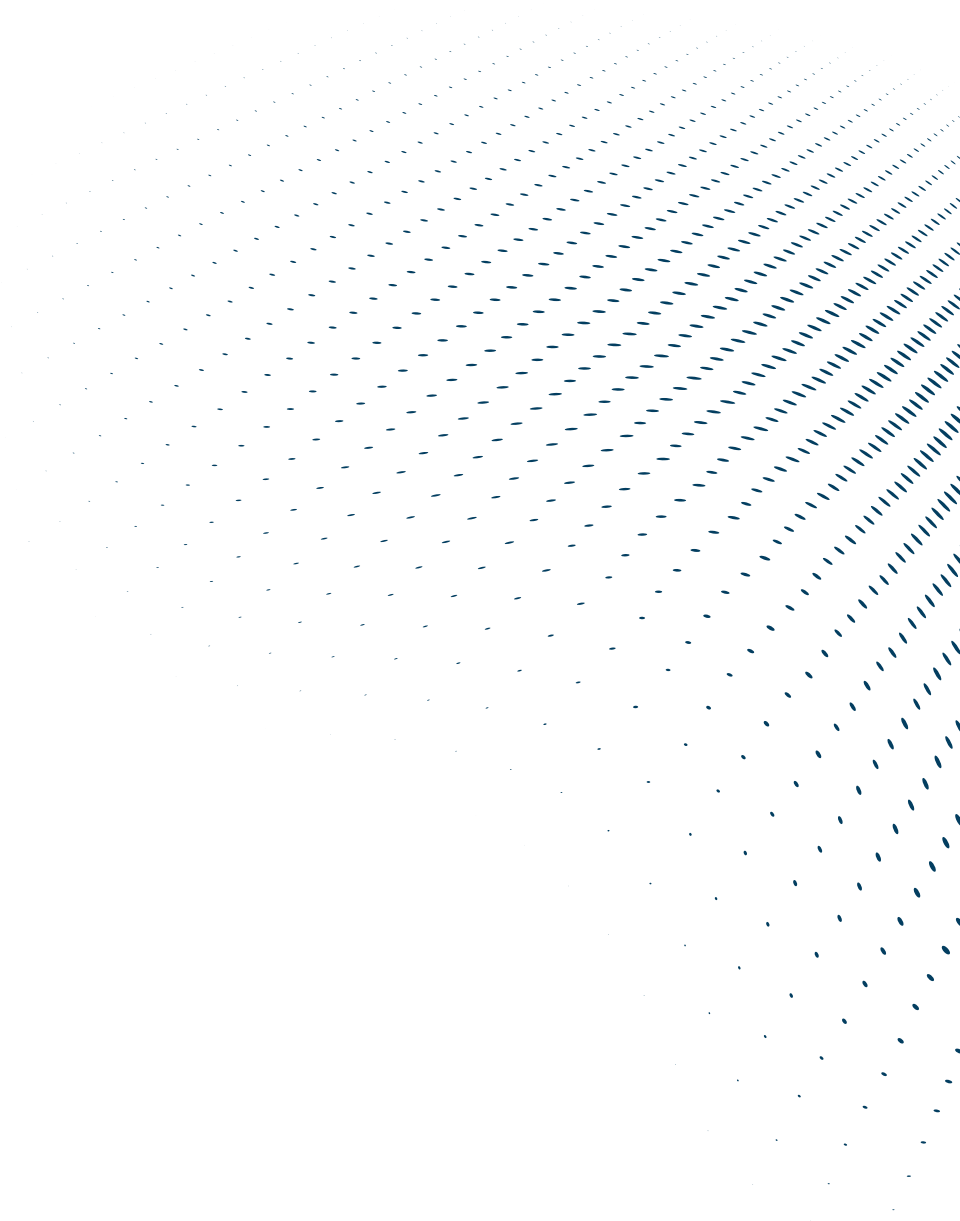


### INDICATOR PERFORMANCE

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 5.

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





# COUNTRY PROFILES





# Afghanistan

Population <sup>1</sup>	35.530.081
Area (km <sup>2</sup> ) <sup>1</sup>	652.860
GDP per capita (USD) <sup>1</sup>	585,85
TPES (Mtoe) <sup>2</sup>	N/A
Energy intensity (toe/10 <sup>3</sup> 2010 USD) <sup>2</sup>	N/A
CO <sub>2</sub> emissions - energy (MtCO <sub>2</sub> ) <sup>2</sup>	N/A

Sources:

1. The World Bank 2017

2. ©OECD/IEA 2017, [www.iea.org/statistics](http://www.iea.org/statistics)

Afghanistan’s overall risk level against the assessed areas is **moderate**.

Among the three EIRA risk areas, *breach of State obligations* is lower compared to *unpredictable policy and regulatory change* and *discrimination between foreign and domestic investors*.

Afghanistan’s performance against EIRA’s four indicators is moderate. It has received a good score of 65 on the indicator *rule of law*. *Foresight of policy and regulatory change* is at 55 points, while *management of decision-making processes* and *regulatory environment and investment conditions* are at 49 and 47, respectively.

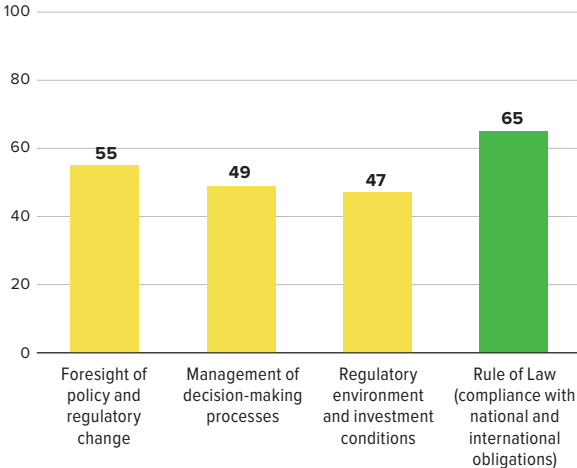
On a more detailed level, Afghanistan’s overall sub-indicator performance is moderate. The highest scoring sub-indicator is *management and settlement of investor-State disputes* at 80 points, followed by *communication of vision and policies* at 73. *Restrictions on FDI* has received 60 points. The performance on the sub-indicators *transparency* (54) and *respect for property rights* (50) is moderate. The score for *institutional governance* stands at 44. Low scores have been obtained on *robustness of policy goals and commitments* (38) and *regulatory effectiveness* (33).

While there are some policies and measures in place, more concrete steps must be taken to strengthen Afghanistan’s performance across all indicators and underlying sub-indicators. Particular attention should be given to enhancing the country’s regulatory effectiveness and increasing the robustness of its policy goals and commitments.

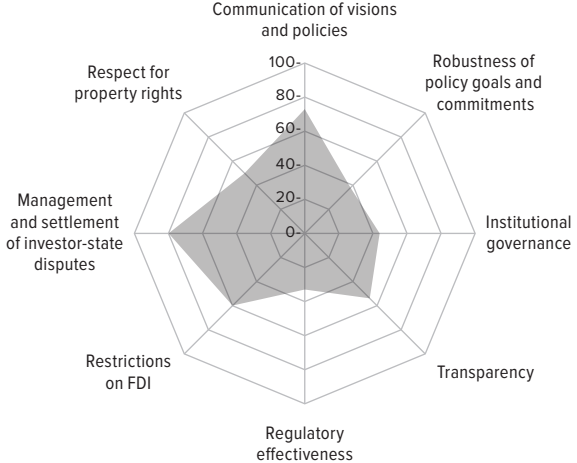
**RISK LEVEL**



**INDICATOR PERFORMANCE**



**SUB-INDICATOR PERFORMANCE**



## Foresight of policy and regulatory change

### QUICK FACTS

The strategic documents for the energy sector are the Afghanistan National Integrated Energy Policy 2016 and the Five Year Energy Sector Self-sufficiency Development Plan 2018-2022 (adopted in 2017).

Afghanistan ratified the Paris Agreement in 2017 and submitted its first NDC.

### STRENGTHS

The Afghanistan National Integrated Energy Policy describes the country's vision for the sector. Enhancing energy security, promoting renewable energy and ensuring rural electrification are the key priorities of the Government. The Five Year Energy Sector Self-sufficiency Development Plan 2018-2022 sets definitive short-term targets for these priorities. The Government has recently adopted the Afghanistan Rural Renewable Energy Strategy 2017-2027 which contains a roadmap for the development of renewable energy in rural areas.

According to the Afghanistan National Integrated Energy Policy, the General Directorate of Energy Sector Projects Supervision, under the Ministry of Energy and Water, is responsible for monitoring the implementation of the energy priorities. It is required to give feedback to the Government in the form of monitoring and evaluation reports. The objectives under the Afghanistan Rural Renewable Energy Strategy are jointly monitored by the Ministry of Energy Water and the Ministry of Rural Rehabilitation and Development through a policy oversight committee.

### AREAS OF IMPROVEMENT

While the Afghanistan National Integrated Energy Policy provides a general outlook for the country, there are few goals set for the future. Without a well-defined end game, the short- and medium-term goals will be stand-alone and may not produce the intended results. This may lead to policy revisions and general unpredictability. To avoid such a situation, the Government should create long-term outcome-oriented targets to shape its short- and medium-term strategies and plans.

The Government should frame and make publically known its monitoring and evaluation process. At present, the policy documents names the authority which will perform this function without explaining the modalities, timeframe and other steps of the process. A structured and properly implemented monitoring mechanism will allow the Government to review its performance and make timely changes to its policies where needed. Moreover, the monitoring results and reports should be made accessible to the public.

## Management of decision-making processes

### QUICK FACTS

The energy sector is under the joint responsibility of the Ministry of Energy and Water, the Ministry of Mines and Petroleum, the Ministry of Rural Rehabilitation and Development, and the Ministry of Finance in coordination with the Ministry of Economics, and the Ministry of Commerce and Industries.

The High Commission on Investment oversees the formulation of the country's investment policies.

The Afghanistan Central Business Registry was established in 2008 as an investment approval authority.

Afghanistan adopted the Law on Access to Information in 2014.

### STRENGTHS

Measures have been taken to coordinate policy-decisions among the different ministries. For instance, the Rural Energy Coordination Committee was created under the joint responsibility of the Ministry of Energy and Water and the Ministry of Rural Rehabilitation and Development. The Committee ensures cooperation between them on issues related to renewable energy technology development and on the other major activities in the sector. Some of the ministries under the High Commission on Investment are involved in framing the country's energy strategy. This helps ensure that the investment and energy policies are synchronised.

The Law on Access to Information stipulates that all information held by the Government is presumed to be public, save for minimal exceptions. The Government has taken proactive measures to increase information access on individual projects. For example, the Ministry of Energy and Water has created the online Renewable Energy Database which provides information to all stakeholders on the location, capacity, finances, and implementation status of different renewable projects.

### AREAS OF IMPROVEMENT

To avoid overlapping decisions and increase accountability, the roles and duties of each ministry, department and committee should be defined and made known to all those involved in the policy-making process. Efforts should be made to streamline coordination between the different ministries, departments and committees. While there are some mechanisms in place, the Government needs to develop a uniform approach to vertical (within ministries) and horizontal (across ministries) cooperation.

Steps should be taken to enhance stakeholder dialogue. Provisions guaranteeing public consultation on draft legislation, policies and regulations should be incorporated in the law. To allow greater participation of local and foreign investors in the policy cycle, the Government must also consider publishing these proposals online and in foreign languages.



## Regulatory environment and investment conditions

### QUICK FACTS

The Energy Services Regulation Department (ESRD) under the Ministry of Energy and Water regulates the electricity market.

The Ministry of Mines and Petroleum is the regulator for the hydrocarbon sub-sector.

The Power Services Regulation Act 2016, the Hydrocarbons Law 2009 and the Hydrocarbons Regulations 2009 create the legal framework for the energy sector.

The Law on Private Investment 2008 was enacted to protect private investment in the country.

### STRENGTHS

The ESRD and the Ministry of Mines and Petroleum have clear legal mandates to oversee the electricity and hydrocarbon sub-sectors. The ESRD is responsible for proposing tariffs, granting licenses, and protecting the interests of electricity consumers. It is also in charge of competition issues related to the electricity sub-sector. This includes preventing activities that distort competition or result in an abuse of the market.

The legal framework of the country encourages foreign investment. The Law on Private Investment grants *fair and equitable treatment* to foreign investors. The Government is taking measures to promote renewable resources, especially solar and hydro power projects. To encourage private investment, the Government offers incentives in the form of project land, tax benefits, a 25 per cent subsidy, and long-term power purchase contracts. Foreign ownership in energy projects is allowed, including the right to hold a majority share. There are no restrictions on the transfer of capital abroad.

### AREAS OF IMPROVEMENT

There should be a clear separation of decision-making and regulatory functions between the ESRD and the Ministry of Energy and Water. Since structural reforms to the ESRD are underway, it is a timely moment for the Government to consider some pertinent issues. As a starting point, efforts should be made to increase the share of revenue from regulatory fees and licenses. The ESRD should also have a clear mandate to allocate its revenue without prior approval of the Government. To further increase its institutional autonomy, the term of office for the board members should be fixed and its renewal limited.

The Law on Private Investment offers the High Commission on Investment the option to restrict investment in natural resources and energy infrastructure, without clear criteria. The Government should re-evaluate the need for such discretionary provisions, which create ambiguity among investors on the level of state intervention in the sector.

## Rule of law

### QUICK FACTS

Afghanistan is a Contracting Party to the Energy Charter Treaty since 2013.

Afghanistan ratified the Convention on the Settlement of Investment Disputes between States and Nationals of Other States in 1968.

Afghanistan ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 2004.

The Law on Private Investment contains provisions protecting property against unlawful expropriation.

### STRENGTHS

The jurisdiction for hearing contractual disputes with foreign investors is defined in the domestic law. Disputes on energy supply activities may be settled through negotiation or by the dispute resolution authority stipulated in the license or contract. The Law on Commercial Arbitration 1995 ensures that foreign arbitral awards are enforced by the local courts. Provisions on voluntary mediation and conciliation are contained in the Code of Civil Procedure 1990. Foreign investors are not required to exhaust local judicial remedies before recourse to international arbitration.

The Law on Private Investment obliges the State to provide prompt, adequate and effective compensation in the case of expropriation. Conditions for expropriation are in conformity with the principles of international law. The compensation for expropriation must be equivalent to the fair market value of the investment or assets. BITs between Afghanistan and other countries, such as Germany and Turkey, classify intellectual property as a type of investment. In general, there are no provisions in national laws or international investment agreements restricting the transfer of technology.

### AREAS OF IMPROVEMENT

Afghanistan should consider establishing an investment ombudsman for resolving conflicts between investors and public authorities. The investment ombudsman should be mandated to impartially process the complaints received from private individuals or companies regarding decisions, actions or omissions of public authorities.

While the domestic law contains provisions against expropriation, there is a need to explain these further. For example, the process for valuation of the compensation should be provided in the law along with the timeframe within which it should be paid. Ideally, the compensation amount can be decided by independent evaluators to ensure it is accurate and unbiased. The inclusion of such provisions will assist in giving clarity and security to investors regarding the legal regime on expropriation.



# Albania

Population <sup>1</sup>	2.873.457
Area (km <sup>2</sup> ) <sup>1</sup>	28.750
GDP per capita (USD) <sup>1</sup>	4.537,86
TPES (Mtoe) <sup>2</sup>	2,19
Energy intensity (toe/10 <sup>3</sup> 2010 USD) <sup>2</sup>	0,17
CO <sub>2</sub> emissions - energy (MtCO <sub>2</sub> ) <sup>2</sup>	3,82

Sources:

1. The World Bank 2017

2. ©OECD/IEA 2017, [www.iea.org/statistics](http://www.iea.org/statistics)

Albania’s overall risk level against the assessed areas is **low**.

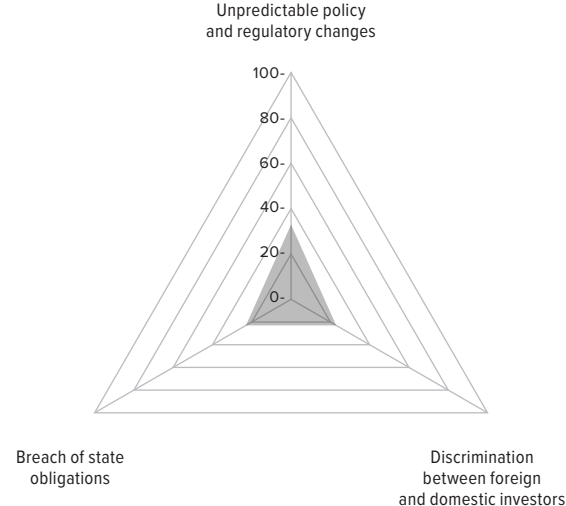
Among the three EIRA risk areas, *discrimination between foreign and domestic investors* and *breach of State obligations* are lower compared to *unpredictable policy and regulatory change*.

Albania’s performance against EIRA’s four indicators is good. It has received a score of 79 on the indicator *management of decision-making processes*, 77 on *rule of law* and 76 on *regulatory environment and investment conditions*. On *foresight of policy and regulatory change* it has scored 46 points.

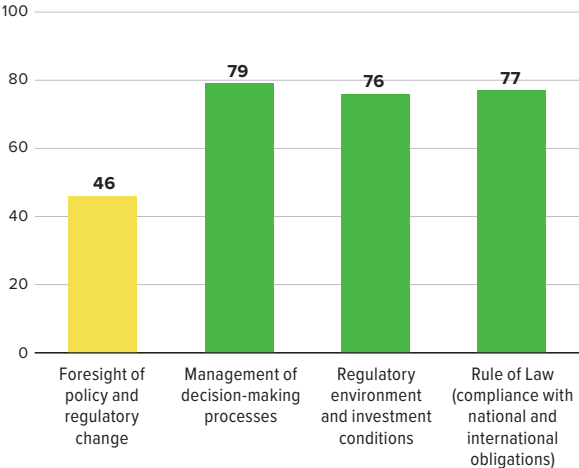
On a more detailed level, Albania’s overall sub-indicator performance is good. The highest scoring sub-indicators are *transparency* and *respect for property rights*, with 83 points. The performance on the sub-indicators *restrictions on FDI* and *institutional governance* is good, at 80 and 75 respectively. *Regulatory effectiveness* has received a score of 72, while *management and settlement of investor-State disputes* is at 70. A moderate score of 50 has been obtained on the sub-indicator *robustness of policy goals and commitments*, followed by *communication of vision and policies* at 41.

While Albania has the relevant policies and measures in place, there is potential for improvement. Attention should be given to better communicating the country’s vision and policies as well as strengthening the robustness of its policy goals and commitments.

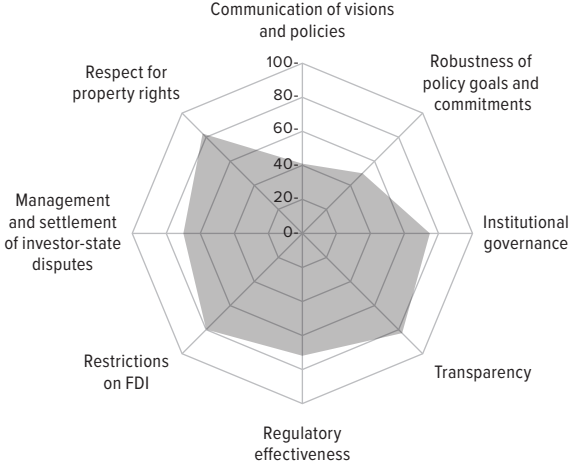
**RISK LEVEL**



**INDICATOR PERFORMANCE**



**SUB-INDICATOR PERFORMANCE**



## Foresight of policy and regulatory change

### QUICK FACTS

The key priorities for the energy sector are identified in the National Strategy for European Integration 2018-2020, the Law no. 43/2015 “On Power Sector” as amended, the National Action Plan for Renewable Energy Resources 2018-2020 and the Second and Third National Energy Efficiency Action Plan 2017-2020.

Law no. 7/2017 “On the Promotion of the Use of Energy from Renewable Sources” was enacted to ensure the sustainable development of the country.

Albania ratified the Paris Agreement in 2016 and submitted its first NDC.

### STRENGTHS

The Government is taking active measures to increase investment and improve the management of the energy sector. The primary policy objectives include achieving affordable, ensuring sustainable and secure energy, increasing renewable energy sources in the final energy consumption and organising an open and competitive market. The Council of Ministers recently adopted the National Energy Strategy for the period 2018-2030.

The Ministry of Infrastructure and Energy is responsible for monitoring the implementation of the energy priorities. In this task, it is assisted by the Strategic Planning and Development Unit which falls under the Prime Minister’s Office. The Law “On Power Sector” envisages that the National Energy Strategy is updated within a maximum period of five years.

### AREAS OF IMPROVEMENT

Efforts should be made to establish quantifiable targets to guide the implementation of the country’s policies. The Government must set ultimate outcomes and legislate accordingly to make its future trajectory resilient to change. This is crucial for issues with long-run implications such as climate change and transition to low carbon energy resources.

Monitoring and assessment mechanisms must be strengthened to ensure the harmonised implementation of national and sectoral policies. The impact of existing measures should be carefully analysed to allow review and improvement.

## Management of decision-making processes

### QUICK FACTS

The Ministry of Infrastructure and Energy drafts the policies for the development of the sector and updates the national energy strategy.

The Ministry of Finance and Economy is responsible for formulating the overall investment policy.

The Albanian Investment Development Agency (AIDA) was established in 2010 to attract foreign investment and increase the competitiveness of the Albanian economy.

Law no. 146/2014 “On Notification and Public Consultation” and Law no. 119/2014 “On The Right to Information” were enacted to enhance the accountability of public authorities.

### STRENGTHS

The legislative power in Albania lies with the National Assembly. The Council of Ministers is mandated by the Law “On Power Sector” to set the overall policies for the electricity sector, based on proposals from the Ministry of Infrastructure and Energy. For the strategies in the area of mining and hydrocarbons, the National Agency of Natural Resources is also consulted. Multiple ministries coordinate on cross-sectoral issues. Legislative proposals must always be accompanied by a report that justifies the financial costs of its implementation.

The right to information is guaranteed in the Constitution. Restriction of the right is only possible for reasons clearly listed in the national legislation. Public bodies are obliged to take the necessary measures to ensure participation of the public and all interested parties in the policy and decision-making process. Laws and regulations are published in the Official Gazette and only take effect after their publication.

### AREAS OF IMPROVEMENT

The Government may consider publishing in the Official Gazette all ministerial decrees and regulations, and making statutes currently available in Albanian also available in other languages, to facilitate information access for foreign investors.

While documents are available in electronic format, the accessibility and usability of the online database should be enhanced. The Government should work towards making it easier to use the information published online in the Official Gazette, which is a practical tool for citizens, legal professionals as well as the public authorities.

## Regulatory environment and investment conditions

### QUICK FACTS

The Albanian Energy Regulatory Authority (ERE) is the regulatory institution for the electricity and natural gas sub-sectors.

The Ministry of Infrastructure and Energy regulates the petroleum sub-sector.

Law no. 7764/1993 “On Foreign Investments” provides a framework for the protection of foreign investors.

Law no. 55/2015 “On Strategic Investments” aims at attracting FDI in strategic sectors by simplifying administrative procedures and services for investors.

### STRENGTHS

The responsibilities of the ERE and the Ministry of Infrastructure and Energy for the respective sub-sectors are clearly stated in the national legislation. The ERE is legally and functionally independent of other public and private entities. It has a dedicated budget and full autonomy to implement it. The members of the ERE are appointed for a fixed term which is renewable only once. The ERE cooperates with the Competition Authority in monitoring competition issues in the energy market.

Albania has generally adopted an open and liberal FDI regime. The legislative framework does not distinguish between domestic and foreign investors. Investment is promoted in energy, which is a strategic sector for Albania with high potential for its economic development. Free movement of capital is permitted, while there are no restrictions on foreign ownership in energy projects.

### AREAS OF IMPROVEMENT

The country should consider lowering restrictions regarding the acquisition of property and the employment of non-Albanian unskilled personnel. An increase in investment can lead to employment generation and better promote national interests.

## Rule of law

### QUICK FACTS

Albania is a Contracting Party to the Energy Charter Treaty since 1998.

The Convention on the Settlement of Investment Disputes between States and Nationals of Other States was ratified by Albania in 1991.

In 2000 Albania ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Law no. 8561/1999 “On Expropriations and Temporary Possession of Private Property for a Public Interest” guarantees the protection of property rights.

### STRENGTHS

National laws provide that disputes between foreign investors and the State may be submitted to the domestic courts or for arbitration. The legislative framework imposes clear time limits on the administrative courts. The exhaustion of local judicial remedies is not required before arbitration proceedings are initiated. Foreign judgments are enforced under the provisions of the Civil Procedure Code. Law no. 10385/2011 “On Mediation in Dispute Resolution” assists interested parties in resolving their disputes through an independent third party mediator.

Expropriation is only permitted for the purpose of public interest and for reasons listed in the law. Further protection against expropriation of foreign investments is provided by the Law “On Foreign Investments”. Disputes related to expropriation between foreign investors and the State may be submitted for resolution to the International Centre for Settlement of Investment Disputes. Intellectual property is considered “investment” under several BITs. In general, there are no restrictions on the transfer of technology.

### AREAS OF IMPROVEMENT

A law governing arbitration should be drafted to provide the framework for arbitral proceedings and encourage the extrajudicial resolution of disputes. Alternative dispute resolution mechanisms can be employed, such as encouraging mediation in disputes involving a public entity.

A formal investment ombudsman or similar institution may be established to handle the complaints of foreign investors against public authorities during the licensing procedures.



# Armenia

Population <sup>1</sup>	2.930.450
Area (km <sup>2</sup> ) <sup>1</sup>	29.740
GDP per capita (USD) <sup>1</sup>	3.936,80
TPES (Mtoe) <sup>2</sup>	3,07
Energy intensity (toe/10 <sup>3</sup> 2010 USD) <sup>2</sup>	0,27
CO <sub>2</sub> emissions - energy (MtCO <sub>2</sub> ) <sup>2</sup>	4,70

Sources:

1. The World Bank 2017

2. ©OECD/IEA 2017, [www.iea.org/statistics](http://www.iea.org/statistics)

Armenia’s overall risk level against the assessed areas is **low**.

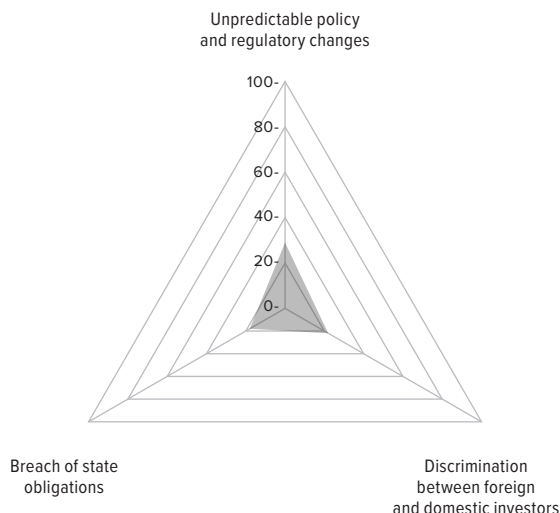
Among the three EIRA risk areas, *breach of State obligations* and *discrimination between foreign and domestic investors* are lower compared to *unpredictable policy and regulatory change*.

Armenia’s performance against EIRA’s four indicators is good. It has received 82 points on the indicator *rule of law* and 81 on *regulatory environment and investment conditions*. *Management of decision-making processes* is at 70 points. On *foresight of policy and regulatory change* it has scored 62 points.

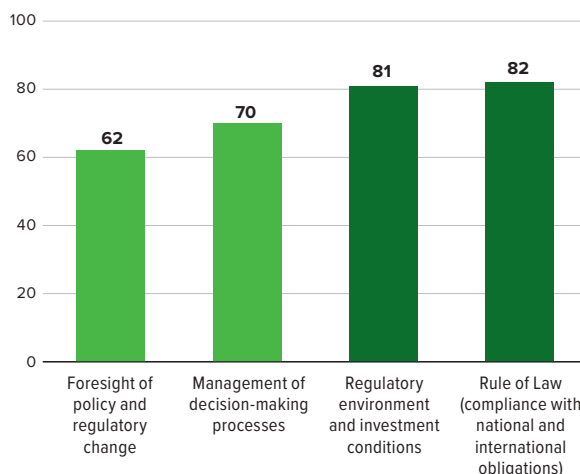
On a more detailed level, Armenia’s overall sub-indicator performance is good. The highest scoring sub-indicator is *restrictions on FDI* with 90 points. *Transparency* and *respect for property rights* have scored 83 points, followed by *communication of vision and policies* at 82. The sub-indicator *management and settlement of investor-State disputes* has a score of 80 while *regulatory effectiveness* has received 72 points. *Institutional governance* stands at 56. Performance on the sub-indicator *robustness of policy goals and commitments* is at 41.

While Armenia has the relevant policies and measures in place, there is potential for improvement. Attention should be given to increasing the robustness of its policy goals and commitments.

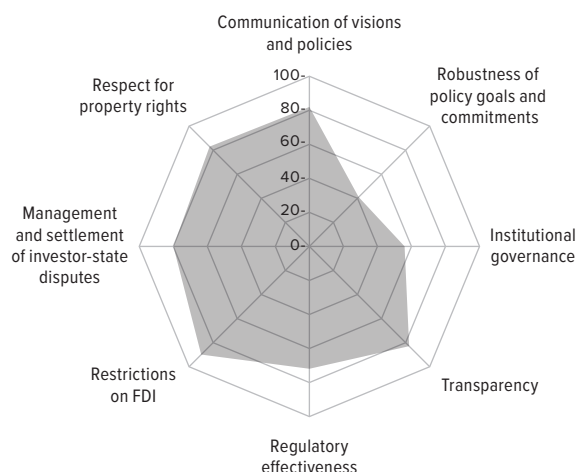
### RISK LEVEL



### INDICATOR PERFORMANCE



### SUB-INDICATOR PERFORMANCE



## Foresight of policy and regulatory change

### QUICK FACTS

The policies governing Armenia's energy sector are the Concept Note on Ensuring Energy Security 2013, the Strategic Program of Prospective Development for 2014-2025, the National Program on Energy Saving and Renewable Energy 2007, and the Development Pathways (up to 2036) for the Energy Sector 2013.

Armenia ratified the Paris Agreement in 2017 and submitted its first NDC.

### STRENGTHS

The main aspiration of Armenia's energy policy is to ensure energy security. Short-, medium- and long-term targets have been set for enhancing energy efficiency, power reliability and access to energy. The Government has framed long-term investment strategy documents that offer clear guidance on the energy sub-sectors which need investment and are considered strategic for the country. In particular, the development of nuclear energy and the efficient use of renewable resources are key priorities.

Monitoring and evaluation mechanisms for the energy policies are in place. The Ministry of Energy Infrastructures and Natural Resources reviews the implementation of the Second National Energy Efficiency Action Plan for 2015-2020. The review is based on the measurement and evaluation of energy savings. A report on the assessment is submitted to the Prime Minister who gives final remarks.

### AREAS OF IMPROVEMENT

Data collection and monitoring of the energy priorities should be conducted by an authority which is independent of the lead ministry. Similarly, individual programmes and projects should be evaluated by entities not involved in their management or implementation. This will provide greater credibility and robustness to the monitoring mechanisms. It will also give assurance to all interested stakeholders that the policies are being executed as planned.

## Management of decision-making processes

### QUICK FACTS

The Ministry of Energy Infrastructures and Natural Resources is responsible for developing and implementing energy policies.

The Ministry of Economic Development and Investments manages the country's investment policy formulation process.

*Business Armenia*, established by the Government in 2015, acts as a single window for investment and also provides information on the energy sector.

Law no. HO-11-N/2003 "On Freedom of Information" ensures that the public has access to information held by governmental authorities.

### STRENGTHS

The decision-making process in Armenia is collaborative. Various ministries and governmental departments participate in the development of energy policies. Administrative units, known as Marzes, may also be consulted on specific issues such as spatial planning. Coordination is ensured through working groups which are created on a need basis. The Department of Investment Attraction and Coordination, within the Ministry of Economic Development and Investments, is in charge of executing the state policy for the investment sector.

Access to information is recognised in the Constitution and can only be denied in situations specified by law. All laws are printed in the Official Journal of the Republic of Armenia. They are also available on the websites of the Ministry of Justice and the Parliament. Additionally, the Public Services Regulatory Commission (PSRC) publishes its decisions online. There is provision for public consultation on draft legislation, including detailed procedures for disseminating these drafts to the public and the timelines for consultations.

### AREAS OF IMPROVEMENT

Measures can be taken to facilitate the ease of doing business for foreign investors. The Government may consider publishing official translations of all relevant energy strategy documents, legislation and regulations. This will allow investors to get accurate and up to date information on the policy trajectory and investment framework of the country. Moreover, the Government may provide pre- and post-investment services through *Business Armenia*. Its scope could be expanded to include business registration as well as granting permits and licences for energy related activities.



## Regulatory environment and investment conditions

### QUICK FACTS

The PSRC is responsible for regulating the energy sector.

The State Nuclear Safety Regulatory Committee coordinates activities on the use of nuclear energy.

The State Commission for Protection of Economic Competition deals with competition issues for all the sectors.

Law no. AI-115/1994 “On Foreign Investments” grants protection to investors.

### STRENGTHS

The energy regulatory set-up in Armenia is robust. The PSRC exercises independence in its functions and has the right to frame its organisational rules. Members of the PSRC are appointed for a fixed term of five years. The budget of the PSRC is determined annually by Law no. LA-137/1997 “On the Budgetary System” of the Republic of Armenia. Granting budgetary approval is the prerogative of the Parliament. The PSRC is also accountable to the Parliament for all its other activities.

Currently, there are no restrictions to FDI in the energy sector. Foreign investors may hold a majority stake in energy projects and employ non-Armenian personnel. There are no limitations on the repatriation of profits or investment related capital. All licensing procedures for undertaking activities in the energy sector have been streamlined by the PSRC. Furthermore, the Government has established the Centre for Strategic Initiatives which is responsible for developing and providing support to specific investment projects.

### AREAS OF IMPROVEMENT

The financial and institutional autonomy of the PSRC should be enhanced. For instance, it should be granted greater freedom in the allocation of its budget. Moreover, limits should be imposed on the re-appointment of its members. This will increase accountability and improve the transparency of its management.

The Government has effected amendments and reforms to its energy laws and policies with the aim of attracting foreign investment in the sector. To ensure these reforms produce the intended results, the necessary pre-conditions should be created for their smooth implementation. This is particularly relevant to the execution of the country’s electricity market liberalisation programme.

## Rule of law

### QUICK FACTS

Armenia is a Contracting Party to the Energy Charter Treaty since 1998.

The Convention on the Settlement of Investment Disputes between States and Nationals of Other States was ratified by Armenia in 1992.

Law no. HO-110-N/2018 “On Code of Civil Procedure” came into effect in April 2018.

Law no. HO-185-N/2006 “On the Property of Public and State Needs” defines the conditions for the alienation of property for public and state needs.

### STRENGTHS

The Law “On Civil Procedure Code” grants foreign investors the right to bring disputes before domestic courts. Investors can appeal against regulatory decisions to the PSRC. Administrative courts are bound to deliver decisions within thirty days from the registration of the petition. National laws allow the recognition and enforcement of foreign judgements on a reciprocal basis. Alternate dispute resolution mechanisms, such as mediation, are encouraged by the Government.

Property rights are protected under the Constitution. Expropriation is only permitted as an extreme measure in case of emergency declared by the law and ordered by a court. The process for valuating compensation is defined in the Law “On the Property of Public and State Needs.” It also sets a timeframe within which the compensation should be effected. Armenia protects intellectual property rights under its national laws and in its BITs. For instance, the BIT signed with the United States of America protects intellectual property as a form of investment.

### AREAS OF IMPROVEMENT

The Government may consider establishing an investment ombudsman to which foreign investors can refer disputes with public authorities. As an alternative, the Government may empower *Business Armenia* with mediation functions to amicably settle post-investment disputes.



# Bangladesh

Population <sup>1</sup>	164.669.751
Area (km <sup>2</sup> ) <sup>1</sup>	147.630
GDP per capita (USD) <sup>1</sup>	1.516,51
TPES (Mtoe) <sup>2</sup>	37,87
Energy intensity (toe/10 <sup>3</sup> 2010 USD) <sup>2</sup>	0,24
CO <sub>2</sub> emissions - energy (MtCO <sub>2</sub> ) <sup>2</sup>	70,47

Sources:

1. The World Bank 2017

2. ©OECD/IEA 2017, [www.iea.org/statistics](http://www.iea.org/statistics)

Bangladesh’s overall risk level against the assessed areas is **moderate**.

Among the three EIRA risk areas, *discrimination between foreign and domestic investors* and *unpredictable policy and regulatory change* are lower compared to *breach of State obligations*.

Bangladesh’s performance against EIRA’s four indicators is moderate. It has received 65 points on *management of decision-making processes*. Two indicators, namely *regulatory environment and investment conditions* and *foresight of policy and regulatory change* scored 58 and 56, respectively. The score for the *rule of law* indicator is 45.

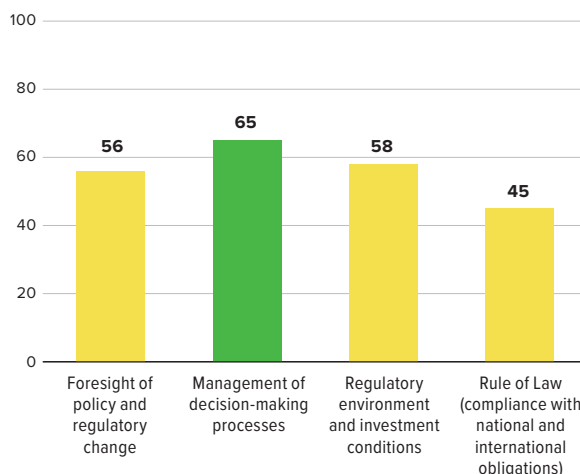
On a more detailed level, Bangladesh’s overall sub-indicator performance is moderate. The highest scoring sub-indicator is *transparency* with 68 points. It is followed by *communication of vision and policies* and *regulatory effectiveness* at 67. On *management and settlement of investor-State disputes* the score is 65. *Institutional governance* stands at 63 points. The *restrictions on FDI* sub-indicator has a moderate score of 50 while *robustness of policy goals and commitments* is at 45. The lowest scoring sub-indicator is *respect for property rights* with 25 points.

While there are some policies and measures in place, more concrete steps must be taken to strengthen Bangladesh’s performance across all indicators and underlying sub-indicators. Particular attention should be given to re-enforcing the respect for property rights.

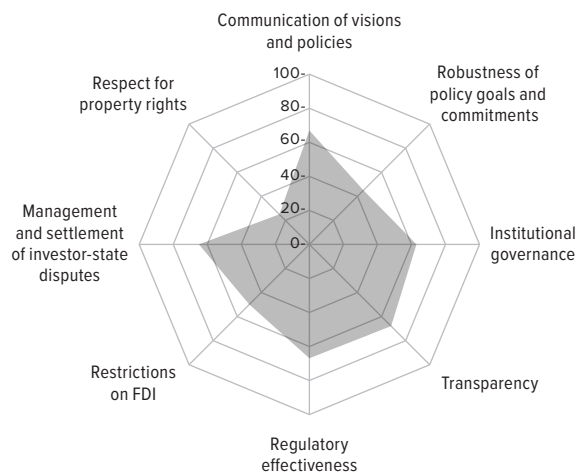
### RISK LEVEL



### INDICATOR PERFORMANCE



### SUB-INDICATOR PERFORMANCE



## Foresight of policy and regulatory change

### QUICK FACTS

The strategic documents for Bangladesh's energy sector are the Vision 2021 (published in 2006) and the Energy Roadmap to Help Achieve Vision 2041 (published in 2016).

The main sub-sectoral action plans are the Power System Master Plan 2016 and the Energy Efficiency and Conservation Master Plan up to 2030 (published in 2015).

### STRENGTHS

The short- and medium-term targets are well articulated. The over-arching Five Year Plan provides the timeframe for executing the country's energy policy. Emphasis is on increasing the use of renewable energy technology and introducing clean resources to the energy mix. Achieving the best global energy intensity is one of the primary aims of the Government. The NDC submitted by Bangladesh is comprehensive with details of contributions from various sectors including power, transport and industry (energy related).

Policies and action plans contain provisions for their periodic review. In the case of the Power System Master Plan, a report is required every five years. Transparent and inclusive review processes are encouraged. The evaluation of the Energy Efficiency and Conservation Masterplan is undertaken by a Joint Coordination Committee, consisting of public agencies and non-governmental stakeholders. The results are published on the website of the Sustainable and Renewable Energy Development Authority.

### AREAS OF IMPROVEMENT

The policy process, from ascertaining goals to their implementation and evaluation, needs to be continual. A time lag between the short- and long-term targets should be avoided.

There are few quantifiable long-term goals for priority issues. Further work must be undertaken on identifying and setting the key performance indicators for the energy sub-sectors. Ultimate outcomes should be developed in line with the existing short- and medium-term targets.

Policy impact assessment processes should be made widely applicable. By evaluating the policy cycle, the Government will be able to assess the economic, social, environmental feasibility of its decisions and whether policies will, in fact, achieve the intended result. This approach is especially relevant to Bangladesh since it is in the process of formulating new regulations for the transition to clean technologies.

## Management of decision-making processes

### QUICK FACTS

The Ministry of Power, Energy and Mineral Resources is the central authority responsible for formulating, implementing and monitoring the country's energy strategy.

Investment policies are under the direct supervision of the Prime Minister's Office.

The Bangladesh Investment Development Authority (BIDA) was established in 2016 as an investment promotion and facilitation agency.

Bangladesh enacted the Right to Information Act in 2009.

### STRENGTHS

The law-making process in Bangladesh is straightforward. The Parliament has exclusive power to initiate and pass legislation. The role of each ministry is stipulated in the law. Detailed legal provisions mandate inter-ministerial consultation on cross-cutting issues.

Information from public authorities is available and accessible. Conditions for limiting access are defined in the domestic legislation. The Right to Information Act provides for an appeal mechanism in case a request for information is denied. Non-governmental institutions are encouraged to participate in the decision-making process.

### AREAS OF IMPROVEMENT

Since the BIDA is at a nascent stage, its mandate vis-à-vis other existing approval authorities needs to be clarified. This entails creating a framework for the upcoming one-stop shop service and determining its implementation in practice.

Efforts should be made to develop tools for stakeholder engagement during different stages of the policy cycle. Instead of ad hoc consultations, the methods and timelines for public participation should be decided at an early stage and made publically known. This will boost the confidence of investors in the Government and promote cooperation.

## Regulatory environment and investment conditions

### QUICK FACTS

The Bangladesh Energy Regulatory Commission (BERC) regulates the electricity, natural gas, and petroleum sub-sectors. The BERC falls under the authority of the Ministry of Power, Energy and Mineral Resources.

The Bangladesh Atomic Energy Commission (BAEC) regulates the nuclear sector for certain issues.

The Foreign Private Investment (Promotion & Protection) Act 1980 was enacted to protect foreign investment.

### STRENGTHS

The BERC is a statutory body. Its existence, composition and powers can be altered only by amending the governing law, the BERC Act 2003. The Chairman and members of the BERC are appointed based on professional competence and integrity. It enjoys functional independence and is entitled to adopt its personnel policy, management rules, and salary structure. It is accountable to the Comptroller & Auditor General and the Parliament.

The legislative framework generally supports foreign investment. The Foreign Private Investment (Promotion and Protection) Act grants fair and equitable treatment to foreign investors. FDI is encouraged in all activities except in reserved industries such as nuclear energy. There are no restrictions on foreign ownership in energy projects. Full repatriation of capital invested through foreign sources is permitted.

### AREAS OF IMPROVEMENT

Functions of the BERC and other regulatory bodies (such as the Competition Commission and the BAEC) should be streamlined to avoid overlaps in decision-making and operations.

Policies and actions must focus on empowering the BERC to improve outcomes. To ensure seamless leadership, the Chairperson and the members should be appointed without delay. Additionally, measures may be taken to increase the share of operating revenue in the BERC fund and to reduce reliance on Government resources and loans.

In practical terms, foreign investors frequently find it necessary to have a local partner though it is not a statutory requirement. Access to more information on conducting local business and on the various investment procedures can increase the ease of doing business for foreign investors.

## Rule of law

### QUICK FACTS

Access to arbitration is provided in the Arbitration Act 2001.

Bangladesh ratified the Convention on the Settlement of Investment Disputes between States and Nationals of Other States in 1980.

Bangladesh acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 1992.

Provisions against expropriation of immovable property are stated in the Acquisition and Requisition of Immovable Property Act 2017.

### STRENGTHS

Enforcement of foreign arbitral awards by domestic courts is efficient. Local courts enforce foreign judgements from reciprocating territories such as England, India, Pakistan, and Singapore. Voluntary mediation and conciliation are available as part of the Code of Civil Procedure 1908. The Government has not made any retroactive changes to its laws in the last five years. National laws do not mandate the exhaustion of local judicial remedies.

Expropriation on the grounds of public interest is only permitted as an extreme measure declared by law and ordered by a court. Compensation for the acquisition of immovable property must be paid within 60 working days. Some BITs, such as with Germany, also provide a timeframe within which compensation for expropriation must be provided to investors. There are several laws in place for protecting intellectual property rights. BITs with various countries, such as Austria, Belgium & Luxembourg, and Germany define “investment” to include intellectual property. In general, there are no statutory provisions restricting technology transfer.

### AREAS OF IMPROVEMENT

Systemised and effective case management measures need to be in place. Timelines for domestic courts to render decisions should be stated in the law.

An investment ombudsman may be established for resolving conflicts between investors and public authorities. The Bangladesh International Arbitration Centre at times helps settle issues for investors, but its scope is limited to capacity building of the country's arbitration sector.

Explicit provisions on the conditions of expropriation are needed in national laws. Usually, parties consult independent auditors to determine the fair value of an expropriated or nationalised investment. This may be made a statutory requirement rather than a market practice. Stipulations could be added in the law for granting protection to intangible property such as equity, shares and intellectual property.



# Belarus

Population <sup>1</sup>	9.507.875
Area (km <sup>2</sup> ) <sup>1</sup>	207.600
GDP per capita (USD) <sup>1</sup>	5.726,03
TPES (Mtoe) <sup>2</sup>	25,27
Energy intensity (toe/10 <sup>3</sup> 2010 USD) <sup>2</sup>	0,43
CO <sub>2</sub> emissions - energy (MtCO <sub>2</sub> ) <sup>2</sup>	53,20

Sources:

1. The World Bank 2017

2. ©OECD/IEA 2017, [www.iea.org/statistics](http://www.iea.org/statistics)

Belarus' overall risk level against the assessed areas is **low**.

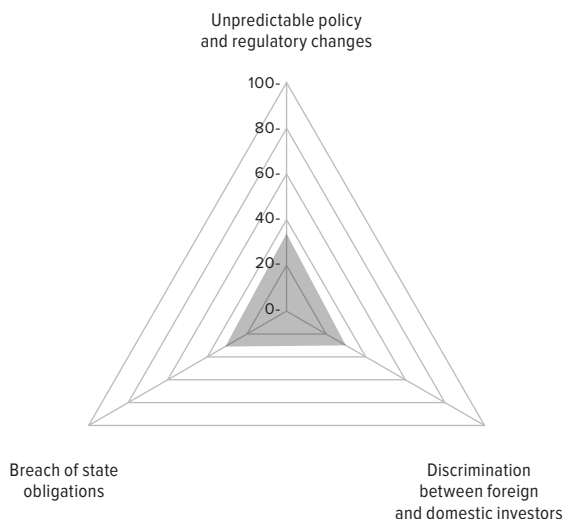
The three EIRA risk areas, *breach of State obligations*, *discrimination between foreign and domestic investors* and *unpredictable policy and regulatory change* are on the same level.

Belarus' performance against EIRA's four indicators is good. It has obtained a score of 72 on *management of decision-making processes*, followed by *regulatory environment and investment conditions* and *rule of law*, both at 69. *Foresight of policy and regulatory change* is at 57 points.

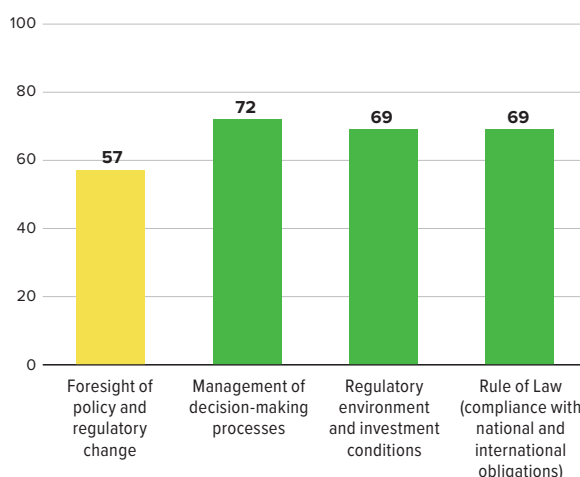
On a more detailed level, Belarus' overall sub-indicator performance is good. The highest scoring sub-indicator is *restrictions on FDI* with 100 points. *Management and settlement of investor-State disputes* (85) and *transparency* (75) have also received good scores. *Institutional governance* stands at 69, while *communication of vision and policies* has scored 65 points. The sub-indicator *respect for property rights* has a moderate score of 53 and *robustness of policy goals and commitments* is at 48 points. *Regulatory effectiveness* is the lowest scoring sub-indicator with 39 points.

While Belarus has the relevant policies and measures in place, there is potential for improvement. Attention should be given to enhancing the regulatory effectiveness of the country.

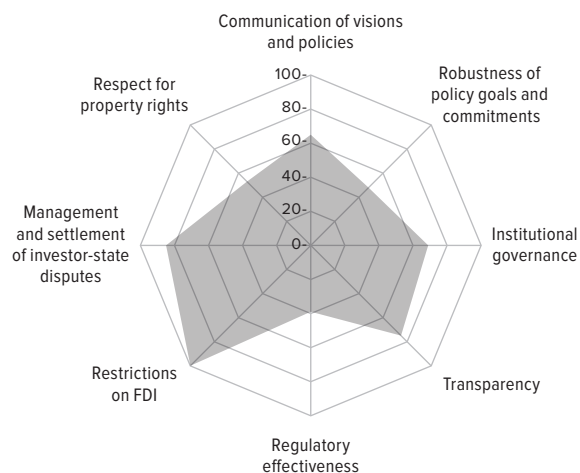
### RISK LEVEL



### INDICATOR PERFORMANCE



### SUB-INDICATOR PERFORMANCE



## Foresight of policy and regulatory change

### QUICK FACTS

The key strategy documents for Belarus are the Concept of Energy Security till 2035 (approved in 2015), the Comprehensive Plan for the development of the electric power industry for the period up to 2025 (approved in 2016), and the National Strategy for Sustainable Socio-Economic Development up to 2020 (approved in 2004).

The National Academy of Sciences monitors the implementation of the energy strategy.

Belarus ratified the Paris Agreement in 2016 and submitted its first NDC.

### STRENGTHS

Short-, medium- and long-term targets have been set for the main priorities such as energy security, power reliability and cross-border cooperation. The sub-sectoral focus is on enhancing energy efficiency and promoting renewable resources. The NDC submitted by Belarus provides details of expected greenhouse gas emission reductions from various sectors, including power, agriculture and industrial processes. Environmental protection targets for the period up to 2025 are envisaged in the Environment Protection Strategy of Belarus adopted in 2011.

There are multiple ministries and institutions that collaborate on monitoring the implementation of the country's energy strategy. The National Academy of Sciences, the Ministry of Economy, the Ministry of Energy, the State Standardization Committee, the Belarusian State Concern for Oil and Chemistry, regional executive committees and the Minsk City Executive Committee monitor the progress on all indicators related to energy security. They provide annual reports on their work to the National Academy of Sciences of Belarus. The Academy then submits to the Council of Ministers a summary on the status of the indicators as well as recommendations for improving the performance.

### AREAS OF IMPROVEMENT

Belarus should develop a coherent and long-term investment plan which encompasses the energy sector. It must include performance indicators for all sub-sectors, highlight those with the most potential and indicate the programmes and interventions to attract the needed investment.

In light of the Government's commitment to reduce carbon intensity, long-term targets should be defined for carbon reduction in the energy sector. This is especially crucial since the sector currently accounts for the largest share of carbon emissions.

Institutional reforms should be implemented to make the monitoring authorities independent of the policy-making bodies. This will enhance transparency and reduce opacity in the policy evaluation process.

## Management of decision-making processes

### QUICK FACTS

The President holds the exclusive right to all strategic decisions in the energy sector.

The Ministry of Energy is responsible for preparing the country's energy policy.

The Ministry of Economy implements the investment policies and programmes.

The National Agency for Investments and Privatization (NAIP), established in 2011, acts as a single window for enquiries regarding investment in various sectors, including energy.

### STRENGTHS

The Government has the prerogative to initiate legislation. Provincial institutions provide consultative and advisory support. A number of ministries and regulatory bodies contribute to the formulation of energy policies. Inter-ministerial consultation during the decision-making process is mandated in the law.

Law no. 361-3/2000 "On Normative Legal Acts of the Republic of Belarus" facilitates access to information. All legal and regulatory information is centralised and accessible online, as well as in print. Information about energy tariffs is available on the website of the Ministry of Energy. The main strategy documents and enacted laws are available in Russian.

### AREAS OF IMPROVEMENT

Information sharing, consultation and dialogue with a broad set of stakeholders should be proactively encouraged. Timely notification and consultation on policy objectives will allow interested parties to understand the rationale behind the decisions taken and will reduce the risk of prolonged discussions during the later stages of the policy cycle.

The role of the NAIP can be more well-defined. For instance, its functions as a one-stop shop should be improved and increased, and the services rendered made widely known to investors.



## Regulatory environment and investment conditions

### QUICK FACTS

The Ministry of Energy is responsible for regulating the energy sector.

The Ministry of Antimonopoly Regulation and Trade deals with competition issues across all sectors including energy.

Law no. 53-3/2013 “On Investments” envisages *fair and equitable treatment* to domestic and foreign investors.

### STRENGTHS

The key regulatory functions and obligations of the Ministry of Energy are stipulated in Resolution no. 1595/2001 “On approval of the Regulation on the Ministry of Energy of Belarus.” The ministry is audited by the State Control Committee of Belarus.

*Fair and equitable treatment* to foreign investors is guaranteed in the national laws and most BITs. There are no restrictions on foreign ownership in energy projects, except where the Government has an exclusive right, such as the nuclear sub-sector. Foreign investors are also granted unrestricted transfer of capital and free convertibility of currencies.

### AREAS OF IMPROVEMENT

Belarus should pursue its efforts to establish an independent energy regulator, separate from the Ministry of Energy. Autonomy of the regulator will ensure distance from any potential undue influence and will promote public confidence in the regulatory framework.

In the case of investment agreements which grant specific privileges to investors, business plans need to be submitted to the Government for technical evaluation. To avoid the perception of discretionary choices the Government may consider clarifying the eligibility criteria for availing these benefits.

## Rule of law

### QUICK FACTS

Belarus signed the Energy Charter Treaty in 1994.

Access to arbitration is provided for in Law no. 279/1999 “On International Arbitration Courts.”

Belarus ratified the Convention on the Settlement of Investment Disputes between States and Nationals of Other States in 1992.

Belarus became a member state of the World Intellectual Property Organisation in 1970.

### STRENGTHS

Dispute resolution is carried out in an efficient manner. National courts are obliged to deliver their decisions within specified time limits. The enforcement of foreign arbitral awards is guaranteed under domestic law. The Government has enacted Law no. 58-3/2013 “On Mediation” to promote alternate dispute resolution mechanisms. There have been no retroactive legislative changes in the last few years.

Property rights are protected under the Constitution. The Law “On Investments” provides guarantees against the expropriation of foreign investments. Nationalisation or requisition of foreign assets is subject to the timely payment of compensation. The formulation of the term “investment” in most of the country’s BITs is broad and includes movable and intangible property. There are no limitations imposed on the transfer of technology.

### AREAS OF IMPROVEMENT

Belarus should consider establishing an investment ombudsman in order to efficiently resolve conflicts between foreign investors and public authorities. This will enable the parties to reach a swift settlement instead of engaging in protracted judicial or arbitral proceedings.

Domestic laws should include well-defined grounds for expropriation, clauses explaining the process for determining the compensation amount as well as a timeframe for effecting the compensation.



# Bosnia and Herzegovina

Population <sup>1</sup>	3.507.017
Area (km <sup>2</sup> ) <sup>1</sup>	51.210
GDP per capita (USD) <sup>1</sup>	5.180,64
TPES (Mtoe) <sup>2</sup>	8,03
Energy intensity (toe/10 <sup>3</sup> 2010 USD) <sup>2</sup>	0,44
CO <sub>2</sub> emissions - energy (MtCO <sub>2</sub> ) <sup>2</sup>	22,24

Sources:

1. The World Bank 2017

2. ©OECD/IEA 2017, [www.iea.org/statistics](http://www.iea.org/statistics)

Bosnia and Herzegovina’s (BiH) overall risk level against the assessed areas is **moderate**.

Among the three EIRA risk areas, *breach of State obligations* and *discrimination between foreign and domestic investors* are lower compared to *unpredictable policy and regulatory change*.

BiH’s performance against EIRA’s four indicators is moderate. It has received a good score of 75 on the indicator *regulatory environment and investment conditions* and 58 on the indicator *rule of law*. On the *management of decision-making processes* indicator, it has scored 46 while *foresight of policy and regulatory change* is at 30 points.

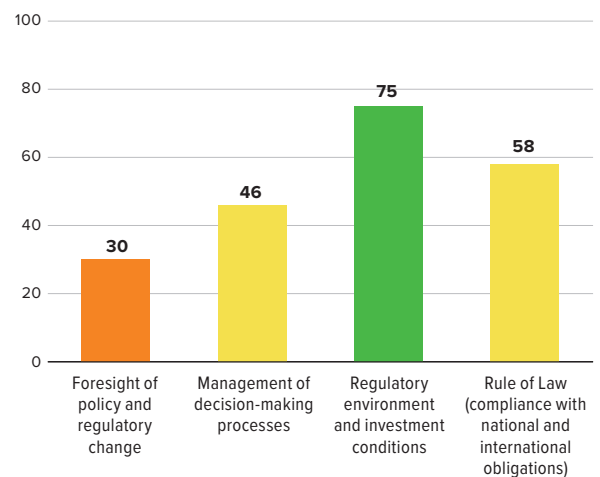
On a more detailed level, BiH’s overall sub-indicator performance is moderate. The highest scoring sub-indicator is *restrictions on FDI* with 80 points. *Management and settlement of investor-State disputes* (75), *regulatory effectiveness* (70) and *transparency* (67) have received good scores. The sub-indicator *respect for property rights* is at 42, followed by *robustness of policy goals and commitments* at 32 points. On *communication of vision and policies* the score is low (29). *Institutional governance* is the lowest scoring sub-indicator with 25 points.

While there are some policies and measures in place, more concrete steps must be taken to strengthen BiH’s performance across all indicators and underlying sub-indicators. Particular attention should be given to strengthening the country’s institutional governance.

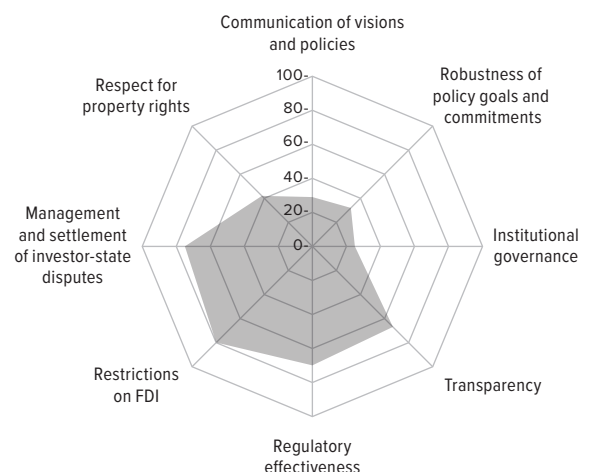
### RISK LEVEL



### INDICATOR PERFORMANCE



### SUB-INDICATOR PERFORMANCE



## Foresight of policy and regulatory change

### QUICK FACTS

BiH is a decentralised country comprising a national government (the State), the two political entities of the Republika Srpska and the Federation of Bosnia and Herzegovina (FBiH), and the independent local Brčko District.

The State-level Renewable Energy Action Plan of BiH (published in 2016) brings together the renewable energy strategy of the political entities.

In 2012 the Republika Srpska adopted an energy policy until 2030.

BiH ratified the Paris Agreement in 2017 and submitted its first NDC.

### STRENGTHS

The primary energy priorities for BiH include safe and reliable electric power supply, environmental protection, and lower dependence on fossil fuels. To this end, investments in renewable energy are encouraged through policy interventions and support schemes.

The National Renewable Energy Action Plan includes a monitoring and evaluation process. It requires the Ministry of Foreign Trade and Economic Relations of BiH to prepare a review report. This report should be based upon information from the entities regarding the realisation of their respective action plans, as well as the implementation status on the State-level.

### AREAS OF IMPROVEMENT

Harmonised and comprehensive energy targets, with timelines for their achievement, must be set on the entity level. The State, in turn, should integrate and translate these into measurable national targets.

Existing laws need to be updated in compliance with the country's international commitments. The Governments on the State and entity level are urged to expedite the adoption of draft laws and policies, in particular, the Framework Energy Strategy of BiH Until 2035 and the draft legislation for the electricity and gas sub-sectors.

A rigorous, evidence-based impact assessment of existing and new policies should be undertaken. Synchronised guidelines and processes for monitoring policy implementation should be developed across all governmental levels.

## Management of decision-making processes

### QUICK FACTS

The Ministry of Industry, Energy and Mining of Republika Srpska plans and manages the electric power strategy in the Republika Srpska.

The Federal Ministry of Energy, Mining and Industry formulates energy policies for the FBiH.

The FBiH is divided into ten cantons each of which has distinct regulations on local energy generation.

All governmental levels have enacted legislation facilitating access to information.

In 2004 the Foreign Investment Promotion Agency (FIPA) was established on the State-level to attract and increase FDI.

### STRENGTHS

Law-making involves the State, the two political entities and the Brčko District. On the State-level, the Ministry of Foreign Trade and Economic Relations of BiH takes the lead in formulating policies for the energy sector. Though ministerial coordination is not a legal requirement, inter-sectoral working groups may be created for exchanging information on policy decisions, as well as on issues of regulatory oversight and compliance.

All adopted legal acts enter into force after publication in the Official Gazette of the State, the entities and the Brčko District. Rules of procedure for the individual legislative bodies foresee the participation of interested stakeholders and their input before the adoption of draft laws. In general, legal and regulatory information is made available on the websites of the competent institutions.

### AREAS OF IMPROVEMENT

Due to the complex constitutional structure of BiH, proactive efforts are needed to improve coordination between the Parliaments of the State, the political entities and the Brčko District. Common standards should be developed for sharing information between the different governmental levels.

Measures may be taken to give more information to investors on the licensing and approval processes in the entities. While the FIPA provides the overarching framework for investment promotion in the country, one-stop shops should be established on the municipal level to provide local assistance to investors and facilitate the ease of doing business.

Legal documents should be made more widely accessible. Investors should receive quality information, preferably in foreign languages.

## Regulatory environment and investment conditions

### QUICK FACTS

The State Electricity Regulatory Commission (SERC) is responsible for transmission of electricity, transmission system operation and international trade in power.

The Federal Commission for Energy Regulation (FERK) is the principal regulatory authority in the FBiH.

The Regulatory Commission for Energy of Republika Srpska (RERS) regulates the electricity market in the Republika Srpska.

The Law on the Policy of Foreign Direct Investment 1998 regulates the participation of foreign investors in BiH.

### STRENGTHS

Though the regulatory setup of BiH is complex, efforts are being made by the State and the entities to streamline it. The governing laws of the SERC, FERK and the RERS have been harmonised to ensure continuous delivery of electricity. The regulatory authorities have a degree of functional independence from their respective Governments. Laws exist to ensure accountability and transparency in regulatory decisions.

Attracting FDI is a priority for BiH. Foreign investors are granted legal protection under national laws and international treaties. The Law on the Policy of Foreign Direct Investment of BiH 1998 accords foreign investors the same rights as domestic investors. It grants the right to hold a majority stake in energy projects and transfer abroad investment-related capital, payments and profits. The entities have enacted laws giving similar rights to foreign investors.

### AREAS OF IMPROVEMENT

Regulatory processes should be simplified and their uniform application ensured across entities, cantons and municipalities. This will help avoid contradiction in regulations for conducting local business. It is also important to make existing regulations and proposed reforms widely known to investors.

## Rule of law

### QUICK FACTS

BiH ratified the Energy Charter Treaty in 2001.

The Convention on the Settlement of Investment Disputes between States and Nationals of Other States was ratified by BiH in 1997.

BiH succeeded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 1993.

### STRENGTHS

In general, the dispute management and settlement processes are effective. Alternate dispute resolution mechanisms, such as mediation, are encouraged. Disputes arising between foreign investors and the State may be resolved in domestic courts or through international arbitration directly, without the requirement of exhausting local dispute resolution mechanisms. International law forms an integral part of the country's legal system. Treaties ratified by BiH prevail over domestic legislation in the case of any contradiction.

Laws exist on the entity level to protect private property against expropriation. In most International Investment Agreements of BiH, intellectual property rights are considered a form of investment and the provisions on expropriation refer to all investments. Neither the State nor the entities have expropriated any foreign investment in recent years.

### AREAS OF IMPROVEMENT

An investment ombudsman may be established to address the grievances of foreign investors. Such a forum may reduce the risk of dispute escalation and also assist in representing the viewpoint of foreign investors to the Government.

Protection against the expropriation of intangible property may be strengthened further under the domestic laws. At present, on the entity level, the expropriation laws grant protection only to real estate or immovable property.

The State and the entities may explain more explicitly in their respective laws the term "public purpose" in the case of expropriation. While the right of countries to determine what constitutes "public purpose" is paramount, at the same time a very broad or ambiguous formulation should be avoided.



# Chad

Population <sup>1</sup>	14.899.994
Area (km <sup>2</sup> ) <sup>1</sup>	1.284.000
GDP per capita (USD) <sup>1</sup>	669,89
TPES (Mtoe) <sup>2</sup>	N/A
Energy intensity (toe/10 <sup>3</sup> 2010 USD) <sup>2</sup>	N/A
CO <sub>2</sub> emissions - energy (MtCO <sub>2</sub> ) <sup>2</sup>	N/A

Sources:

1. The World Bank 2017

2. ©OECD/IEA 2017, [www.iea.org/statistics](http://www.iea.org/statistics)

Chad’s overall risk level against the assessed areas is **moderate**.

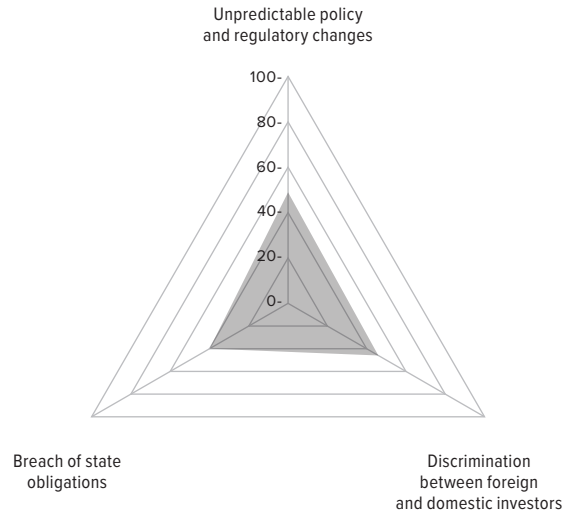
Among the three EIRA risk areas, *breach of State obligations* is lower compared to *discrimination between foreign and domestic investors* and *unpredictable policy and regulatory change*.

Chad’s performance against EIRA’s four indicators is moderate. It has received a score of 60 on the indicator *rule of law* and 52 on the indicator *regulatory environment and investment conditions*. On the *management of decision-making processes* indicator, it has scored 49 while *foresight of policy and regulatory change* is at 44 points.

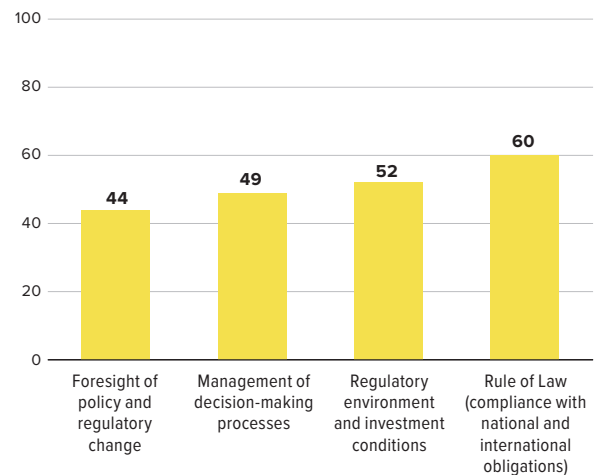
On a more detailed level, Chad’s overall sub-indicator performance is moderate. The highest scoring sub-indicator is *management and settlement of investor-State disputes* with 70 points. *Restrictions on FDI* is at 60. *Transparency* (53) and *respect for property rights* (50) have a moderate score. The sub-indicator *communication of vision and policies* is at 47, followed by *institutional governance* and *regulatory effectiveness* at 44. *Robustness of policy goals and commitments* has the lowest score with 40 points.

While there are some policies and measures in place, more concrete steps must be taken to strengthen Chad’s performance across all indicators and underlying sub-indicators. Particular attention should be given to increasing the robustness of the country’s policy goals and commitments.

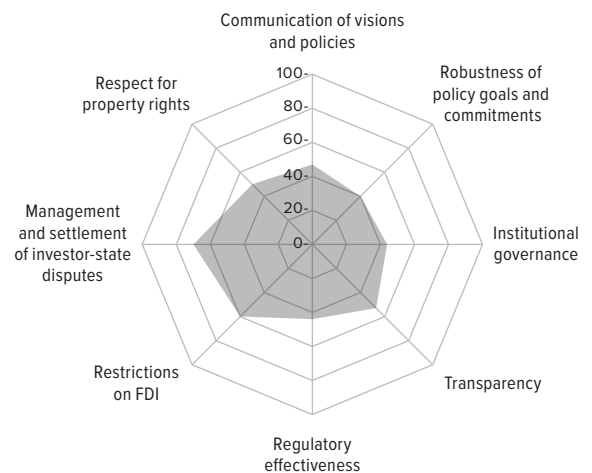
### RISK LEVEL



### INDICATOR PERFORMANCE



### SUB-INDICATOR PERFORMANCE



## Foresight of policy and regulatory change

### QUICK FACTS

The primary strategy document for Chad is Vision 2030, The Chad We Want (published in 2017). The operational planning document for this vision is the National Development Plan 2017-2021.

Chad ratified the Paris Agreement in 2017 and submitted its first NDC.

### STRENGTHS

Vision 2030 states the broad social and economic aspirations of Chad. It outlines the energy priorities of the country, such as strengthening energy security, achieving self-sufficient electricity production and increasing the overall competitiveness of the sector. The National Development Plan promotes the Public-Private Partnership model for mobilising resources and developing the energy sector. It reinforces the commitment of Chad to reach the UN Sustainable Development Goals, particularly relating to climate change. It also highlights the need to access new and renewable energy sources.

The National Development Plan is required to undergo annual, mid-term and final monitoring based on an in-depth analysis of its performance measurements. The Plan envisages an implementation mechanism consisting of steering and operational bodies, and a monitoring system. To better evaluate results, each objective of the Plan is given a specific mechanism that is compatible with the overall system.

### AREAS OF IMPROVEMENT

The Government should create a dedicated strategy document for the energy sector. Presently, Chad has an overarching national development strategy which defines the energy objectives of the country but does not specify targets for their achievement. A detailed energy strategy can give investors a better understanding of the Government's policy trajectory and how it intends to pursue its objectives.

There is a need to define quantifiable targets with baselines and a timeframe for their achievement. Work should be undertaken on ascertaining the short- and medium-term targets for the energy sub-sectors. Long-term targets should be high-level and progressive. They must build on the short-term targets.

Regular reporting of the monitoring and evaluation findings is encouraged. Monitoring bodies should ensure that the review reports give an unbiased account of the progress made on the achievement of the energy goals. The reports should be made available to all interested parties and stakeholders.

## Management of decision-making processes

### QUICK FACTS

The Parliament of Chad comprises a unicameral legislature (National Assembly).

The Ministry of Petroleum and Energy is responsible for formulating the energy policies.

The National Agency of Investments and Exports was created in 2007 to provide business facilitation services to investors.

Chad enacted Law no. 18/PR/2016 related to transparency and good governance.

### STRENGTHS

The law-making process in Chad is straightforward. Adoption of laws, including for the energy sector, is the prerogative of the National Assembly. There are lead ministries responsible for guiding the implementation of the country's energy and investment strategies. In practice, these ministries collaborate on the policies related to their sectors.

All laws are published in the Official Gazette upon enactment. Some initiatives have been taken by the public authorities to make legal information more widely available and accessible. For instance, the Government has recently committed to making the existing upstream licences accessible online. The participation of non-governmental institutions is encouraged to increase accountability.

### AREAS OF IMPROVEMENT

Instruments must be designed for improving inter-ministerial coordination at different stages of the policy-making process. The manner and timeframe for undertaking consultation should be decided at an early stage and made known to all relevant bodies. In particular, there should be coordination between the policymakers and the implementation authorities. This will allow the Government to produce consistent and realistic decisions.

Accessibility to laws and regulations, particularly in the oil and gas sub-sector, should be increased. While the Government is making some modifications to this end, the Ministry of Petroleum and Energy could consider publishing annual reports on developments in exploration, production, investments and the legal framework.

A one-stop approval authority can be established and empowered to take decisions and grant approvals for energy projects. At present, requests for permits and licences in the energy sector may be directed only to the Ministry of Petroleum and Energy.



## Regulatory environment and investment conditions

### QUICK FACTS

Under the supervision of the Ministry of Petroleum and Energy, the Regulatory Authority of the Electric Power Sector (ARSEE) is responsible for the electricity sub-sector.

The Downstream Petroleum Regulatory Authority of Chad (ARSAT) regulates downstream petroleum activities.

Law no. 006/PR/2008 establishes the Investment Charter of Chad.

### STRENGTHS

The mandate and responsibilities of the ARSEE and the ARSAT are stated in the domestic law. The State Inspectorate- General "Inspection Générale d'État" and an audit chamber of the Supreme Court ensure transparency and accountability in the country. Yearly administrative and financial audits of the different Government departments are undertaken. In 2018, the audit chamber of the Supreme Court was created to increase independent oversight of Government decisions.

Chad's policies towards FDI are favourable. The Investment Charter establishes equal treatment for all private investors, whether local or foreign. It also offers incentives to foreign companies with operations in the country. Though Chad has limited BITs in force, they accord investors of the Contracting States with *most favoured nation* as well as *fair and equitable treatment*. State participation is not compulsory in upstream projects.

### AREAS OF IMPROVEMENT

Structural changes should be implemented to increase the institutional, functional and financial independence of the regulatory authorities. For instance, the criteria for the appointment and dismissal of the regulatory commissioners must be stated in the law and widely publicised. Legislation must recognise the right of the regulators to set their budget, salaries of the commissioners and other issues related to their personnel policy. The establishment of independent regulatory agencies will aid in improving the investment environment of the energy sector.

Steps may be taken to create a coherent local content framework. Some legislation, particularly in the petroleum sub-sector, contain measures for enhancing local participation. However, there is a need to design a local content policy which is broad-based and supports the country's socio-economic policies and programmes.

## Rule of law

### QUICK FACTS

Chad has been a signatory and a Contracting Party to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States since 1966.

Chad became a member of the WTO in 1996.

Chad is a member of the OHADA.

### STRENGTHS

As a member of the OHADA, Chad has harmonised its business laws to guarantee legal and judicial security for investors in the other member countries. The enforcement of an international arbitration award is allowed in accordance with the OHADA guidelines. The OHADA's Uniform Act on Arbitration encourages investors to resolve disputes through alternate dispute resolution mechanisms.

The Constitution prohibits seizure of private property except in cases of urgent public need. The Land Law 1967 contains clear stipulations on the determination and payment of compensation in the case of expropriation. It is noteworthy that there has been no expropriation of foreign-owned property in recent years. Chad is a member of the African Intellectual Property Organization and guarantees protection to various forms of intellectual property. The BIT with Benin also grants protection to intellectual property rights.

### AREAS OF IMPROVEMENT

Measures should be taken to develop effective case management mechanisms. Judicial decisions must be delivered in a time-bound manner to avoid delays and lengthy procedures. Alternative dispute resolution mechanisms can be encouraged in conflicts involving governmental authorities.

An investment ombudsman may be established to facilitate relations between foreign investors and public entities, and to resolve issues between them. It may also be instrumental in representing the views of foreign investors to the Government.



# Croatia

Population <sup>1</sup>	4.125.700
Area (km <sup>2</sup> ) <sup>1</sup>	56.590
GDP per capita (USD) <sup>1</sup>	13.294,51
TPES (Mtoe) <sup>2</sup>	8,40
Energy intensity (toe/10 <sup>3</sup> 2010 USD) <sup>2</sup>	0,14
CO <sub>2</sub> emissions - energy (MtCO <sub>2</sub> ) <sup>2</sup>	15,51

Sources:

1. The World Bank 2017

2. ©OECD/IEA 2017, [www.iea.org/statistics](http://www.iea.org/statistics)

Croatia’s overall risk level against the assessed areas is **low**.

Among the three EIRA risk areas, *breach of State obligations* and *discrimination between foreign and domestic investors* are lower compared to *unpredictable policy and regulatory change*.

Croatia’s performance against EIRA’s four indicators is good. It has received a score of 74 on the indicator *rule of law*. *Regulatory environment and investment conditions* has a score of 69, followed by *management of decision-making processes* at 68 points. The score for *foresight of policy and regulatory change* is 49.

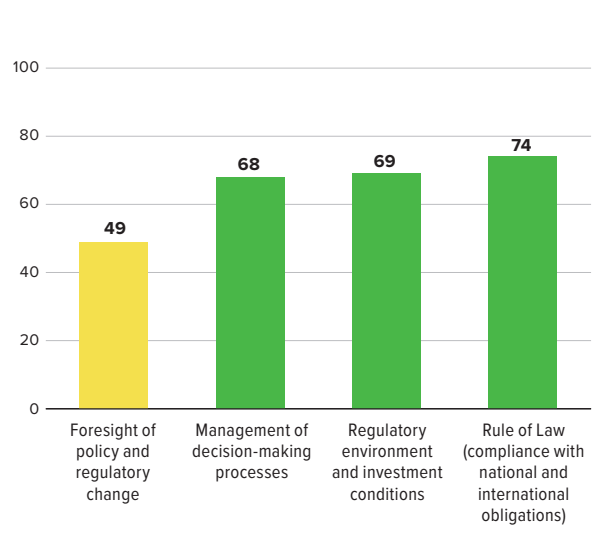
On a more detailed level, Croatia’s overall sub-indicator performance is good. The highest scoring sub-indicator is *respect for property rights* with 83 points. The performance on *transparency* (74) and *regulatory effectiveness* (72) is also good. The sub-indicators *restrictions on FDI* and *management and settlement of investor-State disputes* have scored 65 points each, while *institutional governance* stands at 63. A moderate score of 49 has been obtained on the sub-indicator *communication and vision of policies*. Performance on *robustness of policy goals and commitments* is at 48 points.

While Croatia has the relevant policies and measures in place, there is potential for improvement. Attention should be given to better communicating its vision and policies as well as strengthening the robustness of its policy goals and commitments.

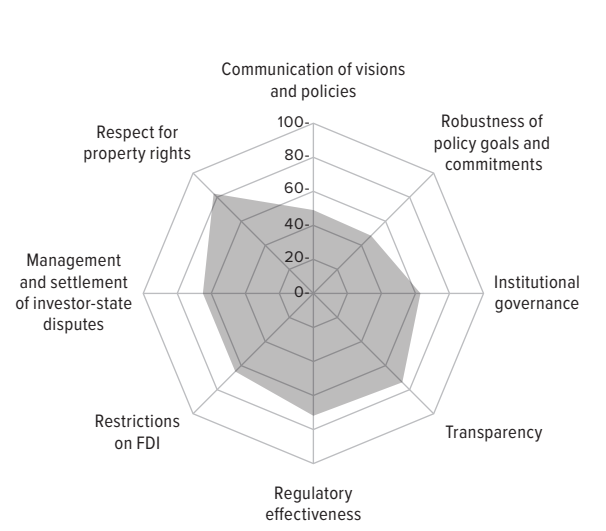
**RISK LEVEL**



**INDICATOR PERFORMANCE**



**SUB-INDICATOR PERFORMANCE**



## Foresight of policy and regulatory change

### QUICK FACTS

In 2009 Croatia published its primary energy strategy document, the Energy Strategy 2020. The Government is currently preparing a new energy strategy with a vision for 2030 and 2050.

The Energy Act 2012 regulates measures to ensure secure and reliable energy supply and efficient power generation.

### STRENGTHS

Diversification of energy resources is a key priority for Croatia. To achieve this objective, the Government intends to expand its natural gas market. Access to new technologies at competitive prices is considered essential. Croatia aims at replacing, as far as possible, fossil fuels with renewable energies. It has already achieved the national target of 20 per cent energy from renewable sources of gross final energy consumption before the stipulated year 2020.

To implement the Energy Strategy 2020, tasks have been allocated to the central, regional and local self-government. The Ministry of Environment and Energy monitors the progress made on the energy targets. It publishes annual reports to inform domestic and foreign investors about the main developments in the sector. All ministries are required to prepare regulatory impact assessment reports evaluating the effect of proposed laws on the economy, society, environment, and the sustainable development of the country.

### AREAS OF IMPROVEMENT

Since Croatia is framing a long-term energy strategy document, certain issues need to be taken into account. Future goals should be set in line with the existing ones to ensure they are seamless and coordinated. Climate change and decarbonisation goals should be integrated with the more traditional energy objectives, such as energy security.

Measures should be taken to translate the main priorities into binding action plans with defined responsibilities, deadlines and monitoring mechanisms. This approach will help provide clarity regarding the entire policy process, from agenda setting to its execution and evaluation.

## Management of decision-making processes

### QUICK FACTS

The main body responsible for implementing and monitoring the energy goals is the Ministry of Environment and Energy.

Investment related issues fall under the Ministry of Economy, Entrepreneurship and Crafts.

The Agency for Investments and Competitiveness (AIK) was established in 2012 under the Ministry of Economy as an investment promotion and facilitation agency.

Croatia enacted the Act on the Right of Access to Information in 2003.

### STRENGTHS

The law-making process in Croatia is clear. The right to initiate legislation rests with parliamentary representatives and the Government. Multiple ministries are involved in framing policies for the energy sector. Informal consultations are conducted on the ministerial level and between relevant government departments.

According to the Constitution, it is mandatory to discuss draft laws and regulations publicly. All proposals, save in special circumstances, must go through a public consultation procedure, during which interested parties may provide comments and recommendations. Access to information from public authorities cannot be restricted except for reasons defined in legislation. Time limits are established for public authorities to provide the requested information.

### AREAS OF IMPROVEMENT

The Government may consider identifying and repealing overlapping laws. Presently, the energy sector is governed by multiple primary legislation, sub-laws and rules. Additionally, there are special laws and secondary frameworks for regulating certain matters. This may give investors the impression that the sector is over-regulated.

Efforts can be made to increase the availability of laws and judicial decisions, both online and in print. To facilitate the ease of doing business for local and foreign investors, the official translations of laws and strategic documents in foreign languages may be developed.

## Regulatory environment and investment conditions

### QUICK FACTS

The Croatian Energy Regulatory Agency (HERA) is the authority in charge of regulating energy activities.

The Croatian Hydrocarbon Agency (CHA) is responsible for monitoring the exploration and exploitation of hydrocarbons.

Competition issues are dealt with by the Croatian Competition Agency.

The Strategic Investment Project Act 2018 regulates the criteria and application procedure for “strategic” investment projects.

### STRENGTHS

The HERA is an autonomous body. Its structure and mandate cannot be altered without amending the governing law, the Act on the Regulation of Energy Activities 2004. It enjoys functional independence and can adopt its personnel policy and management rules. It is financed exclusively through its activities and does not receive monies from the State budget. Similar to the HERA, the CHA is a statutory body with the right to set up its own management rules.

The legislative framework generally supports foreign investment. Projects with a strategic status may receive certain benefits, such as shortened procedures for administrative issues and step-by-step guidance from the AIK. There are no limitations on ownership of energy projects by foreign investors. Full repatriation of capital invested through foreign sources is permitted.

### AREAS OF IMPROVEMENT

Presently, the final decision on whether a project qualifies as strategic rests with the Government. To increase transparency, the role of the Government in this regard may be reduced. Decisions classifying individual projects as strategic should include detailed information on the evaluated parameters. Moreover, efforts should be made to define the implementation and monitoring mechanisms for such projects. Their economic, human resource and environmental feasibility of projects must be assessed before being declared strategic.

## Rule of law

### QUICK FACTS

Croatia ratified the Energy Charter Treaty in 1997.

Croatia ratified the Convention on the Settlement of Investment Disputes between States and Nationals of Other States in 1998.

Provisions against expropriation of immovable property are stated in the Expropriation and Determining of Compensation Act 2014.

### STRENGTHS

Disputes between foreign investors and the State may be resolved in domestic courts or through international arbitration directly, without the requirement of exhausting local dispute resolution mechanisms. National courts enforce foreign judgements on a reciprocal basis. Arbitration and mediation mechanisms are encouraged and incorporated into the law.

There are detailed provisions for calculating the timelines and the amount of compensation that must be paid by the Government for the acquisition of immovable property. Domestic laws exist for the protection of intellectual property rights. BITs with countries such as Albania, Argentina, Iran and Canada, define the term “investment” broadly to include movable property, financial stocks and goodwill. In general, there are no statutory provisions restricting technology transfer.

### AREAS OF IMPROVEMENT

Systemised and effective dispute management measures need to be in place. Timelines for domestic courts to render decisions should be stated in the law and followed through. Moreover, an investment ombudsman may be established to address the grievances of foreign investors and provide advisory services.

The Expropriation and Determining of Compensation Act provides the general framework for expropriation. However, there are concurrent special laws in place which also contain provisions on this issue. This may lead to confusion for investors not acquainted with the country’s legal system regarding the conditions of expropriation applicable to them. For this reason, efforts may be made to streamline the laws and reduce fragmentation.



# Eswatini

Population <sup>1</sup>	1.367.254
Area (km <sup>2</sup> ) <sup>1</sup>	17.360
GDP per capita (USD) <sup>1</sup>	3.224,39
TPES (Mtoe) <sup>2</sup>	N/A
Energy intensity (toe/10 <sup>3</sup> 2010 USD) <sup>2</sup>	N/A
CO <sub>2</sub> emissions - energy (MtCO <sub>2</sub> ) <sup>2</sup>	N/A

Sources:

1. The World Bank 2017

2. ©OECD/IEA 2017, [www.iea.org/statistics](http://www.iea.org/statistics)

Eswatini’s\* overall risk level against the assessed areas is **moderate**.

Among the three EIRA risk areas, *unpredictable policy and regulatory change* is lower compared to *discrimination between foreign and domestic investors* and *breach of State obligations*.

Eswatini’s performance against EIRA’s four indicators is moderate. It has received a score of 76 on the indicator *foresight of policy and regulatory change*. *Management of decision-making processes* stands at 60 and *regulatory environment and investment conditions* is at 57 points. On *rule of law* it has scored 44.

On a more detailed level, Eswatini’s overall sub-indicator performance is moderate. The highest scoring sub-indicator is *communication of vision and policies* with 77 points followed by *robustness of policy goals and commitments* and *institutional governance*, both at 75. The performance on the sub-indicators *restrictions on FDI* is at 70 and *management and settlement of investor-State disputes* is at 55 points. *Regulatory effectiveness* and *transparency* have received scores of 44. A low score of 33 has been obtained on the sub-indicator *respect for property rights*.

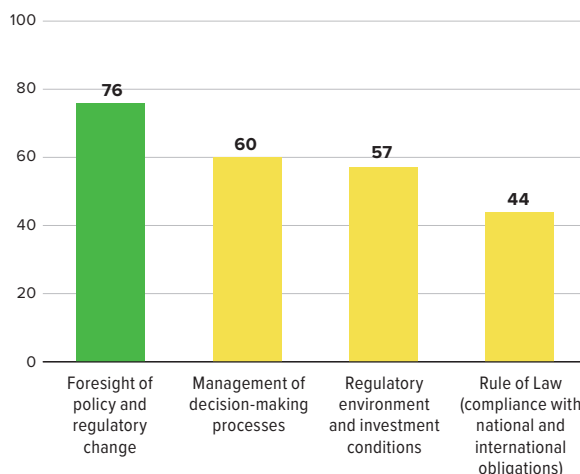
While there are some policies and measures in place, more concrete steps must be taken to strengthen Eswatini’s performance across all indicators and underlying sub-indicators. Particular attention should be given to re-enforcing the respect for property rights, strengthening regulatory effectiveness and increasing transparency.

\*The country has officially changed its name from Swaziland to the Kingdom of Eswatini in 2018.

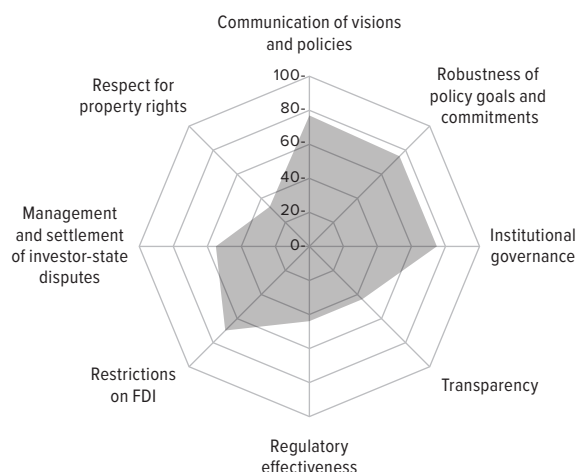
### RISK LEVEL



### INDICATOR PERFORMANCE



### SUB-INDICATOR PERFORMANCE



## Foresight of policy and regulatory change

### QUICK FACTS

The National Development Strategy 2022 (adopted in 1999) is the long-term policy for the country's economic development.

The National Energy Policy 2003 (updated in 2018) and the National Energy Policy Implementation Strategy 2018 serve as primary energy policy documents for the electricity and petroleum sub-sectors until 2030.

The National Climate Change Policy 2016 provides the policy framework for climate change risk management.

### STRENGTHS

The three strategic pillars of Eswatini's energy sector are energy efficiency, energy access and research and development. The priorities for the sector include ensuring adequate security of energy supply, utilising efficient technologies and reducing energy poverty. The climate objectives have been formulated and aligned with the national energy policies. Eswatini is committed to reducing its carbon emissions and to achieving high-level targets for power generation from renewable energy sources by 2030.

The National Energy Policy designates the Ministry of Natural Resources as the lead authority responsible for monitoring and evaluation. The cross-sectoral monitoring responsibility has been entrusted to the Ministry of Economic Planning and the Policy and Programme Coordination Unit under the Prime Minister. The SE4All Action Agenda for Eswatini divides the duties between different domestic and foreign institutions in tracking the implementation status of the SE4All priority actions.

### AREAS OF IMPROVEMENT

Although the country has recently updated its key priorities and objectives for the energy sector and has prepared plans for their execution, further efforts are needed to develop ultimate targets for some areas, particularly power reliability, job creation and innovation. The existence of quantifiable goals, together with appropriate monitoring and review mechanisms, will assist in tracking progress towards the objectives and will enhance policy predictability.

Since energy efficiency is considered a pillar of the country's energy policy, the adoption of a cross-sectoral energy efficiency strategy and an action plan would further strengthen the country's capability to achieve its priorities and help exploit synergies between energy sub-sectors.

## Management of decision-making processes

### QUICK FACTS

The Ministry of Natural Resources and Energy is the central authority responsible for the overall energy policy formulation process.

The Ministry of Commerce, Industry and Trade is responsible for developing policies that encourage local and foreign investment in the country.

The Eswatini Investment Promotion Authority (SIPA), established in 1998, acts as a single window providing information on administrative permits, company registrations and investment opportunities.

### STRENGTHS

The responsibilities of each ministry are defined in the law. The Inter-Ministerial Committee, chaired by the Minister of Natural Resources and Energy, has been constituted to coordinate the implementation of the SE4All Country Action Plan. The Government is currently undertaking structural reforms to increase the efficiency and effectiveness of public institutions and streamline the policy-making processes in the energy sector.

Laws and regulations are easily accessible on private websites. Legal information is centralised in the country's Official Gazette. In general, proposed laws are published in the Official Gazette and stakeholders are granted 30 days to comment on them. All policies and laws are available in English.

### AREAS OF IMPROVEMENT

Efforts must be made to adopt a law on transparency which would increase accessibility to government-held information. Legislation should ensure maximum disclosure of information, clearly define the exceptions to such disclosure and provide user-friendly access procedures.

Eswatini has informal processes, structures and guidelines in place for soliciting stakeholder input in the development of laws and policies. However, to avoid the perception of opacity, the Government should ensure that stakeholder engagement, during all stages of the policy and law-making cycle, is provided for in the national legislation. This will make the decision-making mechanisms more credible.



## Regulatory environment and investment conditions

### QUICK FACTS

The Swaziland Energy Regulatory Authority (SERA) has been established by the Energy Regulatory Act no. 2 of 2007 to regulate the electricity sub-sector.

The Minerals Management Board (MMB), under the Ministry of Natural Resources and Energy, manages the extractive industry and executes the provisions of the Mines and Minerals Act no. 4 of 2011.

The Swaziland Investment Promotion Act no. 1 of 1998 provides for non-discriminatory treatment between domestic and foreign investors.

### STRENGTHS

The SERA and the MMB exercise a certain degree of independence, such as the right to collect fees from their licensing activities. The SERA also has a dedicated budget for its activities. The functions and roles of these authorities are explicitly stated in their respective governing laws. The laws also stipulate the rules and criteria for the appointment of their Boards of Directors.

The Swaziland Investment Promotion Act provides for the freedom and protection of investment. The national framework gives the right to establish businesses, own and dispose of up to 100 per cent ownership of a business in the energy sector, except for mining projects. Investment capital is freely transferable on submission of appropriate documentation to the Central Bank, subject to domestic taxation.

### AREAS OF IMPROVEMENT

Greater institutional and functional autonomy could be granted to SERA and MMB to strengthen their mandates and efficiency. For instance, public confidence in the regulatory framework would increase if the regulatory authorities were made accountable to the Parliament instead of the relevant Ministry. The appointment of the Board members should be based on skills, relevance and merit. It should be conducted through transparent procedures and not be subject to political nominations.

Eswatini may consider framing a dedicated investment law. Consolidated legislation on investment can give broad coverage to investors' rights and obligations and address issues such as equal treatment of investors or access to ISDS mechanisms and mediation.

## Rule of law

### QUICK FACTS

Eswatini ratified the Settlement of Investment Disputes between States and Nationals of Other States in 1971.

Investor-State dispute settlement is available under the Swaziland Investment Promotion Act and the Arbitration Act no. 24 of 1904.

The Constitution protects the right to property against illegal deprivation.

### STRENGTHS

Commercial and contractual disputes are handled in the magistrate courts or the High Court. The Electricity Disputes Tribunal hears complaints against the decisions of the SERA. Eswatini is a forerunner in the enactment of arbitration rules. National laws do not require the exhaustion of local judicial remedies before recourse to international arbitration. Moreover, in the event of a dispute arising between an investor and the State, the investor may also submit the dispute to the High Court.

The law prohibits expropriation unless for "public purpose" and upon prompt payment of adequate and fair compensation. According to the Constitution, investors cannot be deprived of their property without a decision of the domestic courts. In general, there are no restrictions on the transfer of technology.

### AREAS OF IMPROVEMENT

While it is commendable that Eswatini enacted its Law on Arbitration as early as 1904, the Government may consider modernising it to reflect current legal practices. For example, reference to arbitral rules of international institutions, clarity on the role of domestic courts in arbitral proceedings, and defined rules on transparency will enhance investors' confidence in the legal framework and equip the Government to effectively deal with investment disputes.

Provisions stating the conditions of expropriation and the procedure for effecting compensation should be incorporated in national laws. At present, expropriation is allowed only for "public purpose". However, the criteria for what qualifies as "public purpose" and who will decide whether these criteria are fulfilled should be explained. This will assist in providing protection to investors and give clarity on the legal regime.



# The Gambia

Population <sup>1</sup>	2.100.568
Area (km <sup>2</sup> ) <sup>1</sup>	11.300
GDP per capita (USD) <sup>1</sup>	483,02
TPES (Mtoe) <sup>2</sup>	N/A
Energy intensity (toe/10 <sup>3</sup> 2010 USD) <sup>2</sup>	N/A
CO <sub>2</sub> emissions - energy (MtCO <sub>2</sub> ) <sup>2</sup>	N/A

Sources:

1. The World Bank 2017

2. ©OECD/IEA 2017, [www.iea.org/statistics](http://www.iea.org/statistics)

The Gambia’s overall risk level against the assessed areas is **moderate**.

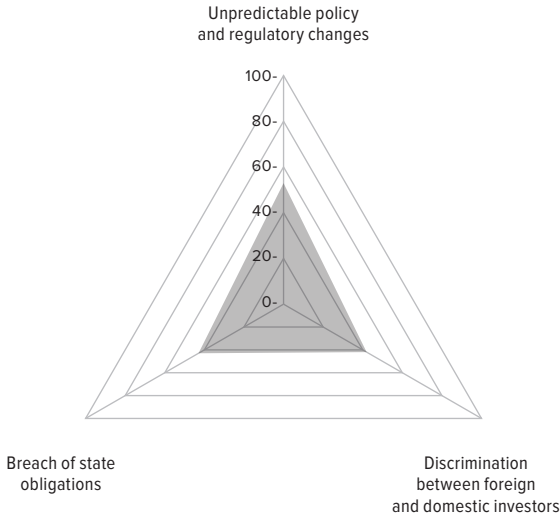
Among the three EIRA risk areas, *discrimination between foreign and domestic investors* and *breach of State obligations* are lower compared to *unpredictable policy and regulatory change*.

The Gambia’s performance against EIRA’s four indicators is moderate. It has received a good score of 68 on *regulatory environment and investment conditions*. On *rule of law* and *management of decision-making processes* it has scored 57 and 50, respectively. *Foresight of policy and regulatory change* is at 33 points.

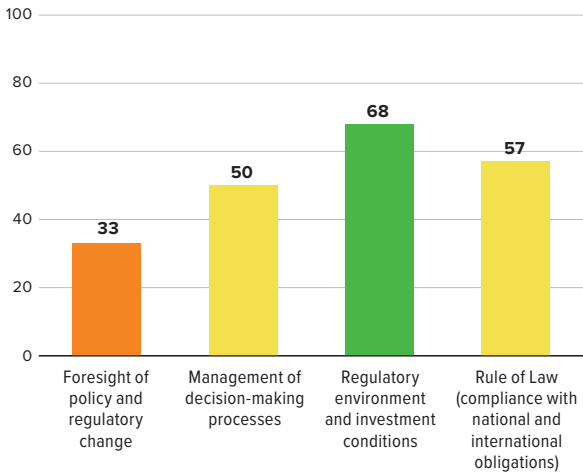
On a more detailed level, The Gambia’s overall sub-indicator performance is moderate. The highest scoring sub-indicators are *restrictions on FDI* with 75 points and *management and settlement of investor-State disputes* with 73 points. *Regulatory effectiveness* is at 61 and *institutional governance* at 53. *Transparency* is at 47 followed by *respect for property rights* at 42 and *communication of vision and policies* at 41. *Robustness of policy goals and commitments* has the lowest score with 25 points.

While there are some policies and measures in place, more concrete steps must be taken to strengthen The Gambia’s performance across all indicators and underlying sub-indicators. Particular attention should be given to increasing the robustness of the country’s policy goals and commitments.

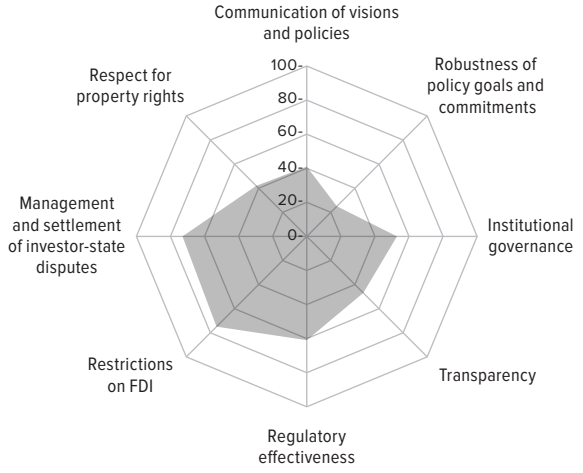
**RISK LEVEL**



**INDICATOR PERFORMANCE**



**SUB-INDICATOR PERFORMANCE**



## Foresight of policy and regulatory change

### QUICK FACTS

The primary energy strategy document for The Gambia is the National Energy Policy Strategy and Action Plan 2015-2020.

The Gambia's National Development Plan sets the country's medium term development strategy and investment programme for the period 2018-2021.

The Gambia ratified the Paris Agreement in 2016 and submitted its first NDC.

### STRENGTHS

The Gambia's Vision 2020, adopted in 1996, recognises the energy sector as vital for economic growth. In accordance with Vision 2020, the country's energy objectives are set out in the National Energy Policy 2015-2020. These include improved accessibility and affordability of energy, increased renewable energy generation capacity and secure future energy supplies. To fulfil the electricity sub-sector objectives, the Cabinet approved The Gambia Electricity Sector Roadmap in 2017. The Government of Gambia is committed to the Economic Community of West African States White Paper on Energy for All by 2030 and the SE4ALL initiative.

The execution of The Gambia Electricity Sector Roadmap 2017 is under the responsibility of the Ministry of Petroleum and Energy. A small multi-agency task force has been created for the purpose of tracking the implementation status. The task force comprises top-level representatives from the relevant ministries and institutions, and the Office of the President. The Renewable Energy Act 2013 envisages that the Ministry of Petroleum and Energy shall recommend medium- and long-term national targets for the use of renewable energy and submit annual progress reports to the Cabinet.

### AREAS OF IMPROVEMENT

Although the country has set certain objectives, the existing plans are about to expire and need to be updated. A long-term energy policy should be created to point the way towards the future. It is necessary that the policy contains progressive quantifiable goals that lead to the achievement of ultimate outcomes. Finally, given its aspiration of transitioning to low carbon technologies, the country should frame policies which facilitate the integration of renewable energy solutions in local communities.

*Ex-ante* and *ex-post* evaluations need to be carried out for new policies and measures. To ensure the effectiveness of a policy, its impacts should be carefully assessed prior to its adoption. Subsequently, review mechanisms may be used to determine whether the measures introduced are most appropriate for meeting the pursued objectives.

## Management of decision-making processes

### QUICK FACTS

The Parliament of The Gambia comprises a unicameral legislature (National Assembly).

The Ministry of Petroleum and Energy is in charge of formulating the energy policies.

The Ministry of Trade, Industry, Regional Integration and Employment frames and implements the investment policies.

The Gambia Investment and Export Promotion Agency (GIEPA), established in 2010, is responsible for the promotion and facilitation of private sector investment and acts as the investors' first point of contact.

The Constitution of the Republic of The Gambia 1997 sets out the principles for good governance.

### STRENGTHS

Legislation may be introduced by the Government or any member of the National Assembly. Proposed laws must be published in the Official Gazette at least fourteen days before they are submitted for consideration to the National Assembly. In practice, the ministries responsible for energy and investment policies consult each other on cross-sectoral issues.

Laws come into force after being enacted by the National Assembly and assented to by the President, followed by their publication in the Official Gazette. All enacted laws and strategy documents are available in English. Stakeholders are notified and consulted before the enactment of new legislation. The Constitution envisages that public bodies are accountable to the National Assembly and should conduct their affairs in accordance with the principles of efficiency, transparency and probity.

### AREAS OF IMPROVEMENT

The Gambia needs to establish the right to access government-held information. Currently, access to laws and regulations is granted upon request. A law on transparency can strengthen the country's efforts towards openness in its decision-making process. Moreover, to ensure effective dissemination of regulatory information the country should make legal documents available on the internet, for example by creating an online portal of the Official Gazette.

The Competitiveness Improvement Forum and working groups which are foreseen under the GIEPA Act 2015 should be created and put into motion. This will provide a channel for dialogue between the Government and investors in priority sectors such as energy. To further increase the stability and predictability of the decision-making process, the country should establish specific procedures for consultation between public entities and stakeholders.

## Regulatory environment and investment conditions

### QUICK FACTS

The Public Utilities Regulatory Authority (PURA) regulates, among other sectors, the electricity and downstream petroleum sub-sectors.

The regulatory functions of the Ministry of Petroleum and Energy are clearly defined in the Petroleum (Exploration, Development and Production) Act 2004.

The GIEPA Act covers the establishment, treatment and promotion of investment.

### STRENGTHS

The PURA is independent in the performance of its functions and obliged under the law to act impartially. The members of its governing board are selected on the basis of their knowledge and experience. They are appointed for a fixed tenure and may be re-appointed only once. The PURA is accountable to the National Assembly Public Accounts Committee and Public Enterprises Committee.

The Gambia has established a liberal FDI regime. Under the national laws, foreign and domestic investors are generally treated in a non-discriminatory manner. All BITs provide for *fair and equitable treatment*. Further protection is accorded to investors through a range of guarantees provided under the GIEPA Act. Presently, investors can hold a majority stake or have full ownership in energy projects. The transfer of investment-related funds abroad is not restricted.

### AREAS OF IMPROVEMENT

The PURA is mandated to regulate multiple activities across sectors creating constraints in the regulator's capacity to perform its functions. The increased burden may result in the unbalanced development of the different sectors and a standardised approach to divergent problems. To ensure the regulator achieves its objectives the Government should increase PURA's institutional capacity and streamline its operations.

Efforts should be made to ease the access to land. Currently, there are restrictions on land ownership by foreign investors, and complicated procedures in place, which may act as an impediment to economic development. Although the Government has taken steps to facilitate access to land through GIEPA, it is necessary that registry mechanisms and comprehensive records are created to provide certainty on land titles.

Under the GIEPA Act, the Government can declare certain areas closed to foreign investors or make them subject to local partnership. The Government may also reserve the right to own some or the majority of shares in strategic industries, which presently include mining, and petroleum exploration and refining activities. To address these concerns, the possibility of intervention in the status of investments must be minimised. Also, the law should contain clear conditions under which the Government may exercise discretion.

## Rule of law

### QUICK FACTS

The Gambia has been a signatory and contracting party to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States since 1974.

The Gambia became a member of the WTO in 1996.

The conditions for the expropriation of property are stipulated in the Constitution.

### STRENGTHS

According to the GIEPA Act, disputes between investors and the State can be submitted to arbitration, after an attempt is made to resolve the matter through conciliation or mediation. Enforcement of foreign arbitral awards can be sought under the provisions of the Alternative Dispute Resolution Act 2005. While The Gambia is not a State party to the New York Convention, it has fully transposed its provisions.

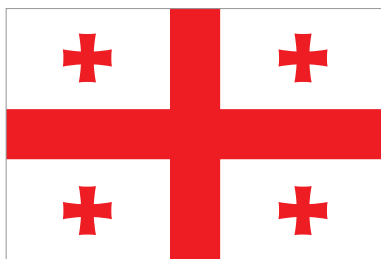
Private property is protected under the Constitution. Compulsory acquisition of property is only permitted for the public interest, with prompt payment of adequate compensation. The determination of the compensation must be made by an impartial and independent authority. The GIEPA Act provides additional guarantees against the expropriation of investments. Protection is also granted to industrial and intellectual property under BITs. Transfer of technology is generally promoted.

### AREAS OF IMPROVEMENT

Case management measures and definitive timeframes should be provided in the law to ensure court judgements will be delivered without delay.

An independent and impartial body, like an investment ombudsman, should be established to deal with the grievances of foreign investors against the public authorities. The existence of such a mechanism can reduce the risk of maladministration and thus reinforce the confidence of investors.

The definition of "public interest" in relation to expropriation should be developed and explained in domestic legislation, such as the GIEPA Act. A list of core activities which constitute public interest can provide clarity to investors. Further, a detailed mechanism for the determination of public interest will ensure the legitimacy of the decisions to expropriate.



# Georgia

Population <sup>1</sup>	3.717.100
Area (km <sup>2</sup> ) <sup>1</sup>	69.700
GDP per capita (USD) <sup>1</sup>	4.078,25
TPES (Mtoe) <sup>2</sup>	4,63
Energy intensity (toe/10 <sup>3</sup> 2010 USD) <sup>2</sup>	0,31
CO <sub>2</sub> emissions - energy (MtCO <sub>2</sub> ) <sup>2</sup>	8,38

Sources:

1. The World Bank 2017

2. ©OECD/IEA 2017, [www.iea.org/statistics](http://www.iea.org/statistics)

Georgia’s overall risk level against the assessed areas is **low**.

Among the three EIRA risk areas, *breach of State obligations* is lower compared to *discrimination between foreign and domestic investors* and *unpredictable policy and regulatory change*.

Georgia’s performance against EIRA’s four indicators is good. *Rule of law and regulatory environment and investment conditions* are at 92 and 77 points. *Management of decision-making processes* stands at 65. The indicator score for *foresight of policy and regulatory change* is moderate, at 46 points.

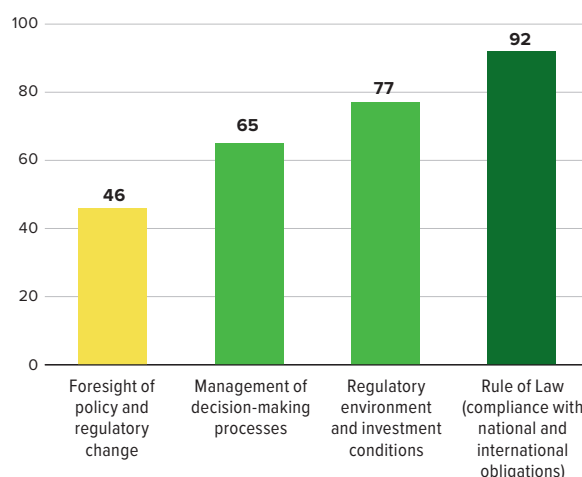
On a more detailed level, Georgia’s overall sub-indicator performance is good. The highest scoring sub-indicators are *management and settlement of investor-State disputes* and *restrictions on FDI* at 100 and 90 points. The performance on the sub-indicator *respect for property rights* is also very good, with a score of 83. *Transparency* is at 73 points while *regulatory effectiveness* has received a score of 64. The sub-indicators *institutional governance* and *communication of vision and policies* have scored 56 each. The performance on *robustness of policy goals and commitments* is the lowest with 35 points.

While Georgia has the relevant policies and measures in place, there is potential for improvement. Attention should be given to increasing the robustness of its policy goals and commitments.

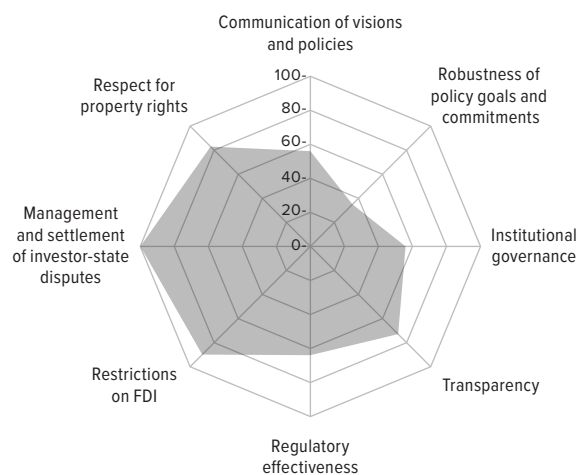
## RISK LEVEL



## INDICATOR PERFORMANCE



## SUB-INDICATOR PERFORMANCE



## Foresight of policy and regulatory change

### QUICK FACTS

The key energy strategy documents for Georgia are the EU-Georgia Association Agreement 2014, the Social-economic Development Strategy 2020 (adopted in 2014) and the Main Directions of the State Policy in Energy Sector, adopted in 2015.

The Law on Electricity and Natural Gas (adopted in 1997) and the Law on Oil and Gas (adopted in 1999) set out the structure and basic responsibilities for the energy sector.

Georgia approved the Paris Agreement in 2017 and submitted its INDC.

### STRENGTHS

Georgia has committed itself to the EU-Georgia Association Agreement and the EU's Energy Community. The Social-economic Development Strategy focuses on the overall long-term economic growth of the country and sets targets for 2020, including for the energy sector. Emphasis is on issues of energy security, access to energy, energy efficiency and the implementation of the EU *energy acquis*. The Government is currently developing a road map for integrating into the EU. The country seeks to reinforce energy security by increasing its indigenous power generation capacity. It also promotes infrastructure projects aimed at securing the capacity of internal and transit flows.

The Ministry of Economy and Sustainable Development monitors the implementation of the energy priorities. The Social-economic Development Strategy provides details of the monitoring and evaluation mechanisms in place. It indicates that public consultations may be undertaken to adopt corrective measures where needed or to identify the areas which require more efforts. The implementation of the EU-Georgia Association Agreement is subject to annual monitoring and reporting.

### AREAS OF IMPROVEMENT

The energy priorities beyond 2020 are unclear due to the absence of a policy for the next decade. The Government should pursue its efforts to finalise the Electricity Strategy 2020, which aims at ensuring long-term security of the electricity system. Moreover, the Government intends to adopt by the end of 2018 a new draft Energy Law based on EU Directives concerning common rules for the electricity and gas markets, access to energy infrastructure and security of supply. Efforts to finalise and publish this document must be intensified. In a similar vein, the Government should expedite the adoption of the country's National Energy Efficiency Action Plan.

Effective monitoring mechanisms should be set for measuring the progress made on the implementation of the energy priorities. As a starting point, monitoring must be conducted by an external institution that is independent of the lead ministry, and can provide accurate and unbiased feedback.

## Management of decision-making processes

### QUICK FACTS

The Ministry of Economy and Sustainable Development is the authority responsible for framing and implementing the country's energy and investment policies.

The Ministry of Environment Protection and Agriculture is in charge of implementing and monitoring the country's NDC.

*Enterprise Georgia* was established in 2017 under the Ministry of Economy and Sustainable Development as a single window for enquiries on investment. It is entitled to represent investors before administrative bodies and to assist them in obtaining necessary licenses and permits.

The General Administrative Code 1999 arranges access to public information.

### STRENGTHS

Georgia has a streamlined decision-making process. The Parliament has the exclusive power to adopt laws. The Government has the right of legislative initiative and it is entitled to propose new laws or modify the existing ones.

The Government makes legal and regulatory information available to the public in an open manner, both electronically and in print. Enacted laws are centralised and accessible on the website of the Legislative Herald of Georgia. According to the General Administrative Code, everybody is entitled to public information. Access to information can only be restricted under well-defined conditions.

### AREAS OF IMPROVEMENT

A one-stop shop dedicated to the energy sector should be set up. Its mandate may include granting easy access to the regulatory bodies responsible for licensing.

The availability of translated policies and laws is low. Therefore, the Government should pursue its efforts to make available official translations of these documents in foreign languages relevant to investors. Moreover, all decisions of the State Agency for Oil and Gas may be made available and easily accessible, preferably online.



## Regulatory environment and investment conditions

### QUICK FACTS

The Georgian National Energy and Water Supply Regulatory Commission (GNERC) regulates the electricity and gas sub-sectors. The State Agency for Oil and Gas (SAOG) is responsible for licensing and state participation in hydrocarbons.

The Competition Agency is responsible for the enforcement of competition law in Georgia, except for regulated sub-sectors such as electricity and gas. For these sub-sectors, the GNERC oversees competition issues.

The Law on Promotion and Guarantees of Investment Activity 1996 governs the establishment and promotion of investments.

### STRENGTHS

The GNERC is an independent body. Its functions as the regulator are well described in the Law on Electricity and Natural Gas 1999. It is entitled to issue licenses for generation, dispatch, transmission and distribution of electricity, transportation and distribution of natural gas. The GNERC prepares an annual report on its activities, which is submitted to the President, the Parliament and the Ministry of Economy and Sustainable Development. It has the right to allocate its budget as it deems fit.

The national law guarantees equal treatment to domestic and foreign investors. FDI is allowed in all regions and zones of the country. There is no notification or screening requirement for investments in the energy sector. Moreover, foreign companies can own a majority stake in most energy projects.

### AREAS OF IMPROVEMENT

To improve transparency the selection procedure of the GNERC's board members and of the SAOG should be publically announced. There must be a clear provision in the law that the appointment is restricted to a one-time renewal.

Ownership of agricultural land by foreigners is currently under a moratorium. The Government is advised to provide clarity on the matter to reduce uncertainty for investors and landowners alike.

## Rule of law

### QUICK FACTS

Georgia ratified the Energy Charter Treaty in 1995.

Georgia ratified the Protocol concerning the Accession of Georgia to the Treaty Establishing the Energy Community in 2017.

Georgia is party to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States since 1992.

Provisions against unlawful expropriation are included in the Law on the Procedure for Expropriation of Property upon the Urgent Necessity of Ensuring Public Needs 1997 and the Law on the Procedure for the Expropriation of Property for Pressing Social Needs 1999.

### STRENGTHS

The Law on Arbitration 2009 is based on the UNCITRAL Model Law. The Law on Promotion and Guarantees of Investment Activity enables dispute resolution between investors and public authorities. Administrative bodies are required to deliver decisions within 30 days. National courts, except for the Constitutional Court, must pronounce decisions within 2 months. Georgia has concluded 35 BITs which provide for consent to international investor-State arbitration. Georgia has a variety of mechanisms in place that favour amicable resolution of conflicts. Voluntary mediation is included as a separate chapter of the Civil Procedure Code 1997. Moreover, the country has a Business Ombudsman for protecting the rights and legitimate interests of investors.

The grounds for expropriation are limited to well-defined situations where public or social interests are at stake, like for public infrastructure or the safety of the State. In case of expropriation, the investor is entitled to full and fair compensation. Intellectual property rights are guaranteed by the Constitution and Georgia's membership to the World Intellectual Property Organisation.

### AREAS OF IMPROVEMENT

Even though the national law states that compensation against expropriation must be paid in advance, the Government could consider establishing a clear timeframe for this purpose.



# Greece

Population <sup>1</sup>	10.760.421
Area (km <sup>2</sup> ) <sup>1</sup>	131.960
GDP per capita (USD) <sup>1</sup>	18.613,42
TPES (Mtoe) <sup>2</sup>	23,19
Energy intensity (toe/10 <sup>3</sup> 2010 USD) <sup>2</sup>	0,10
CO <sub>2</sub> emissions - energy (MtCO <sub>2</sub> ) <sup>2</sup>	64,58

Sources:

1. The World Bank 2017

2. ©OECD/IEA 2017, [www.iea.org/statistics](http://www.iea.org/statistics)

Greece’s overall risk level against the assessed areas is **low**.

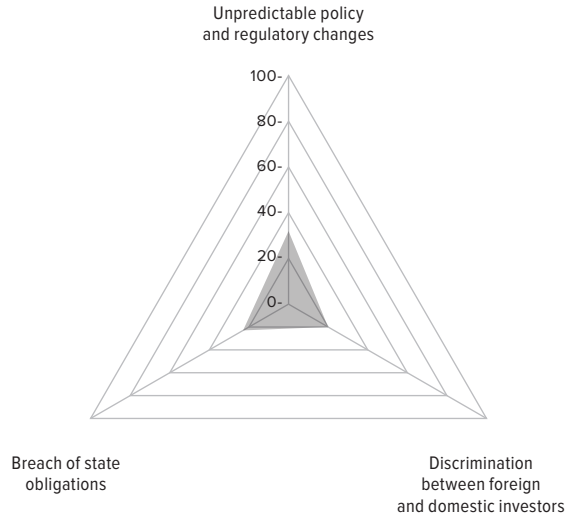
Among the three EIRA risk areas, *discrimination between foreign and domestic investors* and *breach of State obligations* are lower compared to the risk of *unpredictable policy and regulatory change*.

Greece’s performance against EIRA’s four indicators is good. It has received 90 points on the indicator *regulatory environment and investment conditions*. Two indicators, namely *rule of law* and *management of decision-making processes*, scored 77 and 75, respectively. The score for *foresight of policy and regulatory change* indicator is 54.

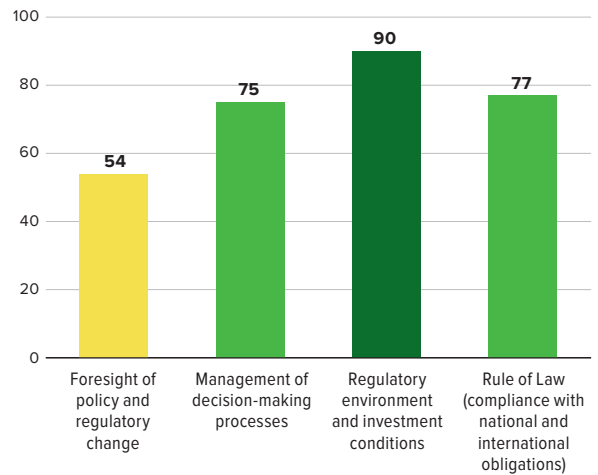
On a more detailed level, Greece’s overall sub-indicator performance is good. The highest scoring sub-indicator is *regulatory effectiveness* with 94 points, followed by *restrictions on FDI* at 85 and *respect for property rights* at 83. *Robustness of policy goals and commitments*, *institutional governance* and *transparency* have received 75 points each, while *management and settlement of investor-State disputes* is at 70. The lowest scoring sub-indicator is *communication of vision and policies* with 32 points.

While Greece has the relevant policies and measures in place, there is potential for improvement. Attention should be given to better communicating the existing policies and plans to investors.

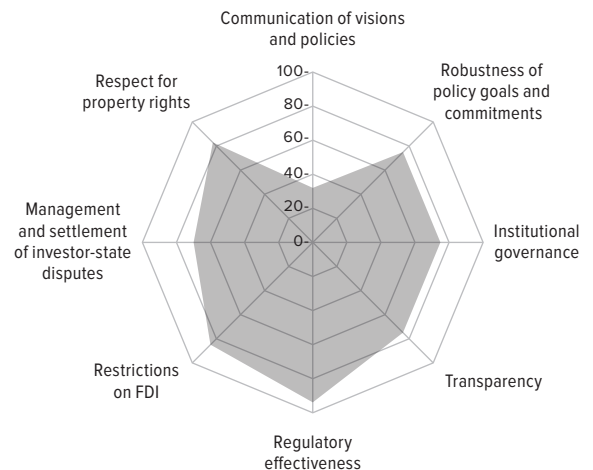
### RISK LEVEL



### INDICATOR PERFORMANCE



### SUB-INDICATOR PERFORMANCE



## Foresight of policy and regulatory change

### QUICK FACTS

The National Renewable Energy Action Plan, adopted in 2010, and Law no. 3851/2010 are the main strategy documents for promoting the development of renewable energy sources.

The National Energy Efficiency Action Plan for the implementation of national energy efficiency improvement targets was adopted in 2017.

As an EU Member State, Greece ratified the Paris Agreement in 2016.

### STRENGTHS

The priorities for the energy sector include reforming the domestic electricity market to promote EU market integration, ensuring the security of energy stocks, increasing energy access and addressing energy poverty. To comply with EU legislation, Greece has set ambitious targets for increasing the share of renewable sources in its final energy consumption by 2020. Also, it is currently in the process of drafting the national Energy and Climate Action for 2021-2030.

The Ministry of Environment and Energy and the Regulatory Authority for Energy (RAE) are responsible for monitoring the implementation of the energy objectives. The RAE submits an annual report about its activity to the Parliament. Law no. 4001/2011 envisages long-term energy planning over a ten-year period under the responsibility of the Ministry of Environment and Energy. For this purpose, the Minister is required to confer with the RAE and is encouraged to consult stakeholders and scientific specialists.

### AREAS OF IMPROVEMENT

The country's energy vision needs to be communicated through a strategy document. Additionally, the national action plan currently drafted must be finalised and adopted to facilitate the implementation of the country's energy objectives. The plan must be periodically reviewed to guarantee progress towards the identified priorities.

The short- and medium-term targets, as well as the ultimate outcomes, must be clearly articulated. The targets should be quantifiable, with a timeframe, and a detailed analysis of the measures to be employed for their accomplishment.

Monitoring and evaluation mechanisms should be developed to improve the implementation and enforcement of the country's energy policy. Incentives or penalties can be employed to provide certainty regarding the country's future actions.

## Management of decision-making processes

### QUICK FACTS

The Ministry of Environment and Energy leads the formulation of energy policies.

The General Secretariat for Investment was established in 2013 as a one-stop investment approval authority for strategic investments.

*Enterprise Greece* operates as a single window for all enquiries concerning investment policies and applications, under the supervision of the Ministry of Economy and Development.

Greece enacted Law no. 3861/2010 requiring the mandatory online publication of all laws and regulations.

### STRENGTHS

The legislative initiative lies with the Government. The powers of each ministry are defined in the law. Inter-ministerial coordination takes place on cross-cutting issues under the responsibility of multiple ministries. Public deliberation is encouraged on proposed regulations before their submission to the Parliament. Energy constitutes an area of shared competence with the EU. Greece exercises its competence in case the EU does not have competence on an issue or where it decides not to exercise it.

The right to access information is established in the Constitution. Such access can be denied only in the case of confidential information or where data is protected under the right to privacy. Laws is centralised in the Official Gazette. All laws and administrative acts are made public through an online electronic registry. The RAE publishes its decisions and annual reports for the energy market on its website.

### AREAS OF IMPROVEMENT

Measures may be taken to facilitate information access for foreign investors. Accountability is enhanced when documents are coherent and widely disseminated. Investment promotion agencies should ensure that enacted and draft laws as well as regulations in force are made available in English or other foreign languages.

## Regulatory environment and investment conditions

### QUICK FACTS

The RAE regulates the electricity and natural gas sub-sectors and monitors the oil products market.

The Hellenic Hydrocarbon Resources Management SA (HHRM) manages and grants the rights to prospecting, exploration and exploitation of hydrocarbons.

Law no. 2889/1995 on prospecting, exploration and production of hydrocarbons regulates the upstream sector.

### STRENGTHS

The RAE is an independent administrative authority. It enjoys financial and functional autonomy, and for its financial management it is accountable to the Court of Auditors. HHRM is a State-owned company but operates independently as a private-sector economic entity. The board members of the RAE and the HHRM are appointed based on scientific expertise, professional competence and relevant experience. There is a fixed term of appointment for the members with limits on renewal.

The legislative framework creates an open and supportive environment for FDI. Domestic laws and BITs grant fair and equitable treatment to foreign enterprises. There is no local ownership requirement for energy projects, and foreign investors are entitled to hold a majority stake.

### AREAS OF IMPROVEMENT

The country may consider lowering restrictions, such as limits on the employment of citizens from third countries (depending upon the size of the investment) and transfer of capital abroad. The relaxation of these measures can assist in attracting more foreign investment.

## Rule of law

### QUICK FACTS

Greece became a Contracting Party to the Energy Charter Treaty in 1997.

The Convention on the Settlement of Investment Disputes between States and Nationals of Other States was ratified by Greece in 1969.

Provisions against the expropriation of immovable property are stated in the Constitution and Law no. 2882/2001 setting out the conditions on expropriation of immovable property.

### STRENGTHS

Enforcement of foreign arbitral awards can be sought under the New York Convention when the seat of the arbitration is in one of its Contracting States. Arbitral awards rendered in non-Contracting States are enforced under the terms of bilateral agreements or through the provisions of the Civil Procedure Code. National laws do not require the exhaustion of local judicial remedies before the initiation of arbitration proceedings. An Investor Ombudsman has been established to assist investors facing difficulties during the licensing procedure and specific bureaucratic obstacles.

The right to own and possess property is established under the Constitution. Expropriation is only permitted on the grounds of public interest and with prompt, adequate, and effective compensation. The owner retains all its ownership rights, until the payment of the compensation. The amount of the compensation is decided by the court and must be paid within eighteen months from the publication of the decision. There are several laws in place for protecting intellectual property rights. BITs define "investment" to include intellectual property. In general, there are no statutory provisions restricting technology transfer.

### AREAS OF IMPROVEMENT

Effective case management measures should be adopted to lower the domestic courts' caseload and accelerate judicial proceedings. Alternative dispute resolution mechanisms can be employed, such as encouraging mediation in disputes involving a public entity.

Currently "public interest" is defined on a case-by-case basis within limits prescribed by the Supreme Administrative Court. A general definition of the term may be incorporated in Law no. 2882/2010 to clarify its scope and application and to create greater certainty.

Retroactive changes to laws should be avoided to increase investment security.



# Hungary

Population <sup>1</sup>	9.781.127
Area (km <sup>2</sup> ) <sup>1</sup>	93.030
GDP per capita (USD) <sup>1</sup>	14.224,85
TPES (Mtoe) <sup>2</sup>	25,21
Energy intensity (toe/10 <sup>3</sup> 2010 USD) <sup>2</sup>	0,18
CO <sub>2</sub> emissions - energy (MtCO <sub>2</sub> ) <sup>2</sup>	42,48

Sources:

1. The World Bank 2017

2. ©OECD/IEA 2017, [www.iea.org/statistics](http://www.iea.org/statistics)

Hungary’s overall risk level against the assessed areas is **low**.

Among the three EIRA risk areas, *breach of State obligations* is lower compared to *discrimination between foreign and domestic investors* and *unpredictable policy and regulatory change*.

Hungary’s performance against EIRA’s four indicators is good. It has received a score of 82 on *rule of law*. *Regulatory environment and investment conditions* and *management of decision-making processes* are at 73 and 62 points, respectively. The indicator score for *foresight of policy and regulatory change* is 61.

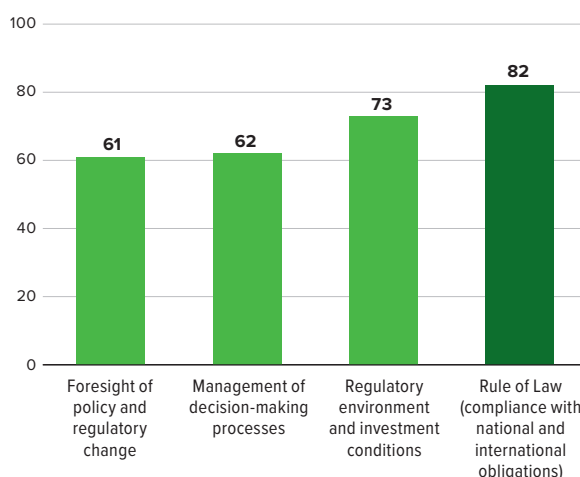
On a more detailed level, Hungary’s overall sub-indicator performance is good. The highest scoring sub-indicator is *respect for property rights* with 83 points, followed by *management and settlement of investor-State disputes* and *restrictions on FDI* at 80. On *transparency* the score is 74, while *communication of vision and policies* stands at 73. A good score of 67 has been obtained on *regulatory effectiveness*. *Institutional governance* and *robustness of policy goals and commitments* have each received a moderate score of 50.

While Hungary has the relevant policies and measures in place, there is potential for improvement. Attention should be given to strengthening the country’s institutional governance and the robustness of its policy goals and commitments.

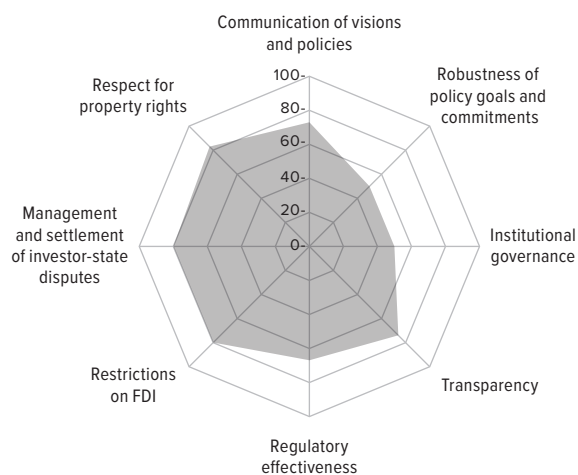
### RISK LEVEL



### INDICATOR PERFORMANCE



### SUB-INDICATOR PERFORMANCE



## Foresight of policy and regulatory change

### QUICK FACTS

The National Energy Strategy 2030 was published in 2012 to define the vision and energy priorities of the country.

Action plans for the implementation of the country's strategy are the National Renewable Energy Action Plan 2010-2020, the 2015 National Energy Efficiency Action Plan until 2020 and the Climate and Energy Awareness Raising Action Plan published in 2015.

As an EU Member State, Hungary ratified the Paris Agreement in 2016.

### STRENGTHS

The Energy Strategy 2030 states the short- and medium-term targets for the energy sector and provides a timeline for their realisation. To give a long-term perspective, it includes a roadmap until 2050. The focus is on integrating energy efficiency measures throughout the supply and consumption chain, promoting renewables and increasing the share of low carbon intensive electricity generation. The strategy also takes into account horizontal issues, such as social and welfare conditions, environmental protection and rural development.

The National Energy Strategy 2030 mandates a biennial review. The purpose of this evaluation is to give the Government an opportunity to re-examine its long-term targets and modify them, if and when needed. The Ministry for Innovation and Technology is required to report the progress made in the priority areas to the Parliament.

### AREAS OF IMPROVEMENT

Efforts should be made to close the gap between policy formulation and implementation. While the Government has set targets and put monitoring mechanisms in place, it needs to develop supporting action plans for its policies. This will help avoid a potential mismatch between the high-level objectives of the country and their realisation. Action plans can provide clarity on how policy objectives will be achieved and who will be responsible for them. They can demonstrate the Government's intent to translate the stated goals into reality and indicate its preparedness to accomplish them.

The monitoring process should be made independent for an accurate representation of the implementation status. The evaluation must be conducted on a regular basis. Progress should be measured not only on the targets for specific objectives but also in the broader context of the energy sector and the economy.

## Management of decision-making processes

### QUICK FACTS

The newly created Ministry for Innovation and Technology has been tasked with formulating and monitoring policies in the energy sector.

The Hungarian Investment Promotion Agency (HIPA) offers one-stop shop management consultancy services to potential investors in some sectors.

Act no. CXXXI of 2010 on Social Participation in Preparing Laws mandates stakeholder engagement on bills and draft governmental and ministerial decrees.

### STRENGTHS

The Hungarian Parliament has the general legislative power and is entitled to regulate all issues, including those related to energy. The Government is currently restructuring its internal setup to streamline and better handle policy-making processes related to energy and environmental issues. Though there are various ministries and public entities involved in framing investment policies, decisions are coordinated and discussed before adoption.

The right to access information of public interest is defined in the law. All enacted laws are publicly available and drafts are accessible on the website of the Parliament. The online portal for national legislation is user-friendly and provides guidance on which laws are in force, have been repealed or are likely to change. Consultation with interested parties is undertaken by the Government on proposed laws, regulations and policies.

### AREAS OF IMPROVEMENT

A one-stop shop may be established to simplify administrative procedures for different projects, including in the energy sector. Its scope of work should include assisting with all types of projects, facilitating local business and strengthening horizontal and vertical cooperation between public entities. Presently, the HIPA provides consultancy services for selected sectors and in the case of specific high-priority projects the Government appoints on a discretionary basis a coordinator to accelerate implementation.

Though stakeholder engagement is stipulated in the law, efforts must be made to implement these stipulations in practice. For instance, adjustments to laws and policies should be notified to the public well in advance so they can give careful consideration to the proposed changes and provide constructive feedback.



## Regulatory environment and investment conditions

### QUICK FACTS

The Hungarian Energy and Public Utility Regulatory Authority (HEA) is entrusted with licensing, supervision, price regulation and network tariff-setting in the electricity, natural gas and district heating sub-sectors.

The Hungarian Atomic Energy Agency (HAEA) is the institution dealing with nuclear energy. It is supervised by the Ministry of Innovation and Technology.

Act no. XXIV of 1988 on the Investments of Foreigners in Hungary was adopted to attract and protect foreign investment in the country.

### STRENGTHS

The HEA is a statutory body. Its functions and composition are stated in the law. It has functional independence and the right to frame its internal organisational rules. In terms of the budget, the HEA covers the expenses related to its operation through its revenues. It is required to submit an annual report on its activities to the Parliament.

The legislative framework supports foreign investment. The Act on the Investments by Foreigners in Hungary grants *fair and equitable treatment* to foreign investors. FDI is encouraged in all activities. Special emphasis is on increasing private investment in clean energy technologies. For this purpose, the Government is granting tax incentives to renewable and energy efficiency projects.

### AREAS OF IMPROVEMENT

The HEA can have a greater impact if it is granted more freedom in the allocation and spending of its revenues. This, however, will only be possible once the governance of the HEA is improved. Accountability and public confidence in the regulatory framework can be increased by making the organisation and management more transparent. For instance, the selection procedure of the HEA's President and Vice-Presidents may be publicised and limits established on the number of re-appointments for the Vice-Presidents.

Due to the limited availability of laws and regulations in different languages, investors may need to rely on unofficial translations of the documents. This may lead to ambiguity regarding the country's regulatory structure, financial arrangements and operations. Official translations of the governing laws, subsidiary legislation and regulations should be made available in foreign languages to provide greater clarity.

## Rule of law

### QUICK FACTS

Hungary ratified the Energy Charter Treaty in 1998.

Hungary ratified the Convention on the Settlement of Investment Disputes between States and Nationals of Other States in 1987.

Provisions against the expropriation of immovable property are stated in Act no. CXXIII of 2007 on Expropriation.

### STRENGTHS

In recent years, Hungary has promulgated new legislation to strengthen and modernise its international dispute settlement rules. For instance, Act no. XXVIII of 2017 on Private International Law has restructured and streamlined the provisions applicable to disputes with a foreign element, as well as issues of recognising and enforcing foreign judgements. Access to arbitration has also been given an impetus through Act no. LX of 2017 on Arbitration. The new Act is based on the UNCITRAL Model Law.

Hungary has a dedicated law protecting real estate against expropriation. There are defined grounds on which the Government may expropriate property, such as for reasons of national defence, energy supply or the development of large-scale greenfield projects. Time limits exist for the payment of compensation in such cases. Intellectual property rights are protected under the national laws. The National Intellectual Property Council assists the patent office in drafting comprehensive regulations and action plans for safeguarding intellectual property.

### AREAS OF IMPROVEMENT

A time frame should be set for the delivery of judgements by domestic courts. At present, Act no. CXXX of 2016 on the Code of Civil Procedure contains deadlines for various stages of a hearing, such as the first date of hearing and for filing an appeal. However, without a defined time limit for a final judgement, processes in the first instance alone can take years and lead to undue delay and high cost.



# Jordan

Population <sup>1</sup>	9.702.353
Area (km <sup>2</sup> ) <sup>1</sup>	89.320
GDP per capita (USD) <sup>1</sup>	4.129,75
TPES (Mtoe) <sup>2</sup>	8,62
Energy intensity (toe/10 <sup>3</sup> 2010 USD) <sup>2</sup>	0,29
CO <sub>2</sub> emissions - energy (MtCO <sub>2</sub> ) <sup>2</sup>	23,78

Sources:

1. The World Bank 2017

2. ©OECD/IEA 2017, [www.iea.org/statistics](http://www.iea.org/statistics)

Jordan’s overall risk level against the assessed areas is **low**.

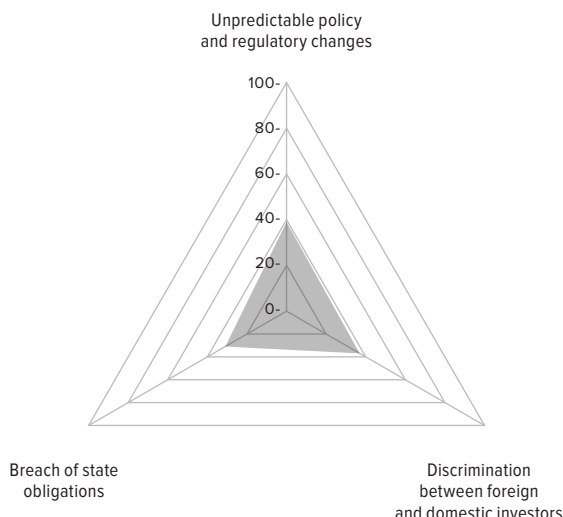
Among the three EIRA risk areas, *breach of State obligations* is lower compared to *discrimination between foreign and domestic investors* and *unpredictable policy and regulatory change*.

Jordan’s performance against EIRA’s four indicators is good. It has received good scores on *rule of law* (69) and *management of decision-making processes* (64). On the indicator *regulatory environment and investment conditions*, it has received 56 points while *foresight of policy and regulatory change* is at 49.

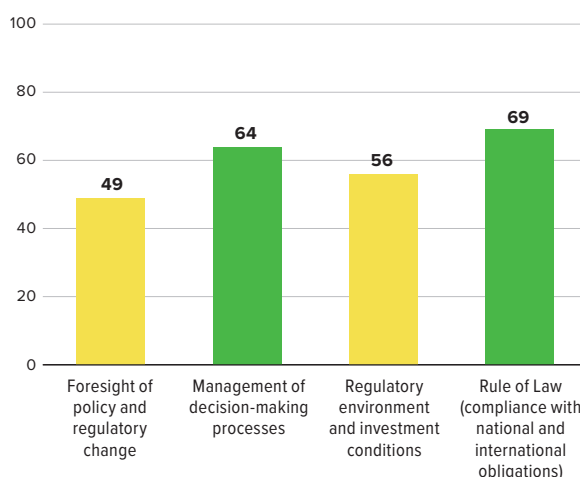
On a more detailed level, Jordan’s overall sub-indicator performance is good. The highest scoring sub-indicator is *management and settlement of investor-State disputes* with a very good score of 80. It is followed by *institutional governance* at 75 and *regulatory effectiveness* at 67. A moderate score of 58 has been obtained on *respect for property rights*. *Communication of vision and policies* and *transparency* are at 54 and 53, respectively. The sub-indicator *restrictions on FDI* stands at 45. *Robustness of policy goals and commitments* has received 44 points.

While Jordan has the relevant policies and measures in place, there is potential for improvement. Attention should be given to lowering restrictions on FDI and enhancing the robustness of its policy goals and commitments.

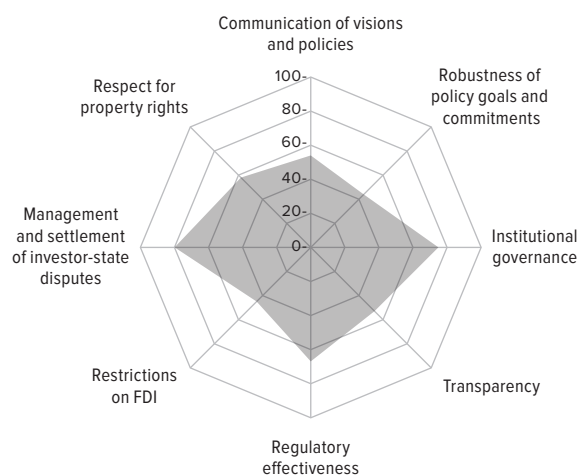
### RISK LEVEL



### INDICATOR PERFORMANCE



### SUB-INDICATOR PERFORMANCE



## Foresight of policy and regulatory change

### QUICK FACTS

The Jordan National Energy Strategy Plan 2007-2020 and its updated version the National Energy Strategy 2015-2025 set the priorities for the energy sector.

Law no. 13/2012 on Renewable Energy and Energy Efficiency as amended in 2014, was adopted to promote investment in renewable energy.

Jordan ratified the Paris Agreement in 2016 and submitted its first NDC.

### STRENGTHS

The Government has developed a comprehensive energy strategy for strengthening energy security, reducing energy cost and promoting indigenous resources. Given the general lack of conventional resources, ambitious targets have been set to raise the share of renewable energy by 2025. The Government has recently adopted the second National Energy Efficiency Plan 2017-2020. The Jordan Renewable Energy and Energy Efficiency Fund is a special program introduced for funding innovative ideas and research.

The Ministry of Energy and Mineral Resources monitors the implementation of the energy strategy. Indicators are measured by the Department of Statistics and the Energy and Mineral Regulatory Commission (EMRC). A report is submitted by the Ministry to the Prime Minister, the Cabinet of Ministers, the Ministry of Planning and International Cooperation, the Ministry of Finance and the Royal Hashemite Court.

### AREAS OF IMPROVEMENT

The Government needs to set long-term objectives and targets for the energy sector. The existing targets only cover the period up to 2025. Short-term decisions that do not take into account the future needs of the country may help achieve immediate results but risk leading to policy adjustments in the longer-term. The Government should expedite work on its upcoming energy strategy for 2020-2030 and ensure it sets quantifiable targets which shape the short and interim targets.

Measures should be taken to manage the transition to new technologies and the resulting trade-offs. Incentive schemes for renewables must be designed bearing in mind future implications as the sector matures. Periodic evaluation of the incentive framework should be undertaken to ensure the sector evolves predictably and progressively.

Monitoring of the energy policies and programmes should be conducted by a body which is independent of the decision-makers and policy implementation authorities. Compliance and enforcement mechanisms must also be established to support the implementation of legislation and programmes.

## Management of decision-making processes

### QUICK FACTS

Jordan is a constitutional monarchy. The King exercises executive authority by appointing the Prime Minister, who in turn sets up a Cabinet of Ministers.

The Ministry of Energy and Mineral Resources is responsible for formulating and implementing policies related to all energy sub-sectors.

The Jordan Investment Commission (JIC) was established in 2014 to develop the investment policies and provide one-stop shop services.

Law no. 47/2007 on Securing the Right to Information Access establishes the procedure for obtaining information from public authorities.

### STRENGTHS

The King and the Parliament share legislative powers. The right to initiate legislation rests with the Government. Consultation on legislative proposals takes place within the Cabinet of Ministers or in working groups. Draft laws are prepared in the Legislation and Opinion Bureau, which is a department in the Prime Minister's Office. The Bureau also provides legal opinions on issues referred to it by ministries or other governmental bodies, and drafts regulatory decisions and instructions issued by the Cabinet of Ministers.

Laws are published in the Official Gazette upon enactment. To encourage good governance, the Legislative and Opinion Bureau has created a website which contains draft legislation submitted to it for review. Laws are consulted with interested public and private entities on a case-by-case basis.

### AREAS OF IMPROVEMENT

Wider public consultations should be undertaken to encourage participatory decision-making processes. Institutionalised stakeholder engagement mechanisms will give the public equal opportunity to provide input on the draft laws and regulations.

A translation unit within the Legislative and Opinion Bureau should be established. Official translations of laws and policy documents in foreign languages will help provide accurate information to non-Jordanian investors about the legal and regulatory framework of the country as well as guidance on how to conduct business locally.

## Regulatory environment and investment conditions

### QUICK FACTS

The EMRC is the national regulator for all the energy sub-sectors.

Law no. 30/2014 on Investment sets out the conditions for local and foreign investments.

Regulation no. 77 of 2016 for Organising Non-Jordanian Investments lists the economic activities that non-Jordanian investors are allowed to undertake. It also identifies the activities in which their participation is prohibited.

### STRENGTHS

Jordan has recently streamlined its regulatory setup by merging different sub-sectoral authorities into one entity, the EMRC. The EMRC is legally distinct with the capacity to possess movable and immovable assets necessary to achieve its objectives and carry out legal actions. It is managed and supervised by a Board of Commissioners. Members of the Board are appointed for a fixed tenure with the possibility of one renewal.

Jordan has introduced some positive changes to its investment framework. For instance, the minimum capital requirement imposed on foreign investors has been abolished by the Regulation for Organising Non-Jordanian Investments 2016. The said Regulation also introduces a provision which reaffirms the Government's commitment to upholding international treaties as well as investment promotion and protection agreements. Finally, the Investment Law removes limits on the percentage of foreign ownership in projects located in the Free Zones or Special Economic Zones.

### AREAS OF IMPROVEMENT

The budgetary autonomy of the EMRC should be guaranteed. An independent auditor must perform controls over the EMRC's annual accounts, and the Government should not participate in the process. Moreover, the EMRC should have the exclusive right to prepare its annual budget without the possibility of modifications by the Government. At present, the proposed budget is submitted to the Ministry of Finance for review and amendment before it is presented to the Parliament.

The Government may consider easing some of the existing restrictions on FDI. For instance, the investment screening procedures of the Companies Control Department at the Ministry of Industry and Trade may be relaxed or fast-tracked. Restrictions on the employment of non-Jordanian personnel and the use of local equipment for energy projects may be lowered. Finally, while there are no limits on foreign ownership in energy projects, there is a cap of 50 per cent for engineering and construction services. Since this can impede investment in a number of sectors, including energy, the Government may consider lowering the limit or removing it entirely.

## Rule of law

### QUICK FACTS

Jordan will accede to the Energy Charter Treaty in 2018.

Jordan ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 1979.

The Constitution of Jordan 1952 grants protection against the expropriation of property.

In 2016 the Government replaced the Ombudsman Bureau and the Anti-Corruption Commission with the Integrity and Anti-corruption Commission.

### STRENGTHS

Disputes can be settled under the national law if the parties choose to apply it. Administrative courts are competent to hear appeals against regulatory decisions. The domestic courts enforce foreign judgements except for reasons stated in the law. Law no. 31/2001 on Arbitration grants foreign investors the right to third-party arbitration within the country or abroad.

No property may be expropriated except for purposes of public utility, in consideration of just compensation and following the due process of law. The Investment Law grants protection against direct as well as indirect expropriation. BITs with Canada and Austria allow the parties dissatisfied with the compensation amount to approach a judicial or independent authority for review. Some BITs signed by Jordan, such as with the United Kingdom and China, include an "umbrella clause" which grants additional protection to investors against a breach of contract by the State. As a result, investors may potentially benefit from such a clause even if it is not included in Jordan's BIT with the investor's home-State.

### AREAS OF IMPROVEMENT

Alternative dispute resolution mechanisms should be promoted for resolving conflicts between investors and governmental authorities. While the creation of the Integrity and Anti-corruption Commission is a commendable step towards increasing national integrity, the mandate of the Commission is quite broad. Therefore, in line with best practices, the Government may consider establishing an ombudsman authority which settles issues arising in the course of investment activities. The ombudsman could deal with deadlocks on matters of taxation, customs, labour, construction, licencing and land. It may also be given mediation functions to facilitate time and cost-effective settlement of disputes.

The conditions for expropriation must be defined. The domestic law should include a timeline for paying compensation to the affected investor and an explanation for the intended use of the acquired property. For clarity, it should be explicitly mentioned that any act of expropriation will be non-discriminatory.



# Kazakhstan

Population <sup>1</sup>	18.037.646
Area (km <sup>2</sup> ) <sup>1</sup>	2.724.902
GDP per capita (USD) <sup>1</sup>	8.837,46
TPES (Mtoe) <sup>2</sup>	78,09
Energy intensity (toe/10 <sup>3</sup> 2010 USD) <sup>2</sup>	0,42
CO <sub>2</sub> emissions - energy (MtCO <sub>2</sub> ) <sup>2</sup>	225,15

Sources:

1. The World Bank 2017

2. ©OECD/IEA 2017, [www.iea.org/statistics](http://www.iea.org/statistics)

Kazakhstan’s overall risk level against the assessed areas is **moderate**.

Among the three EIRA risk areas, *discrimination between foreign and domestic investors* and *unpredictable policy and regulatory change* are lower compared to *breach of State obligations*.

Kazakhstan’s performance against EIRA’s four indicators is moderate. It has received a score of 74 on *management of decision-making processes* and 54 on *regulatory environment and investment conditions* and *rule of law*. The score for *foresight of policy and regulatory change* is at 53.

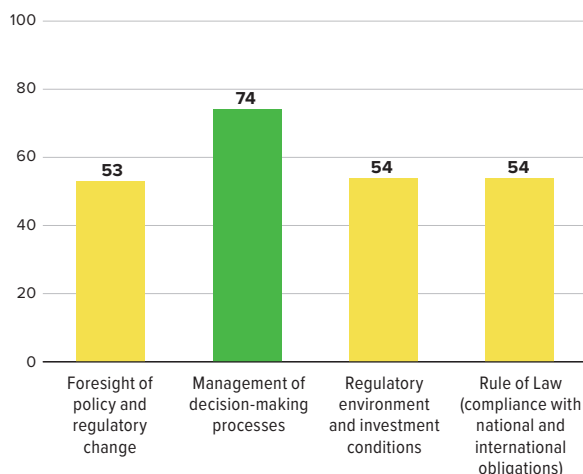
On a more detailed level, Kazakhstan’s overall sub-indicator performance is moderate. The highest scoring sub-indicators are *institutional governance* and *management and settlement of investor-State disputes* with 75 points. The sub-indicator *transparency* is at 72 points, followed by *restrictions on FDI* at 70. A good score of 63 has been obtained on *communication of vision and policies*. On *robustness of policy goals and commitments*, the score is 42. The performance on *regulatory effectiveness* and *respect for property rights* stands at 37 and 33 points, respectively.

While there are some policies and measures in place, more concrete steps must be taken to further strengthen Kazakhstan’s performance across all indicators and underlying sub-indicators. Particular attention should be given to enhancing the country’s regulatory effectiveness and re-enforcing the respect for property rights.

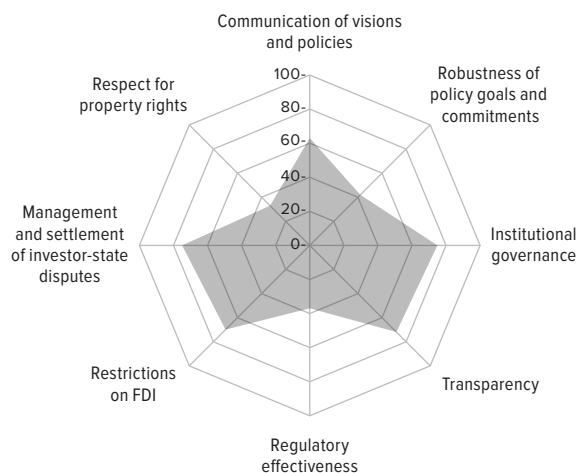
### RISK LEVEL



### INDICATOR PERFORMANCE



### SUB-INDICATOR PERFORMANCE



## Foresight of policy and regulatory change

### QUICK FACTS

The country's vision for its overall development is outlined in the Kazakhstan 2050 Strategy, published in 2012.

The strategic documents for Kazakhstan's energy sector are the Concept for the transition of the Republic of Kazakhstan to a "green economy" (adopted in 2013) and the Concept for the Development of the Fuel and Energy Complex of the Republic of Kazakhstan until 2030 (adopted in 2014).

Kazakhstan ratified the Paris Agreement in 2016 and submitted its NDC.

### STRENGTHS

The Kazakhstan 2050 Strategy enshrines key political, economic and social reforms aimed at increasing the country's economic growth and improving its investment climate. The Government has set short- and medium-term targets and determined ultimate outcomes for some of its priorities including energy efficiency, renewables, energy security, access to energy, and investment. An action plan for the development of alternative and renewable energy has also been adopted to facilitate the transition to low carbon technologies. Kazakhstan has committed to conditional and unconditional targets for the reduction of greenhouse emissions by 2030 that cover all sectors of its economy.

The Ministry of Energy and the Ministry of Investment and Development jointly monitor the progress towards the identified goals. Both ministries publish statistical data and reports about the results of policy implementation.

### AREAS OF IMPROVEMENT

The Government should pay closer attention to the establishment of targets for its other energy priorities, such as power reliability and innovation. Identifying measurable interim goals and expected outcomes would allow the Government to provide a future vision for action, coordinate the involvement of various actors and track progress.

While the Government has in place an action plan for renewable energy, detailed plans for other sub-sectors should also be developed. They should include details about time frames, costs and benefits of the measures. The adoption of action plans will give perspective to governmental policies and, consequently, increase investors' confidence.

The policy documents and action plans should contain monitoring and evaluation mechanisms for the determined goals. The evaluation must be conducted on a regular basis by institutions not directly involved in designing policies or their implementation. The periodic reporting of findings and conclusions will ensure that the Government can introduce necessary changes to its strategic documents and action plans in a timely manner.

## Management of decision-making processes

### QUICK FACTS

The Ministry of Energy is responsible for the oil, gas and electricity sub-sectors. It is also tasked with the implementation of the country's NDC targets and the development of renewable energy.

The Ministry of Investment and Development is in charge of the mining sub-sector, the overall investment strategy, industrial development and local content.

The *Kazakh Invest National Company JSC*, established in 2017, acts as an investment promotion agency and a single window for enquiries.

Kazakhstan enacted Law no. 480-V "On Legal Acts" in 2016 which stipulates the rules for stakeholder engagement in the decision-making process.

### STRENGTHS

The President sets the strategic direction for the country. The legislative initiative is vested in the Parliament and the Government. The Cabinet of Ministers, with support from the Presidential Administration's Socioeconomic Monitoring Department, coordinates between ministries on energy and investment matters.

According to Law no. 401-V "On Access to Information" as amended in 2016, all laws and policy documents are made available electronically in Kazakh and Russian through a centralised online registry. Relevant ministries regularly publish on their websites various reports, analyses and statistics about recent developments in the energy sector. Draft legislation is consulted with state bodies, the National Chamber of Entrepreneurs and interested stakeholders before adoption.

### AREAS OF IMPROVEMENT

To successfully implement its NDC, the Government should set up an inclusive system that establishes clear responsibilities and combines tracking and verification mechanisms. This would help build confidence in the integrity of the information reported to the public.

A clear division of functions among public institutions is necessary to avoid overlaps and contradictory decisions. For instance, the role of the Investor Assistance Centre as a one-stop shop needs to be clarified and reinforced. A dedicated web portal may be created where investors can obtain information on procedures, contracts and sectoral requirements as well as submit applications and register their business.

Dialogue between the Government and the stakeholders must be strengthened. The Government should extend the timeframe for public consultations on draft laws and documents to ensure that all stakeholders can study the proposals and are able to offer a meaningful contribution.



## Regulatory environment and investment conditions

### QUICK FACTS

The Ministry of Energy fulfils the functions of the regulator in the energy sector.

The Entrepreneurial Code no. 375-V of 2015 as amended in 2016 provides for non-discrimination between domestic and foreign investors.

### STRENGTHS

The regulatory responsibilities are divided between the Ministry of Energy, the Ministry of Investment and Development, and the Committee on Regulation of Natural Monopolies and Protection of Competition within the Ministry of National Economy. Their mandate and functions are enshrined in the law. The Committee on Regulation of Natural Monopolies and Protection of Competition also deals with competition issues across all sectors including energy.

The legislative framework generally supports foreign investment. Currently, there are no geographical restrictions on investment activities. However, some modifications in this regime are expected with the entry into force of the new Subsurface Use Code. Foreign entities are legally allowed to hold a majority stake in energy projects and are not required to partner with the State or local entities. The law neither restricts foreign entities from transferring investment-related capital and profits nor limits the freedom of currency transactions.

### AREAS OF IMPROVEMENT

The country will benefit from a regulatory body with delineated lines of authority that is institutionally and financially distinct from the Government. This body should be held accountable to the Parliament. This will guarantee an objective assessment of its performance. To ensure that the regulatory authority acts impartially, an autonomous management board must be created. The criteria and process for selection and dismissal of its members must be defined and a time-bound term introduced.

The Government can take steps to reduce the number of restrictions imposed on investors regarding the employment of foreign personnel and local procurement. This will allow investors to secure the necessary number of skilled workers, select the most competitive suppliers and, consequently, reduce operating costs.

## Rule of law

### QUICK FACTS

Kazakhstan ratified the Energy Charter Treaty in 1995.

Kazakhstan ratified the Convention on the Settlement of Investment Disputes between States and Nationals of Other States in 2000.

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards was ratified by Kazakhstan in 1995.

### STRENGTHS

The law requires domestic courts to deliver decisions within a defined time limit. The country's legal framework facilitates the enforcement of foreign judgments and arbitral awards. Law no. 373-II "On Investment" 2003 and Law no.488-V "On Arbitration" 2016 stipulate that investors may arbitrate their dispute with the State without referring it first to domestic courts. Voluntary mediation is also envisaged in domestic laws as an amicable means for preventing and resolving grievances of investors.

Investors' tangible and intangible property, including intellectual property rights, is protected under domestic laws and international agreements. Expropriation is only permitted in exceptional cases and upon the payment of compensation.

### AREAS OF IMPROVEMENT

The role of an investment ombudsman should be entrusted to an independent institution staffed with specialists from various relevant fields. Such an institution will be well placed to handle complaints from private individuals and companies against actions or omissions of State authorities in an impartial and effective manner.

Retroactive application of laws generates uncertainty and undercuts investors' confidence in the country's legal framework. Efforts must be made to avoid retrospective imposition of obligations that may have a detrimental effect on existing legal relations and established investments.

The core requirements for fair and rightful expropriation must be stated in the law. The "public interest" concept must be adequately defined. In addition, the introduction of a robust compensation procedure and a specified timeframe for the payment of compensation will minimise the risk of discretionary or discriminatory expropriation.



# Kenya

Population <sup>1</sup>	49.699.862
Area (km <sup>2</sup> ) <sup>1</sup>	580.370
GDP per capita (USD) <sup>1</sup>	1.507,81
TPES (Mtoe) <sup>2</sup>	25,10
Energy intensity (toe/10 <sup>3</sup> 2010 USD) <sup>2</sup>	0,48
CO <sub>2</sub> emissions - energy (MtCO <sub>2</sub> ) <sup>2</sup>	14,14

Sources:

1. The World Bank 2017

2. ©OECD/IEA 2017, [www.iea.org/statistics](http://www.iea.org/statistics)

Kenya’s overall risk level against the assessed areas is **low**.

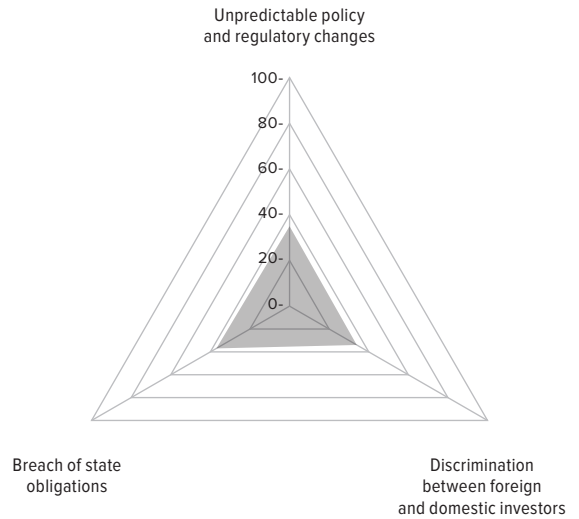
The three EIRA risk areas, *discrimination between foreign and domestic investors*, *unpredictable policy and regulatory change* and *breach of State obligations* are on the same level.

Kenya’s performance against EIRA’s four indicators is good. It has received a score of 78 on *management of decision-making processes*. *Rule of law* and *regulatory environment and investment conditions* are at 63 and 58. The score for *foresight of policy and regulatory change* stands at 53.

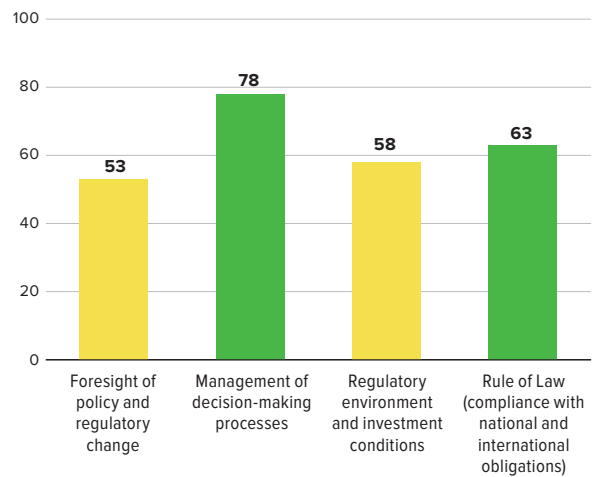
On a more detailed level, Kenya’s overall sub-indicator performance is good. The highest scoring sub-indicator is *management and settlement of investor-State disputes* with 85 points, followed by *transparency* and *institutional governance* at 81 and 75 points. On *communication of vision and policies* the score is at 67, while *restrictions on FDI* is at 65 points. A moderate score of 50 has been obtained on *regulatory effectiveness*. Performance on the sub-indicators *respect for property rights* and *robustness of policy goals and commitments* stands at 42 and 40, respectively.

While Kenya has the relevant energy policies in place, there is potential for improvement. Attention should be given to strengthening the country’s regulatory effectiveness and the robustness of its policy goals and commitments.

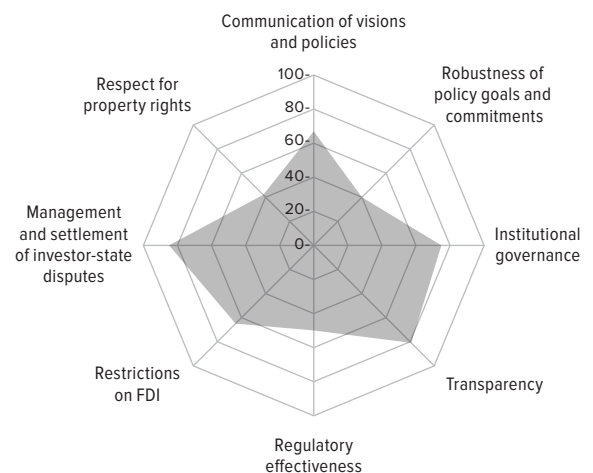
## RISK LEVEL



## INDICATOR PERFORMANCE



## SUB-INDICATOR PERFORMANCE



## Foresight of policy and regulatory change

### QUICK FACTS

The Sessional Paper No. 4 on Energy adopted in 2004 defines Kenya's energy approach.

Kenya Vision 2030 (launched in 2008) is the overarching national policy document which prioritises the increase of energy generation capacity and the improvement of energy efficiency.

Kenya ratified the Paris Agreement in 2016 and submitted its NDC.

### STRENGTHS

The Sessional Paper contains short- and medium-term energy goals to be achieved between 2004 and 2024. The Government's focus is on increasing connectivity in rural areas, reinforcing transmission and distribution systems, expanding investment programmes and improving power reliability. Specific targets are incorporated in the SE4All Action Plan and the SE4All Kenya Investment Prospectus (adopted in 2015). The Government has adopted the National Climate Change Action Plan (2013), the Rural Electrification Master Plan (2009), and the Least Cost Power Development Plan 2011-2031 for the realisation of its priorities.

Various local and international institutions are involved in monitoring the implementation of the country's energy strategy. The oversight of the Vision 2030 implementation is carried out by the Vision 2030 Delivery Secretariat and the President's Delivery Unit with the support of the SE4All Coordination Committee. All bodies cooperate to fulfill the Government's flagship development plans, including actions in the energy sector.

### AREAS OF IMPROVEMENT

A long-term energy strategy comprising measurable targets and concrete implementation plans must be developed. The adoption of the draft National Energy and Petroleum Policy which has been pending since 2015 will bring more clarity about the energy goals to be pursued and the timelines for their achievement.

The implementation of the energy policy can be improved through a number of measures. Reviewing and reporting requirements should be incorporated in the Sessional Paper to permit quality assessment of the Government's actions in accordance with rigorous analytical methods. The participation of affected communities and the private sector in the review process is equally important because it will raise awareness and increase local ownership.

## Management of decision-making processes

### QUICK FACTS

The Ministry of Energy frames and implements the energy policy of Kenya, including the SE4All Action Plan.

The Kenya Investment Authority (*KenInvest*) was established in 2004 to facilitate FDI.

The Access to Information Act no. 31 of 2016 gives effect to the constitutional right of access to information held by public authorities.

### STRENGTHS

The law and policy-making functions are shared among the central and the 47 county governments. The Ministry of Environment and Natural Resources through its National Climate Change Secretariat is responsible for monitoring the implementation of Kenya's NDC and is supported by various state institutions. *KenInvest* maintains a "Regulations Portal" which provides information about processes and permits required in various sectors of the economy, including approvals and licenses issued by the Energy Regulatory Commission (ERC).

The country effectively manages a central registry of laws which gives easy access to the entire national legislation. According to the Constitution and the Statutory Instruments Act no. 23 of 2013, decision-making authorities are required to undertake consultations with the parties that are likely to be affected by legislative or policy changes. The proposal for such changes should be sent to the Parliament together with an explanatory memorandum outlining the method and the results of the consultation as well as an impact assessment.

### AREAS OF IMPROVEMENT

The Ministry of Energy should present an annual account on the implementation of Kenya's SE4All action agenda, in the form of a Performance Assessment Report (PAR), to be distributed to all stakeholders. The publication of the first PAR will provide an update on the implementation status and a basis for dialogue between national authorities and stakeholders.

The ERC is required by law to regularly inform the public about its activities and decisions by publishing annual reports. To comply with this requirement, the ERC should complete and release the latest report for 2016-2017. It should also publish drafts of its decisions and regulations on its web portal. This will ensure that stakeholders are granted the opportunity to review and react to these drafts.

## Regulatory environment and investment conditions

### QUICK FACTS

The ERC regulates the import, export, generation, transmission and distribution of electricity as well as the production of renewable energy and downstream petroleum operations.

Upstream petroleum operations fall under the purview of the Cabinet Secretary for Petroleum and Mining.

Currently, the Parliament is considering the adoption of the Energy Bill, the Petroleum Bill, and the Energy Local Content Bill which collectively will introduce new local content requirements for all energy sub-sectors.

### STRENGTHS

The mandate and functions of the regulatory bodies are articulated in law. The ERC enjoys a certain degree of functional independence. It is an autonomous institution with a dedicated budget and qualified staff. The ERC is accountable to the Office of Auditor-General and the Parliament. It comprises a Chairperson, a Director-General and five Commissioners who have fixed tenures that can be renewed only once.

Investors in the energy sector are allowed to undertake projects in all zones and regions of the country. Partnership with the State or State-owned enterprises is not mandatory under the law and foreign companies are allowed to hold a majority stake in energy projects except in the mining sub-sector. Since the repeal of the Exchange Control Act in 1993, there are no controls on foreign exchange. Transfer of capital and profits arising from investment is unrestricted.

### AREAS OF IMPROVEMENT

While the ERC has acquired a certain level of autonomy, additional steps should be taken to increase its institutional and financial independence. For instance, the Parliament should be empowered to select the Commissioners in accordance with criteria established in the law. The members of the Commission should not be affiliated to the Government or any other public authority. This will guarantee that the staff responsible for the ERC's management act impartially in the exercise of their powers. Further, the ERC should be allowed to control and adjust its budget to best meet its financial needs.

The Government should be aware that some screening and pre-establishment mechanisms as well as local content requirements may be perceived as onerous and can potentially hamper Kenya's attractiveness as an investment destination. If such requirements remain in place, the Government should ensure that the local content policy and tools are applied in a transparent and coherent manner and are backed by accountable institutions.

## Rule of law

### QUICK FACTS

Kenya ratified the Convention on the Settlement of Investment Disputes between States and Nationals of Other States in 1967.

Kenya acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 1989.

Kenya has been a member country of the World Trade Organisation since 1995.

### STRENGTHS

Domestic courts have jurisdiction over contractual disputes with foreign investors, unless parties agree otherwise. The Constitution promotes alternative dispute resolution methods, including mediation and arbitration. The Nairobi Centre for International Arbitration was established under the International Arbitration Act no. 26 of 2013 as a neutral venue for the conduct of international arbitration. The ERC refers the parties to mediation before it hears any complaints. It may also appoint an expert or constitute a dispute resolution panel. Decisions of the ERC can be appealed before the Energy Tribunal.

The right to property is enshrined in the Constitution. Expropriation of foreign assets is only permitted on public interest grounds. An investor not satisfied with the expropriation decision may request domestic courts to review the amount of compensation and the legality of expropriation. The Industrial Property Act no. 3 of 2001 and the international investment treaties to which Kenya is a party guarantee protection of intellectual property rights.

### AREAS OF IMPROVEMENT

Protection against the expropriation of tangible and intangible assets may be strengthened in the national legislation. The State could introduce explicit provisions to determine what constitutes "public or national purpose". Since there is no specific procedure in place about how and when compensation should be made, the domestic law must include a detailed process for this with clear steps and guidelines.



# Kyrgyzstan

Population <sup>1</sup>	6.201.500
Area (km <sup>2</sup> ) <sup>1</sup>	199.949
GDP per capita (USD) <sup>1</sup>	1.219,82
TPES (Mtoe) <sup>2</sup>	3,98
Energy intensity (toe/10 <sup>3</sup> 2010 USD) <sup>2</sup>	0,66
CO <sub>2</sub> emissions - energy (MtCO <sub>2</sub> ) <sup>2</sup>	9,88

Sources:

1. The World Bank 2017

2. ©OECD/IEA 2017, [www.iea.org/statistics](http://www.iea.org/statistics)

Kyrgyzstan’s overall risk level against the assessed areas is **low**.

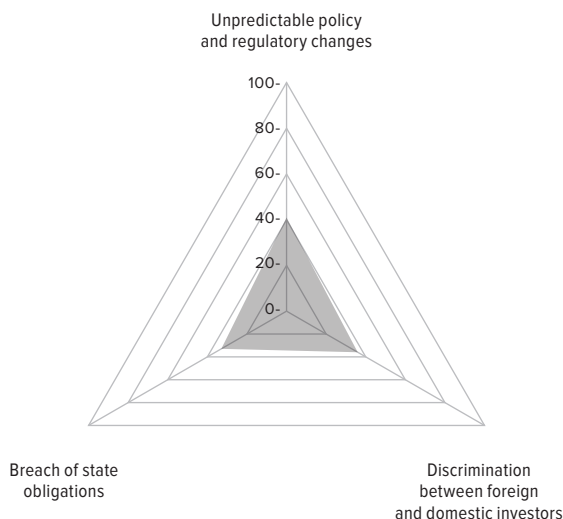
Among the three EIRA risk areas, *breach of State obligations* is lower compared to *unpredictable policy and regulatory change* and *discrimination between foreign and domestic investors*.

Kyrgyzstan’s performance against EIRA’s four indicators is moderate. On *management of decision-making processes* it has received 72 points and 68 on *rule of law*. The indicator *regulatory environment and investment conditions* is at 54 while *foresight of policy and regulatory change* is at 38.

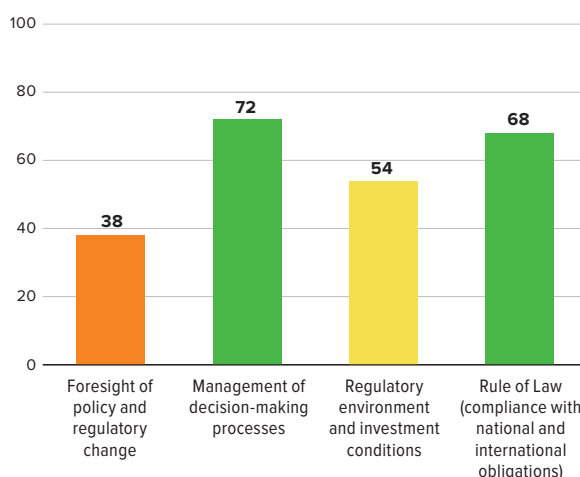
On a more detailed level, Kyrgyzstan’s overall sub-indicator performance is moderate. The highest scoring sub-indicator is *management and settlement of investor-State disputes* with 85 points followed by *transparency* at 81. On *restrictions on FDI* the score is 70. *Institutional governance* stands at 63. *Robustness of policy goals and commitments* and *respect for property rights* have received a moderate score of 50 each. The sub-indicators *regulatory effectiveness* and *communication of vision and policies* are at 39 and 26, respectively.

While Kyrgyzstan has the relevant policies and measures in place, there is potential for improvement. Attention should be given to enhancing the country’s regulatory effectiveness and better communicating its energy vision and policies.

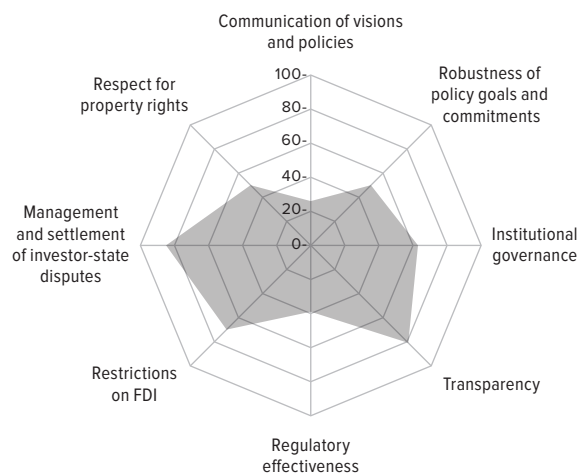
### RISK LEVEL



### INDICATOR PERFORMANCE



### SUB-INDICATOR PERFORMANCE



## Foresight of policy and regulatory change

### QUICK FACTS

The National Energy Programme for 2008-2010 and the Strategy for Development of the Fuel and Energy Sector until 2025 were approved in 2008.

Kyrgyzstan signed the Paris Agreement in 2016 but the ratification is still pending.

### STRENGTHS

The National Energy Programme and the Strategy for Development have been developed with the objective to improve energy efficiency, ensure reliable power supply and encourage innovative technologies. The Strategy for Development reaffirms the country's commitment to boost investment in power generation projects and tackle environmental concerns by increasing the share of renewables in its energy mix.

The Government is responsible for the overall execution of policies in the energy sector, including the National Energy Programme. The State Committee on Industry, Energy and Subsoil Use (State Committee) monitors the policy objectives and planned actions stated in the National Energy Programme and the Strategy for Development. Monitoring functions are also performed by the State Agency for Regulation of the Fuel and Energy Complex (State Agency).

### AREAS OF IMPROVEMENT

The Government must expedite the process of updating the National Energy Programme which has been ongoing for the last few years. At present, the National Energy Programme sets the main priorities for the period of 2008-2010 while the Strategy for Development contains projections of energy demand and supply from 2011 to 2025. The Government should ensure that the updated version of the Programme incorporates short-, medium- and long-term objectives that are measurable and time-bound.

Action plans, policies, secondary legislation and investment incentives should be in place so the Government can pursue its energy policy coherently. It is also crucial that targets are monitored and assessed on a regular basis and in a transparent manner. Appropriate review mechanisms and procedures should be embodied in the national strategy documents so the state authorities can track progress and readjust their objectives.

The ratification of the Paris Agreement will signal Kyrgyzstan's participation in the global effort to reduce greenhouse emissions. It will also harness the Government's commitment to enforce national policies and laws addressing climate change, facilitate regular reporting on its emissions and track the achievement of its targets.

## Management of decision-making processes

### QUICK FACTS

The State Committee is in charge of implementing policies for the energy sector.

The Ministry of Economy is the leading institution responsible for investment policies and legislation, including public-private partnership projects.

The Investment Promotion and Protection Agency was established in 2017 to support foreign companies in starting their business.

Kyrgyzstan adopted Law no. 213/2016 "On Access to Information Administered by State Bodies and Local Self-Government Authorities" for regulating access to information held by the State.

### STRENGTHS

According to the Constitution, the central Government ensures the implementation of the national policy in all fields of the economy, including the energy sector. Inter-ministerial coordination is envisaged when laws and decisions are drafted on transversal matters, such as the management of mining activities.

The Ministry of Justice is responsible for updating the online state registry which contains all laws and regulations enacted in the country. Under Law no. 34/1996 "On Regulatory Legal Acts", state authorities are required to publish draft laws and decrees on their websites and consult with relevant stakeholders. The Council on Development of Business and Investments acts as a consultative body to the Government. It makes proposals on how to foster an attractive investment environment.

### AREAS OF IMPROVEMENT

Though the country has yet to ratify the Paris Agreement, it should already prepare a climate change mitigation plan containing measures and activities for the implementation of its climate change goals.

The State Committee may consider increasing the transparency in its activities by regularly publishing reports and statistics on its past and future actions. This will assure better access to information and constructive dialogue between public authorities and stakeholders.

While the general legal framework allows state authorities to conduct public deliberations on draft laws, it does not prescribe timelines and modalities for participation. For instance, while the energy regulatory authority may organise public hearings and conferences to present its activities and proposals, it is not legally bound to do so. To foster a productive relationship with stakeholders, public authorities should develop and adhere to minimum consultation standards, such as rules for agenda-setting, participation methods and timelines.



## Regulatory environment and investment conditions

### QUICK FACTS

The State Agency is an autonomous body regulating the electricity and gas sectors.

The State Committee regulates the exploration and extraction of oil, gas and coal.

Law No. 66/2003 “On Investments” provides equal treatment to domestic and foreign investors.

### STRENGTHS

The regulatory authorities have been entrusted with functions that are reflected in the law. The Decree no. 650/2014 “On the State Agency for Regulation of the Energy Sector at the Government of the Kyrgyz Republic” separated the State Agency from other executive bodies. It has legal personality and its own staff.

The existing legal framework makes the investment climate more favourable to FDI than in the past. Foreign investors are free to establish and own businesses. The law does not impose any territorial restrictions on investment in the energy sector, or limits on foreign ownership or control. Foreign investors are not legally obliged to purchase products or services from local suppliers. Currency exchange control is absent. The Law “On Investments” also guarantees the absence of restrictions on repatriation of earnings and capital.

### AREAS OF IMPROVEMENT

The institutional setup of the State Agency can be improved by establishing a board or commission whose members are appointed for a fixed term, with the possibility of limited renewal. The legal independence of the State Agency should also be safeguarded by empowering it to take decisions that do not require governmental approval and render it accountable to the Parliament. Finally, the State Agency’s financial independence will be assured if it is allowed to dispose of its budget without any governmental interference.

The Government should consider reducing the degree of state intervention since it can create a negative perception about the regulatory environment. For example, the Government currently has the first right to acquire strategic objects as defined in Law no. 94/2008 “About Strategic Objects of the Kyrgyz Republic”. Additionally, preliminary governmental consent is required for mergers or acquisitions in projects of strategic importance. Such measures could result in uncertainty and delays.

The quota system for foreign workers currently in force may be perceived as overly restrictive and result in a misalignment between supply and demand for skilled labour. To the extent that quotas are necessary, they should be administered in a consistent and transparent manner. Similarly, the work permit process could be made more inclusive for all types of foreign workers.

## Rule of law

### QUICK FACTS

Kyrgyzstan ratified the Energy Charter Treaty in 1997.

Kyrgyzstan signed the Convention on the Settlement of Investment Disputes between States and Nationals of Other States in 1995 but the ratification is still pending.

Kyrgyzstan acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 1996.

### STRENGTHS

The national courts have jurisdiction to hear contractual and commercial disputes between investors and the Government. Foreign investors may seek redress against the State before an arbitration tribunal. Prior exhaustion of local judicial remedies is not required. The International Court of Arbitration was established under the Law on Arbitration Courts 2002 to handle all types of commercial disputes. Foreign judicial decisions and awards are recognised and enforced in Kyrgyzstan.

Domestic laws guarantee a broad scope of rights to investors, such as national treatment and repatriation of investment and property. The Law “On Investments” authorises expropriation only when it is carried out in the public interest, on a non-discriminatory basis, and against payment of prompt and adequate compensation, including lost profits. Kyrgyzstan has entered into a number of BITs that promote and protect intellectual property rights as a form of “investment”. There are no restrictions to the transfer of technology in the energy sector.

### AREAS OF IMPROVEMENT

Some BITs to which Kyrgyzstan is a party entitle foreign investors to submit their disputes to arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States. The Government should finalise the ratification process of this Convention so that foreign investors can have an additional avenue for pursuing the resolution of their disputes.

The provisions regarding indemnification in case of investment expropriation can be reformulated to include a definition of the term “public interest” and a valuation method for calculating damages and interest. Further, a reasonable timeframe for the payment of compensation can be introduced. These reforms will reduce the risk of arbitrariness and legal uncertainty.



# Latvia

Population <sup>1</sup>	1.940.740
Area (km <sup>2</sup> ) <sup>1</sup>	64.490
GDP per capita (USD) <sup>1</sup>	15.594,29
TPES (Mtoe) <sup>2</sup>	4,26
Energy intensity (toe/10 <sup>3</sup> 2010 USD) <sup>2</sup>	0,15
CO <sub>2</sub> emissions - energy (MtCO <sub>2</sub> ) <sup>2</sup>	6,84

Sources:

1. The World Bank 2017

2. ©OECD/IEA 2017, [www.iea.org/statistics](http://www.iea.org/statistics)

Latvia’s overall risk level against the assessed areas is **low**.

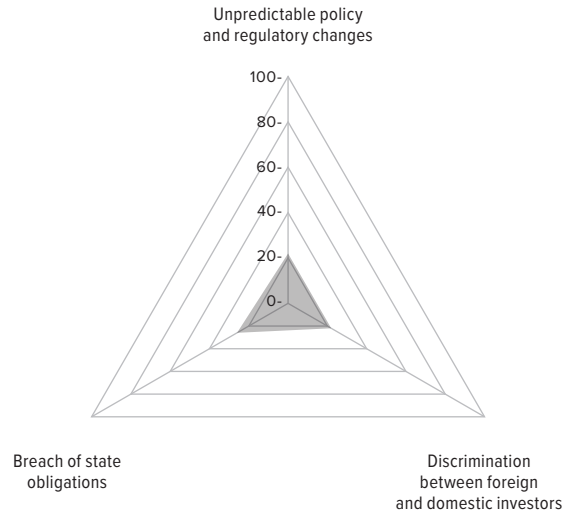
Among the three EIRA risk areas, *discrimination between foreign and domestic investors* and *unpredictable policy and regulatory change* are lower compared to *breach of State obligations*.

Latvia’s performance against EIRA’s four indicators is good. It has received a score of 88 on *regulatory environment and investment conditions* and 87 on *foresight of policy and regulatory change*. On *rule of law* it has received 74 points, while *management of decision-making processes* is at 73.

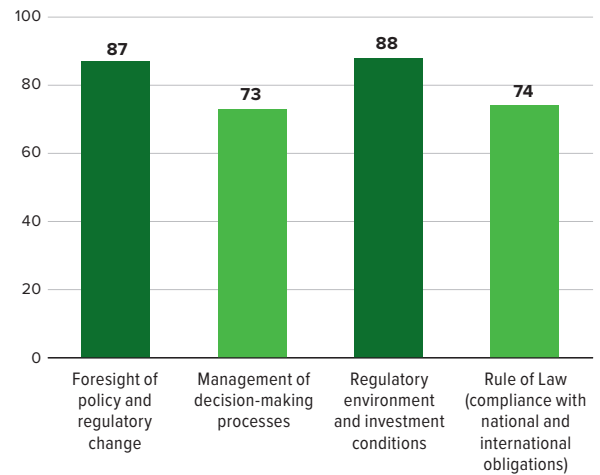
On a more detailed level, Latvia’s overall sub-indicator performance is also good. The highest scoring sub-indicator is *regulatory effectiveness* with 100 points. The performance on the sub-indicators *robustness of policy goals and commitments* and *communication of vision and policies* is also very good with scores of 88 and 87, respectively. *Respect for property rights* is at 83 and *institutional governance* is at 81. A good score of 75 has been obtained on the sub-indicator *restrictions on FDI*. It has scored 65 on the *management and settlement of investor-State disputes* and 64 on *transparency*.

While Latvia has relevant policies and measures in place, there is some potential for improvement. Attention should be given to the management and settlement of investor-State disputes and to further enhancing transparency.

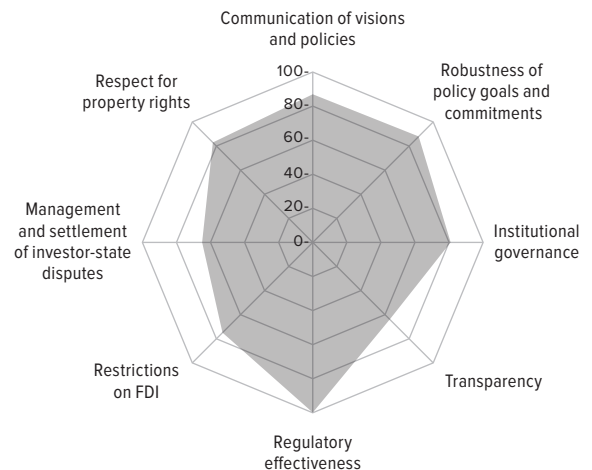
## RISK LEVEL



## INDICATOR PERFORMANCE



## SUB-INDICATOR PERFORMANCE



## Foresight of policy and regulatory change

### QUICK FACTS

The country's primary policy documents are the Latvian Energy Long-Term Strategy 2030 – Competitive Energy for the Society (endorsed in 2013) and the Sustainable Strategy of Latvia until 2030 (adopted in 2010).

The action plans for implementing the energy policies are the National Development Plan 2014-2020 (adopted in 2012) and the Energy Development Guidelines for 2016-2020.

As an EU member state, Latvia ratified the Paris Agreement in 2017.

### STRENGTHS

The strategy documents define the medium- and long-term targets and priority actions. They outline the performance indicators to be achieved by 2020 and 2030 in the fields of energy security, energy efficiency, renewable energy and greenhouse gas emissions. They also highlight the main investment projects which will improve the infrastructure for energy supply help achieve energy self-sufficiency. The NDC submitted by Latvia covers all sectors including energy.

The process for monitoring the implementation of the energy objectives is straightforward. The Ministry of Economics is required to present annual reports to the Cabinet of Ministers and the Parliament about the implementation of actions envisaged in the Strategy 2030. The Government and all respective ministries are responsible for regular reporting to the Sustainable Development Committee of the National Development Plan.

### AREAS OF IMPROVEMENT

Specific timelines and processes for reviewing and updating the energy objectives and action plans could be included in policy documents, such as the Strategy 2030. This should be in addition to the general regulation on the preparation of development planning documents and impact assessment. Defining the steps and procedures for regular evaluation, together with the identification of stakeholders who should be engaged in the review, will improve the enforcement of the country's energy strategy.

To allow productive dialogue on policy choices the annual reports submitted by the policy implementation authorities to the Cabinet of Ministers and the Parliament should be made available to all interested parties and stakeholders.

## Management of decision-making processes

### QUICK FACTS

The Ministry of Economics is responsible for formulating energy strategies and laws.

The Ministry of Economics develops investment policies with the support of the Investment and Development Agency of Latvia (LIAA).

The LIAA was established in 1993 to promote business development by facilitating foreign investment in the country.

The Freedom of Information Law 1998 as amended in 2006 ensures that the public has access to information held by state authorities.

### STRENGTHS

The policy- and law-making process, as well as the line of responsibilities between different government institutions, are clearly defined. When necessary, the Ministry of Economics collaborates with other ministries in the development and execution of energy policies. The Ministry of Environmental Protection and Regional Development monitors the implementation of the country's NDC targets. A national inventory report on greenhouse gas emissions is prepared and broadly circulated on an annual basis.

All enacted laws and regulations are published in the Official Gazette and can be accessed through an online legal database. Before any legislative initiative, the Government is required to conduct public consultations with selected stakeholders. The energy regulatory authority makes all its draft regulations and decisions publicly available. It also publishes annual reports on the status of the electricity and gas markets. All written comments from stakeholders should appear on the energy regulator's website and be duly evaluated.

### AREAS OF IMPROVEMENT

To increase openness, the participation of all stakeholders in the decision-making process should be encouraged. Adequate time should be granted the interested parties for expressing their opinion and giving recommendations on proposed laws and regulations. This will reduce any existing perception of biased decisions and increase the accountability of the Government.

It is important that foreign investors can obtain comprehensive information on energy matters and investment opportunities. Therefore, the Government may consider expanding the mandate of the LIAA to include new functions and responsibilities related to setting up a business in the energy sector. Efforts should also be made to provide investors with official and up-to-date translations of all legal acts and policy documents. This will help them understand the domestic legal regime and make informed business decisions.

## Regulatory environment and investment conditions

### QUICK FACTS

The Public Utilities Commission (PUC) is the regulatory authority for electricity, gas and district heating.

The Ministry of Economics regulates the upstream activities.

Equal treatment is granted to investors under EU law and international agreements.

### STRENGTHS

The energy regulatory setup of Latvia is sound and effective. The PUC and the Ministry of Economics have clear mandates and are accountable to the State Audit Office and the Parliament. In general, the PUC acts as an independent agency and is not subordinate to any state institution in the performance of its duties. The appointment criteria and the grounds for dismissal of the PUC Board are determined in the law. The Parliament appoints the Chair of the Commission and four other Board members for a limited tenure which is renewable only once.

The legislative framework generally creates favourable investment conditions. Foreign investors may hold a majority stake in energy projects and employ foreign personnel without any limitations. In principle, there is no prohibition on investing in any energy sub-sector. There are no restrictions imposed on repatriation of capital abroad or on convertibility of currencies.

### AREAS OF IMPROVEMENT

To stimulate the development of the upstream sector, there is a need to clarify the Government's mandate, role and degree of intervention in the prospecting, exploration and extraction of hydrocarbons. In particular, there should be certainty about the obligatory nature and level of state participation in investment projects prior to the announcement of the tendering process.

## Rule of law

### QUICK FACTS

Latvia ratified the Energy Charter Treaty in 1995.

Latvia ratified the Convention on the Settlement of Investment Disputes between States and Nationals of Other States in 1997.

Latvia acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 1992.

### STRENGTHS

National courts have jurisdiction to hear contractual disputes with foreign investors. Voluntary mediation and conciliation are available under the Law on Mediation 2014 and the Civil Procedure Law 1998. The domestic legislation does not require exhaustion of local remedies before recourse to international arbitration.

The Constitution of Latvia states that expropriation of property for public purposes is allowed only in exceptional cases, in accordance with the law and in return for fair compensation. The Law on Expropriation of Real Estate for Public Interest 2011 provides a process and timeframe for the determination and payment of compensation in the event of expropriation. Latvia is bound under its BITs to protect intellectual property rights as a form of "investment".

### AREAS OF IMPROVEMENT

The introduction of timeframes for the delivery of judgements is essential since it will enable domestic courts to manage and dispose of cases in due time and improve the overall functioning of the judicial system.

The Government should consider establishing an investment ombudsman for facilitating relations and resolving disputes between foreign investors, public utilities and state institutions. Alternatively, it could empower the investment promotion authority with mediation functions. To further improve investor-State dispute settlement mechanisms, the Government may also consider enacting a law on arbitration.



# Liechtenstein

Population <sup>1</sup>	37.922
Area (km <sup>2</sup> ) <sup>1</sup>	160
GDP per capita (USD) <sup>*</sup>	168.146,02
TPES (Mtoe) <sup>2</sup>	N/A
Energy intensity (toe/10 <sup>3</sup> 2010 USD) <sup>2</sup>	N/A
CO <sub>2</sub> emissions - energy (MtCO <sub>2</sub> ) <sup>2</sup>	N/A

Sources:

1. The World Bank 2017

2. ©OECD/IEA 2017, [www.iea.org/statistics](http://www.iea.org/statistics)

\* 2015 data

Liechtenstein’s overall risk level against the assessed areas is **low**.

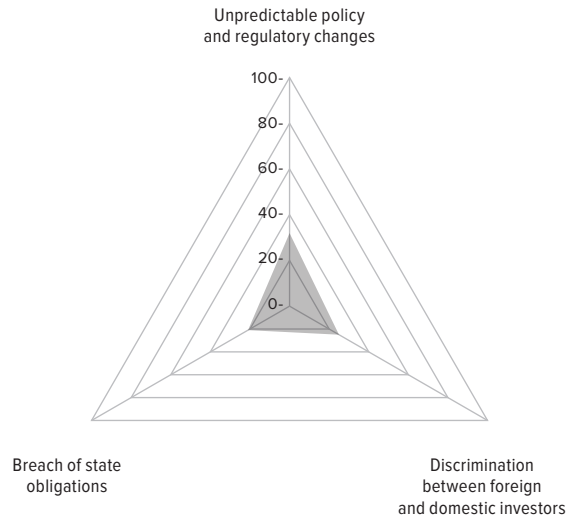
Among the three EIRA risk areas, *breach of State obligations* and *discrimination between foreign and domestic investors* are lower compared to *unpredictable policy and regulatory change*.

Liechtenstein’s performance against EIRA’s four indicators is good. The indicators *regulatory environment* and *rule of law* have good scores of 81 and 79, respectively. It has received a good score of 67 points on *management of decision-making processes*. The score for *foresight of policy and regulatory change* is 59.

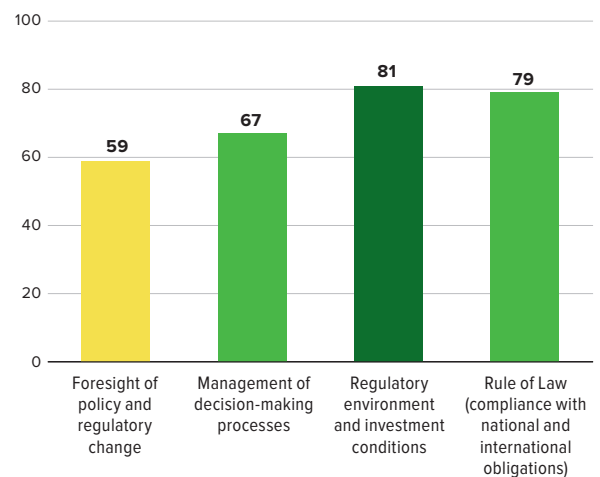
On a more detailed level, Liechtenstein’s overall sub-indicator performance is good. The country has received 100 points on the sub-indicator *restrictions on FDI* and 83 on *respect for property rights*. *Institutional governance* and *management and settlement of investor-State disputes* are both at 75. *Communication of vision and policies* is at 69 points, while *regulatory effectiveness* stands at 61. A moderate score of 58 has been obtained on the sub-indicator *transparency*. Performance on *robustness of policy goals and commitments* is at 48 points.

While Liechtenstein has the relevant policies and measures in place, there is potential for improvement. Attention should be given to enhancing transparency and strengthening the robustness of its policy goals and commitments.

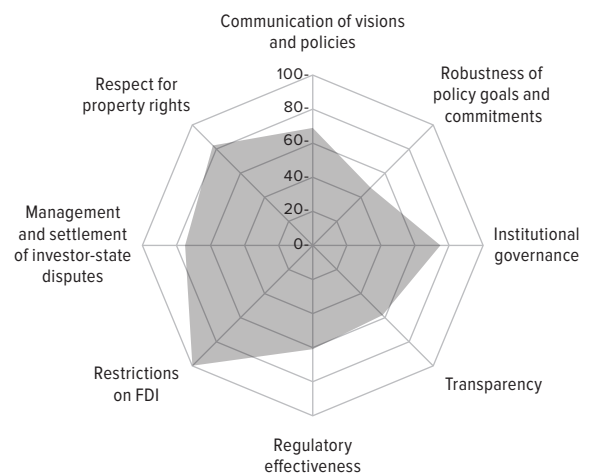
## RISK LEVEL



## INDICATOR PERFORMANCE



## SUB-INDICATOR PERFORMANCE



## Foresight of policy and regulatory change

### QUICK FACTS

The key energy strategy document for Liechtenstein is the Energy Strategy 2020, published in 2012. The Government is planning an Energy Strategy for 2030 and an Energy Vision for 2050.

Law no. 730.2/2015 “On the Promotion of Energy Efficiency and Renewable Energy” provides measures to increase energy efficiency and promote the use of renewable energy.

Liechtenstein ratified the Paris Agreement in 2017 and submitted its NDC.

### STRENGTHS

Liechtenstein is a party to the European Economic Area and closely follows the EU’s energy policies. Security of supply, cost-efficiency and environmental sustainability are the primary focus of the Government’s energy strategy. Clear goals have been set for priority areas, such as for promoting energy efficiency, increasing the share of renewables in the energy mix and reducing greenhouse gas emissions. In fact, the 2020 goal for energy efficiency was achieved as early as 2015.

The Office for Energy, under the Ministry for Infrastructure, Economic Affairs and Sport, monitors the implementation of the country’s energy strategy. It keeps track of a series of measures targeted at attaining the goals as can be seen in the Government’s half-term review of the Energy Strategy 2020, which was published in 2017.

### AREAS OF IMPROVEMENT

The adoption of the new Energy Strategy 2030 and Energy Vision 2050 should be expedited. The goals set in the new strategy should follow-up on the existing ones. In particular, the country’s need for greater energy security should be balanced with its goal to decarbonise the sector. As with the Energy Strategy 2020, the objectives in the new Energy Strategy 2030 should be supported by binding action plans which will ensure its execution.

Monitoring mechanisms designed for measuring the progress made on the targets should be independent of the policy-making and implementation authorities. Moreover, a provision may be included in the law to facilitate review of the energy priorities and set out the process regarding how the review should be performed.

## Management of decision-making processes

### QUICK FACTS

The Office for Energy, within the Ministry for Infrastructure, Economic Affairs and Sport, is the body responsible for developing and implementing the country’s energy policy.

The Department for Economy is responsible for handling investment-related issues. It is under the Ministry for Infrastructure, Economic Affairs and Sport.

The Office for Energy acts as a single window for all enquiries regarding investment in the energy sector.

Liechtenstein adopted Law no. 172.015/1999 “On Information for the Population (Information Act)” which establishes the right to information.

### STRENGTHS

The law-making process in Liechtenstein is well-defined. Legislative initiative lies with the Parliament and the Reigning Prince. The Energy Commission advises the Government on all energy policy matters. It oversees the energy policy environment and technological developments in the sector.

The Government makes all legal and regulatory documents available, electronically and in print. Though it is not a legal requirement, in practice the Government organises public consultations on proposed policies and laws. The Law “On Information for the Population (Information Act)” entitles the public to receive information from governmental authorities. It also stipulates the situations in which information can be restricted, like public safety, business secrecy and for the protection of personal life.

### AREAS OF IMPROVEMENT

The work of the Office for Energy may be re-organised so that its various responsibilities can be managed effectively. The Government may also consider establishing a one-stop shop for the energy sector, which approves investments and arranges licenses.

Regulatory decisions should be made available, preferably through an easily accessible online repository. Access to information on tariff methodology can improve the transparency in the regulatory framework. Moreover, the availability of all relevant laws and regulations in a foreign language can contribute to attracting more investors in the market.

The country should have legal provisions for consultation with stakeholders during the policy and law-making process. Feedback from the public on regulatory decisions should also be encouraged.



## Regulatory environment and investment conditions

### QUICK FACTS

The Commission for Energy Market Oversight regulates the electricity and gas markets, in alignment with the EU's internal market directives.

Competition issues are dealt with by the Economic Department of the Ministry for Infrastructure, Economic Affairs and Sport.

### STRENGTHS

The functions of the Commission for Energy Market Oversight, such as the adoption of non-discriminatory price setting mechanisms and the designation of transmission and distribution system operators, are defined in the electricity and gas market laws. The Parliament performs public control over its operations. It is granted a degree of budgetary autonomy. For instance, it has the right to levy fees and allocate its financial resources without prior approval of the Government.

The legal framework of Liechtenstein is conducive to FDI. Screening of investment is not a pre-requisite for undertaking projects in the country. Equal treatment is granted to foreign and local investors. Foreign companies are allowed to hold a majority stake in energy projects and are not legally obliged to partner with state or local enterprises. Transfer of invested capital and related profits are fully permitted.

### AREAS OF IMPROVEMENT

The Government may consider granting more functional and organisational independence to the Commission for Energy Market Oversight. In particular, its Secretariat should be separated from the Ministry for Infrastructure, Economic Affairs and Sport. The selection procedure of the Commission's members should be made transparent and renewal of their mandate limited. These measures would enhance its accountability and its position as an impartial supervisory authority.

## Rule of law

### QUICK FACTS

Liechtenstein ratified the Energy Charter Treaty in 1997.

Liechtenstein acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 2011.

Law no. 711.0/1887 "On the Procedure in Cases of Expropriation" determines the process for expropriation.

### STRENGTHS

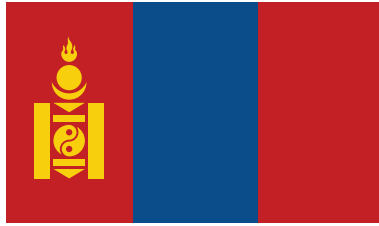
The procedure for hearing contractual disputes with foreign investors is stated in the national laws. Arbitration is included in Law no. 271.0/1912 "On the Legal Proceedings in Civil Cases". Moreover, the Liechtenstein Chamber of Commerce and Industry has prepared rules of arbitration in 2012 which parties may apply to international and domestic proceedings and to arbitral tribunals sitting both in Liechtenstein and abroad. Liechtenstein encourages the amicable resolution of disputes and has adopted Law no. 275.1/2004 "On Mediation in Civil Matters".

The Law "On the Legal Proceedings in Civil Cases" contains detailed provisions protecting property rights. Intellectual property is protected by the Law on Swiss Patent 2011, as the countries have a unified territory of protection. The Constitution and the Law "On the Procedure in Cases of Expropriation" explain in detail the process of expropriation. They also stipulate that expropriation may take effect only after the payment of appropriate compensation.

### AREAS OF IMPROVEMENT

The Government may take measures to improve domestic dispute resolution processes. In addition to the existence of mediation mechanisms in civil cases, an investment ombudsman could be established to address potential complaints of foreign investors. To ensure the speedy disposal of cases, a time limit may be set for domestic courts and administrative tribunals to deliver final judgements.

While the Constitution and the Law "On the Procedure in Cases of Expropriation" provide a number of guarantees against unlawful expropriation, they do not provide the circumstances under which such expropriation would be justified. Therefore, the Government should explicitly mention the situations and circumstances under which expropriation may occur.



# Mongolia

Population <sup>1</sup>	3.075.647
Area (km <sup>2</sup> ) <sup>1</sup>	1.564.120
GDP per capita (USD) <sup>1</sup>	3.735,16
TPES (Mtoe) <sup>2</sup>	4,94
Energy intensity (toe/10 <sup>3</sup> 2010 USD) <sup>2</sup>	0,42
CO <sub>2</sub> emissions - energy (MtCO <sub>2</sub> ) <sup>2</sup>	17,16

Sources:

1. The World Bank 2017

2. ©OECD/IEA 2017, [www.iea.org/statistics](http://www.iea.org/statistics)

Mongolia’s overall risk level against the assessed areas is **low**.

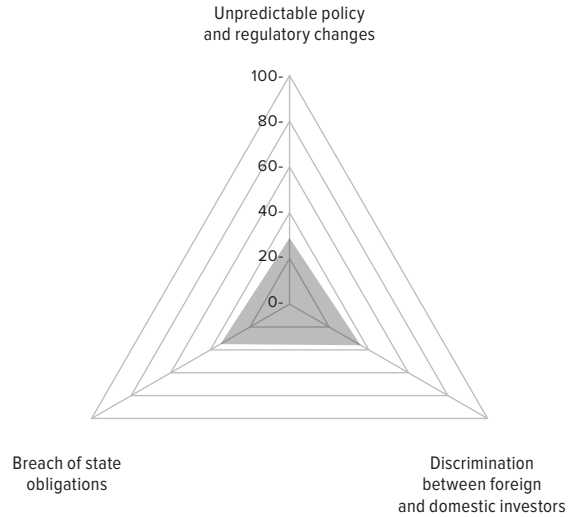
Among the three EIRA risk areas, *unpredictable policy and regulatory change* is lower compared to *breach of State obligations* and *discrimination between foreign and domestic investors*.

Mongolia’s performance against EIRA’s four indicators is good. It has received a score of 75 and 73 on the indicators *foresight of policy and regulatory change* and *management of decision-making processes*. On *rule of law* it has received 65 points, while *regulatory environment and investment conditions* is with 53 points.

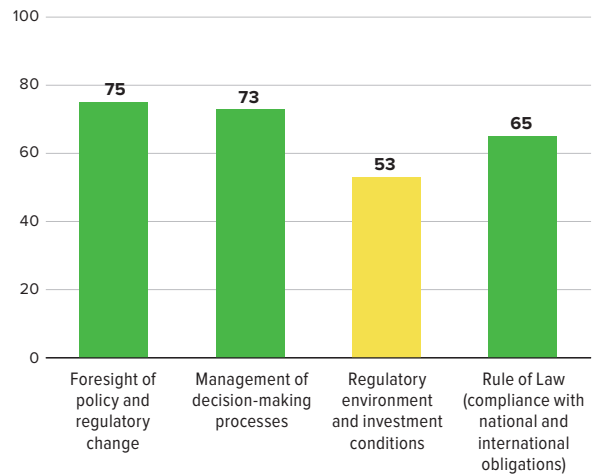
On a more detailed level, Mongolia’s overall sub-indicator performance is good. The highest scoring sub-indicator is *institutional governance* with a very good score of 88, followed by *management and settlement of investor-state dispute* at 80 points. The performance on the sub-indicators *communication of vision and policies* and *robustness of policy goals and commitments* is good with scores of 77 and 72, respectively. The sub-indicator *transparency* is at 58, followed by *regulatory effectiveness* at 56. *Restrictions on FDI* and respect for property rights are both at 50.

While Mongolia has relevant policies and measures in place, there is potential for improvement. Attention should be given to lowering the current restrictions on FDI and to enhancing the respect for property rights.

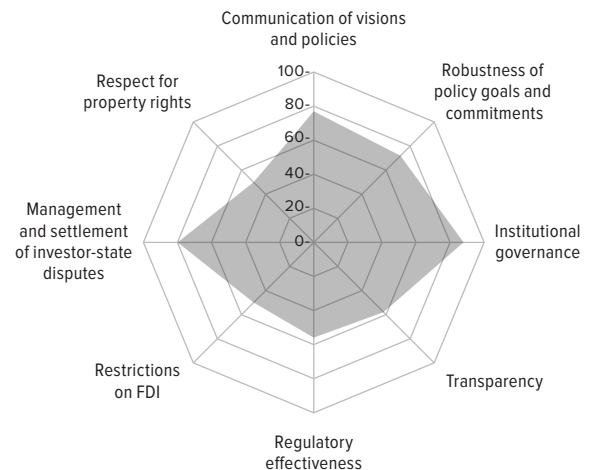
### RISK LEVEL



### INDICATOR PERFORMANCE



### SUB-INDICATOR PERFORMANCE



## Foresight of policy and regulatory change

### QUICK FACTS

The primary energy strategy document for Mongolia is the State Policy on Energy 2015-2030. The operational planning documents for the Strategy are the Government Action Programme 2016-2020, the National Energy Efficiency Action Plan 2014-2020 and the National Renewable Energy Programme 2005-2020.

Mongolia ratified the Paris Agreement in 2016 and submitted its NDC.

### STRENGTHS

The State Policy on Energy outlines the energy priorities of the country, such as strengthening energy security, improving power reliability and affordability, increasing renewable energy generation, improving energy efficiency, promoting innovative technologies, and boosting investment in the energy sector. The State Policy on Energy includes quantifiable and time-bound targets for these priority areas. The Government Action Programme stipulates concrete actions for achieving these targets.

There is a defined mechanism for monitoring and reviewing the implementation of the stated goals. The Ministry of Energy and the Energy Regulatory Commission (ERC) are tasked with the implementation and monitoring of the State Policy of the Energy Sector. The Ministry of Energy prepares and submits half-yearly reports to the Government on the implementation status of the targets. The Ministry of Mining and Heavy Industries undertakes monitoring and evaluation for the mining sub-sector. Its financial statements as well as information on the budget execution and performance are made available on its website.

### AREAS OF IMPROVEMENT

While the monitoring and evaluation process in Mongolia is quite robust, to avoid the risk of self-assessment the Government may consider restructuring its current setup. As a starting point, the ministries responsible for framing policy targets and ensuring their implementation should not participate in the monitoring process. This will make the process more neutral and add to its credibility. Independent monitoring will also give an objective view to investors on how the Government is performing and whether it will achieve its intended objectives.

## Management of decision-making processes

### QUICK FACTS

The Ministry of Energy is the central authority responsible for the formulation of the energy policy.

The National Development Agency (NDA), under the Prime Minister, is in charge of framing the investment policies of the country.

The NDA acts as a single window for all enquiries concerning investment policies and applications. It also provides business facilitation services to investors.

Mongolia enacted the Law of Mongolia on the Information Transparency and Right to Information in 2011.

### STRENGTHS

The law making process in Mongolia is straightforward. According to the Constitution, the President, members of the national parliament and the Government have the right to legislative initiatives. Citizens and other organisations may forward their suggestions on draft laws to those entitled to initiate a law. There are lead ministries responsible for guiding the implementation of the country's energy and investment strategies. Proposed policies are discussed with experts and officers of the central government and the provincial governments before their adoption.

Information requests directed to public authorities cannot be denied except when such information is classified or its disclosure is prohibited under the law. The ERC annually publishes information on the power sub-sector. It also makes available regulatory decisions on the energy market. Under the law, each ministry and agency is required to maintain a dedicated web page for disclosing all public information related to the procurement plans and their current status.

### AREAS OF IMPROVEMENT

Though inter-ministerial coordination is essential during the legislative process, efforts should be undertaken to enhance the implementation and effectiveness of such cooperation. For this purpose, standing committees may be created to increase coordination on cross-sectoral issues. It will ensure there is active dialogue between the concerned ministries and that their mandate is complementary rather than contradictory. Moreover, it can help to counter the perception that discussion between ministries on key issues is not optimal or minimal in practice.

Efforts can be made to create and make available official translations of laws, policies and regulations in foreign languages. At present, the online registry of laws contains legislation only in Mongolian. Availability of official translations will allow investors to get updated information about the investment and legal framework of the country, engage proactively in the policy development process as well as obtain guidance on how to conduct business locally.

## Regulatory environment and investment conditions

### QUICK FACTS

The ERC regulates the generation, transmission, distribution, dispatching and supply of energy.

The mining sub-sector is under the authority of the Ministry of Mining and Heavy Industries.

The Authority for Fair Competition and Consumer Protection is responsible for enforcing the Law of Mongolia on Competition 2010.

The Law of Mongolia on Investment 2013 protects the legal rights and interests of investors operating in the country.

### STRENGTHS

The mandate and responsibilities of the ERC are stated in its governing law, the Law of Mongolia on Energy 2001. To ensure financial independence, it is funded through its service fees and charges. There are legal provisions to ensure transparency and accountability in its management. For instance, the Chairman and Regulators of the ERC can hold office only for a prescribed period which cannot be renewed indefinitely. The ERC is vested with wide powers including the issuance of licenses, setting the tariff methodology and resolving disputes between license holders and between consumers and license holders. Additionally, the Regulators of the ERC in their capacity as state inspectors can impose penalties and suspend licenses.

Mongolia's legislative framework encourages and promotes FDI. The Law of Mongolia on Investment contains detailed provisions for the stabilisation of the country's tax and investment environment. The Government also provides inward investment support and facilitation services, such as incentives relating to land rights and investment in the free economic zones. Investors have a right to transfer their assets and revenues out of Mongolia without hindrance.

### AREAS OF IMPROVEMENT

The Government may consider reducing the level of state intervention in certain energy sub-sectors. For instance, foreign state-owned entities need to obtain prior approval from the Ministry of Economic Development before investing in the mining sector. Moreover, in the case of "strategic mineral deposits" the Government has a pre-emptive right to take an equity interest of up to 50 per cent or to impose a special royalty in lieu of such interest. To retain the attractiveness of this sub-sector for investors the Government may consider relaxing such regulations to the extent possible.

## Rule of law

### QUICK FACTS

Mongolia ratified the Energy Charter Treaty in 1999.

Mongolia is a Contracting Party of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States since 1991.

The Law of Mongolia on Investment protects the assets of foreign investors from illegal confiscation.

### STRENGTHS

Positive measures have been taken to encourage alternate dispute resolution mechanisms such as voluntary mediation and conciliation. The Investor Protection Council functions as an investment ombudsman and resolves deadlocks between investors and public authorities. The Government adopted the revised Law of Mongolia on Arbitration 2017 to ensure conformity with international arbitration standards. The law is based on the UNICITRAL Model Law. National laws do not require the exhaustion of local judicial remedies before the initiation of arbitration proceedings.

Properties of the investors may be expropriated only for public interest purposes, on the condition of full compensation and following the due process. The Law of Mongolia on Land 2002 provides a timeframe within which compensation should be effected for the acquisition of land by the Government. Mongolia has a number of laws protecting intellectual property rights. There are no restrictions imposed on the transfer of technology.

### AREAS OF IMPROVEMENT

Attention should be given to strengthening the management processes for handling domestic cases. A time frame should be set for national courts to deliver final judgements. Efforts should also be made to ensure that hearings are set closely and not suspended for indefinite periods. This will bring efficiency in judicial proceedings and reduce costs for the parties involved.

Legal provisions protecting foreign investors against expropriation should be strengthened. At present, the Constitution only safeguards citizens against illegal confiscation or requisition of private property. While the Law of Mongolia on Investment offers a degree of protection to foreign investors, it does not mention that expropriation will be non-discriminatory in nature.

Measures should be taken to streamline and clarify provisions related to land use. While Mongolia respects property rights, there is a high level of discretion granted to the central and local governments in re-acquiring land for "special needs". This makes strategic sectors such as mining, which have previously been subject to investor-State disputes, particularly vulnerable.



# Montenegro

Population <sup>1</sup>	622,471
Area (km <sup>2</sup> ) <sup>1</sup>	13,810
GDP per capita (USD) <sup>1</sup>	7,669,57
TPES (Mtoe) <sup>2</sup>	1,01
Energy intensity (toe/10 <sup>3</sup> 2010 USD) <sup>2</sup>	0,22
CO <sub>2</sub> emissions - energy (MtCO <sub>2</sub> ) <sup>2</sup>	2,36

Sources:

1. The World Bank 2017

2. ©OECD/IEA 2017, [www.iea.org/statistics](http://www.iea.org/statistics)

Montenegro’s overall risk level against the assessed areas is **low**.

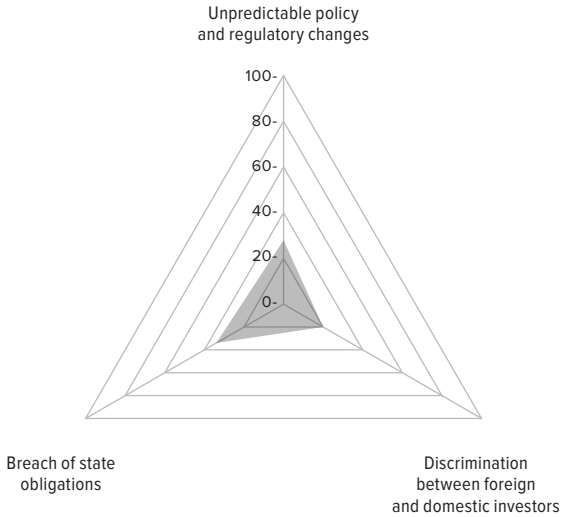
Among the three EIRA risk areas, *discrimination between foreign and domestic investors* and *unpredictable policy and regulatory change* are lower compared to *breach of State obligations*.

Montenegro’s performance against EIRA’s four indicators is good. It has received very good scores on the indicators *regulatory environment and investment conditions* (90) and *management of decision-making processes* (83). The indicators *foresight of policy and regulatory change* and *rule of law* are at 66.

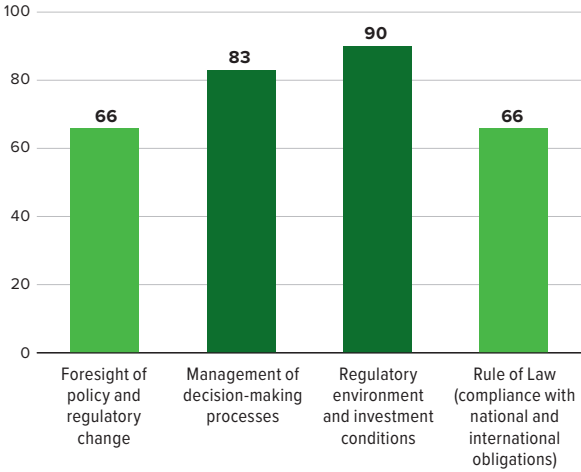
On a more detailed level, Montenegro’s overall sub-indicator performance is good. The highest scoring sub-indicator is *regulatory effectiveness* (100) followed by *institutional governance* (94). The performance on the sub-indicators *restrictions on FDI* and *robustness of policy goals and commitments* is at 80 and 75, respectively. A good score of 72 has been obtained on the sub-indicator *transparency*. *Respect for property rights* is at 67 points while *management and settlement of investor-State disputes* stands at 65. The lowest score has been received on *communication of vision and policies* (58).

While Montenegro has the relevant policies and measures in place, there is some potential for improvement. Attention should be given to better communicating the country’s vision and policies.

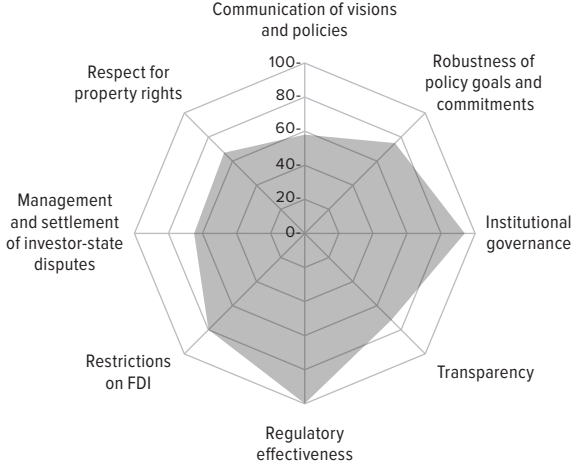
**RISK LEVEL**



**INDICATOR PERFORMANCE**



**SUB-INDICATOR PERFORMANCE**



## Foresight of policy and regulatory change

### QUICK FACTS

The Energy Policy 2030 (adopted in 2011) and the Action Plan 2016-2020 of the Energy Development Strategy 2030 (adopted in 2015) outline the objectives of Montenegro.

Montenegro ratified the Paris Agreement in 2017 and submitted its first NDC.

### STRENGTHS

As an EU-candidate country, Montenegro is committed to harmonising its energy policies with the European *acquis*. The Energy Policy 2030 identifies the country's priorities such as security of supply, liberalisation of the energy market, and development of sustainable energy. The Energy Development Strategy 2030 contains a thorough description of the short- and medium-term targets as well as programmes, projects and activities for the realisation of these targets.

The Ministry of Economy oversees the implementation of the energy goals and reports to the Government on an annual basis. The Directorate for Energy establishes channels of communication among the various implementation bodies, prepares periodic reports on the progress of their activities and proposes corrective measures in case of deviation from the planned action.

### AREAS OF IMPROVEMENT

The Government should ensure that there is a continuum between short- and medium-term goals, on the one hand, and long-term targets, on the other. Defining long-term outcome-oriented targets will give investors and energy partners confidence in the country's policy trajectory.

The independence of the monitoring bodies is a critical aspect of policy development and implementation. It will assist the Government in gaining credibility and identifying the appropriate instruments to achieve the desired targets.

## Management of decision-making processes

### QUICK FACTS

The Ministry of Economy is in charge of developing energy legislation and policies.

Investment policies are prepared by the Directorate for Investment and Business Environment within the Ministry of Economy.

The Ministry of Sustainable Development and Tourism is responsible for framing strategies in the area of climate change.

The Montenegrin Investment Promotion Agency was set up in 2005 to assist investors with starting and operating a business.

### STRENGTHS

General legislative competence belongs to the Parliament. The responsibility of energy and investment policy-making rests with the same central authority, which facilitates central planning, coherence and effective information flow. Montenegro has undertaken efforts to develop a framework for measurable, reportable and verifiable greenhouse gas emissions reduction.

The Law on Free Access to Information 2012, as amended in 2017, allows access by the general public to data held by national authorities. National legislation and the decisions of the energy regulatory authority are published in the Official Gazette upon adoption. The main regulations and legal acts must go through a public consultation procedure. The key information documents regarding Montenegro's priorities are available in English.

### AREAS OF IMPROVEMENT

The Government may take measures to reinforce active engagement of relevant stakeholders through dialogue and partnership. To this end, it must codify the rules concerning modes of consultation, provide an adequate timeframe for the consultation process and state the criteria for the selection of participating parties.



## Regulatory environment and investment conditions

### QUICK FACTS

The Energy Law 2015 establishes and specifies the competences of the Energy Regulatory Agency of Montenegro (ERA).

The Foreign Investment Law 2011 as amended in 2014 lays down guarantees and safeguards for foreign investors.

### STRENGTHS

The ERA supervises operations of energy undertakings and monitors the functioning of the energy market. It decides on the issuance of licences for energy activities, tariff methodologies and regulated prices. The ERA demonstrates a high level of independence in the performance of its duties. It has a dedicated budget which is separate from the Government's budget. Its management board is appointed by the Parliament through a public and transparent procedure. The ERA submits annual reports on market conditions and its finances to the Parliament for information and adoption.

Montenegro has a legal framework that encourages FDI. In general, there is no distinction made between investors on the basis of nationality. There is no requirement to enter into partnerships with the State. Foreign investors can own 100 per cent of an energy project through their subsidiaries in Montenegro. Profits and capital can be repatriated without limitations or restrictions.

### AREAS OF IMPROVEMENT

Annual quotas on the number of foreign workers can be perceived by investors as a restrictive measure. This is accentuated by the granting of incentives that are contingent on the employment of local labour. The Government needs to be prudent and ensure that these measures do not contravene its commitment to a liberal FDI regime.

## Rule of law

### QUICK FACTS

Montenegro ratified the Energy Charter Treaty in 2015.

Montenegro ratified the Convention on the Settlement of Investment Disputes between States and Nationals of Other States in 2013.

Montenegro is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards since 2006.

### STRENGTHS

Domestic courts have jurisdiction to hear investment disputes, unless the parties decide to resort to arbitration in accordance with the Foreign Investment Law. National courts recognise and enforce foreign arbitral awards. They also enforce foreign court judgements upon their recognition as authoritative and final. There have not been any retroactive changes to domestic laws in the last five years.

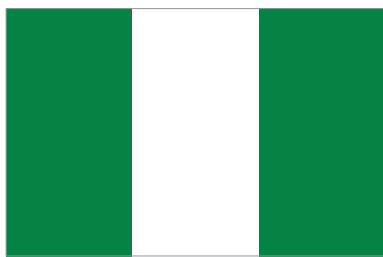
Private property may be expropriated for a public purpose and upon the payment of compensation. The expropriation procedure, including the determination of compensation, is administered by a designated body. Intellectual property rights are protected under multinational agreements, BITs and national legislation.

### AREAS OF IMPROVEMENT

Efficiency of court practice and procedure is a major component of fair trial and effective remedies. Concrete timelines for the delivery of judgements should be stipulated in the national law to ensure that excessive delay does not occur in domestic proceedings.

The Government should consider extending to investors the possibility of mediating their disputes with the state authorities. The voluntary nature of mediation, the flexibility it affords to parties and the non-binding nature of decisions makes it an attractive dispute resolution option for the parties.

The decision to expropriate should be motivated by a "public purpose" that is clearly defined in the Law on Expropriation 2006 instead of being determined on an ad hoc basis by a separate law or governmental decision. This would reduce arbitrariness in the event of expropriation. The introduction of a reasonable time frame within which compensation is to be paid is another step in the direction of minimising the risk of legal uncertainty.



# Nigeria

Population <sup>1</sup>	190.886.311
Area (km <sup>2</sup> ) <sup>1</sup>	923.770
GDP per capita (USD) <sup>1</sup>	1.968,56
TPES (Mtoe) <sup>2</sup>	139,37
Energy intensity (toe/10 <sup>3</sup> 2010 USD) <sup>2</sup>	0,30
CO <sub>2</sub> emissions - energy (MtCO <sub>2</sub> ) <sup>2</sup>	64,44

Sources:

1. The World Bank 2017

2. ©OECD/IEA 2017, [www.iea.org/statistics](http://www.iea.org/statistics)

Nigeria’s overall risk level against the assessed areas is **moderate**.

The three EIRA risk areas, *breach of State obligations*, *discrimination between foreign and domestic investors* and *unpredictable policy and regulatory change* are on the same level

Nigeria’s performance against EIRA’s four indicators is moderate. It has received a score of 59 on *management of decision-making processes* and 58 on the indicator *rule of law*. *Foresight of policy and regulatory change* is at 54 points while *regulatory environment and investment conditions* is at 51.

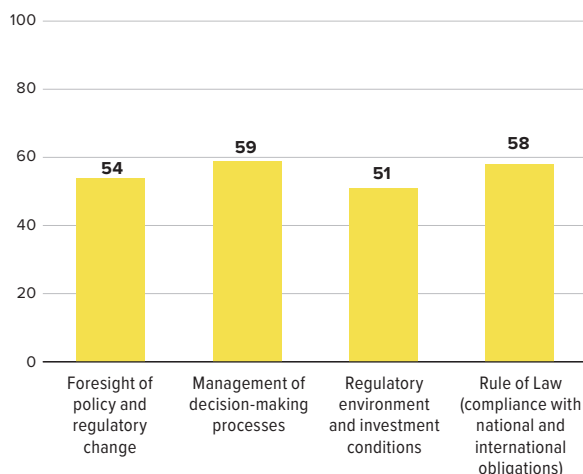
On a more detailed level, Nigeria’s overall sub-indicator performance is moderate. The highest scoring sub-indicator is *management and settlement of investor-State disputes* with 73 points. The sub-indicators *communication of vision and policies* and *transparency* have received 61 points. *Regulatory effectiveness* and *institutional governance* are at 56. On *restrictions on FDI*, the score is moderate (47). It is closely followed by *robustness of policy goals and commitments* at 46. Performance on the *respect for property rights* sub-indicator is the lowest with 42 points.

While there are some policies and measures in place, more concrete steps must be taken to strengthen Nigeria’s performance across all indicators and underlying sub-indicators. Particular attention should be given to re-enforcing the respect for property rights.

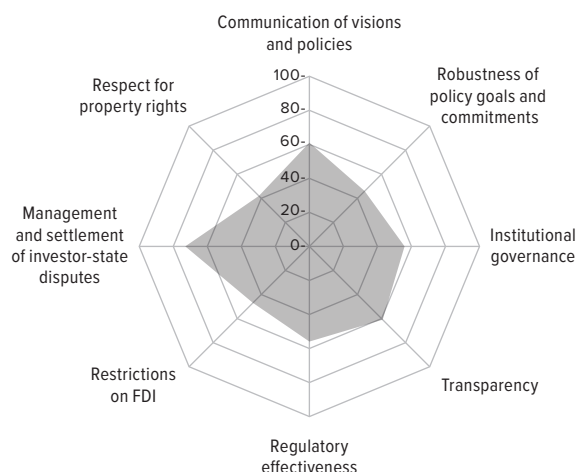
### RISK LEVEL



### INDICATOR PERFORMANCE



### SUB-INDICATOR PERFORMANCE



## Foresight of policy and regulatory change

### QUICK FACTS

The primary strategy documents for Nigeria are the National Energy Policy 2003 and the Nigeria Vision 20:2020.

The action plans for implementing the energy policies are the Economic Recovery and Growth Plan 2017 and the National Integrated Infrastructure Master Plan 2015.

### STRENGTHS

The short- and medium-term targets are well communicated. Nigeria is taking measures to integrate CO<sub>2</sub> reduction in its energy policy. It intends to replace, as far as possible, fossil fuels with renewable energies. The Ministry of Environment takes the lead in coordinating the national implementation of the United Nation Framework Convention on Climate Change. One of the main programmes initiated by the Ministry for this purpose is the issuance of green bonds to environment-friendly projects.

Lead ministries are appointed for implementing the energy priorities. The execution of the Economic Recovery and Growth Plan is coordinated by the Ministry of Budget and National Planning. The Vision 20:2020 envisages the institutional and governance framework for monitoring the overall performance of the country. It proposes setting up a Monitoring and Evaluation Office directly responsible to the Minister of the National Planning Commission. An independent committee is intended to provide oversight on the duties of the Monitoring and Evaluation Office.

### AREAS OF IMPROVEMENT

Further work should be undertaken to identify and set the key performance indicators for the energy sub-sectors. Ultimate outcomes must be developed in line with the existing short- and medium-term targets.

The key priorities and targets can be incorporated in binding documents. This will provide a level of certainty to investors regarding the long-term energy and investment framework of the country. Moreover, actions on the priorities tend to be more proactive when they are stated in the law and are less likely to change.

Measures may be taken to ensure consistent and continual implementation of policies already in place. Evaluating the existing policy instruments can help the decision-makers assess their impact and restructure them if needed. New policies and legislation should be drafted after taking into account the trajectory and implementation status of the instruments in force.

More periodic reporting of the monitoring and evaluation findings is encouraged. The final reports should be made widely available. They should give a balanced account and also contain relevant recommendations. The proposals must be given due consideration and followed up.

## Management of decision-making processes

### QUICK FACTS

Nigeria has a bicameral legislature.

The investment policies and programmes are formulated primarily by the Ministry of Industry, Trade and Investment.

Nigeria enacted the Freedom of Information Act in 2011 to make public records and information available.

### STRENGTHS

Laws for the energy sector are made exclusively by the Federal Government. The Energy Commission of Nigeria provides the institutional framework for the strategic planning and coordination of national energy policies. The Nigerian Investment Promotion Commission was established in 1995 to coordinate all the investment activities. Action plans for policy implementation are prepared by the Ministry of Budget and National Planning.

Information from public authorities is available and accessible. Conditions for restricting information access are defined in the national laws. Programmes such as the Nigerian Extractive Industries Transparency Initiative have been launched to increase openness in the energy sector. The Government encourages the participation of non-governmental institutions in such projects to improve accountability.

### AREAS OF IMPROVEMENT

Efforts can be made to resolve cross-sectoral issues through synchronised policy formulation and implementation processes. In particular, inter-ministerial coordination can be improved to reduce sub-optimal implementation by the lead ministries.

Proactive measures are needed to encourage dialogue on policy choices. Direct engagement with interested parties on critical issues should take place and awareness about the implications of the different policy options created. Such an approach will increase the accountability of the Government and empower the public to make informed decisions.

Instruments can be designed for stakeholder consultation at different stages of the policy process. Instead of ad hoc consultations, the methods and timelines of public participation should be decided at an early stage and made publically known.

## Regulatory environment and investment conditions

### QUICK FACTS

The Nigerian Energy Regulatory Commission (NERC) regulates the generation, transmission, distribution and trading of electricity.

The Department of Petroleum Resources is the lead regulator for the oil and gas sub-sectors.

The Nigerian Oil and Gas Industry Content Development Act 2010 provides the legal framework for local content.

### STRENGTHS

The mandate and composition of the regulatory authorities are stated in the national legislation. For instance, the functions and powers of the Nigerian Mining Cadastre Office are stipulated in its governing law. The personnel policy and management rules for most of the regulatory authorities are in place. The Chairman and the members of the NERC are appointed for a fixed tenure by the President and enjoy functional independence. Financial and budgetary accountability lies with the National Assembly and the Auditor General.

The legislative framework generally supports foreign investment. The Nigerian Investment Promotion Commission Act provides guarantees to foreign investors and promotes identified strategic projects. Some BITs accord investors of the contracting countries with *most favoured nation* as well as *fair and equitable treatment*. In principle, there are no restrictions on foreign ownership in energy projects. Full repatriation of capital invested through foreign sources is permitted. There is a defined local content regime in place to boost job creation and to develop the domestic private sector. The Nigerian Content Development and Monitoring Board is responsible for overseeing the implementation of these requirements.

### AREAS OF IMPROVEMENT

Due to the presence of multiple regulatory authorities, it is essential to ensure their roles and responsibilities are streamlined. Functions should be complementary and not overlapping. The existence of regulators which perform similar or obsolete functions should be evaluated.

Policy design for local content should be consistent with the broader objectives of the country. The success of such policy interventions is dependent on the progress made in other areas such as developing infrastructure and improving the quality of education. Additionally, content targets should be realistic. Over-ambitious targets may lead to a mismatch between supply and final demand. It may create economic distortions and at the same time hinder investments in the required sectors.

## Rule of law

### QUICK FACTS

Nigeria ratified the Convention on the Settlement of Investment Disputes between States and Nationals of Other States in 1965.

Nigeria acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 1970.

Access to arbitration is provided in the Arbitration and Conciliation Act 2004.

### STRENGTHS

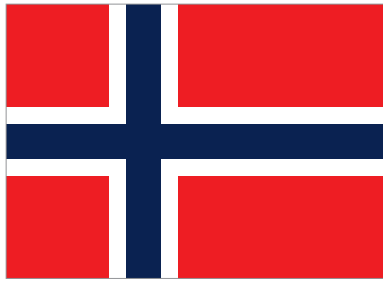
Domestic courts have the jurisdiction to resolve disputes between foreign investors and the Government. Local courts recognise contractual provisions that allow direct access to international arbitration. The Arbitration and Conciliation Act is inspired by the UNCITRAL Model Law. It provides the legal framework for resolving commercial disputes. National courts enforce foreign judgements on a reciprocal basis. There have been no retroactive legislative changes in the past years.

The Nigerian Investment Promotion Act provides guarantees against the expropriation of foreign investment. Domestic laws exist for the protection of intellectual property rights. The formulation of the term "investment" in most BITs is broad and includes movable and intellectual property. The inflow of foreign technology is encouraged and monitored by the National Office for Technology Acquisition and Promotion.

### AREAS OF IMPROVEMENT

An investment ombudsman or similar institution may be established to resolve conflicts between foreign investors and public authorities.

Under the domestic law, expropriation refers only to physical property. National legislation may contain provisions for granting protection against the expropriation of intangible property such as equity, shares and intellectual property.



# Norway

Population <sup>1</sup>	5.282.223
Area (km <sup>2</sup> ) <sup>1</sup>	385.178
GDP per capita (USD) <sup>1</sup>	75.504,57
TPES (Mtoe) <sup>2</sup>	29,62
Energy intensity (toe/10 <sup>3</sup> 2010 USD) <sup>2</sup>	0,06
CO <sub>2</sub> emissions - energy (MtCO <sub>2</sub> ) <sup>2</sup>	36,72

Sources:

1. The World Bank 2017

2. ©OECD/IEA 2017, [www.iea.org/statistics](http://www.iea.org/statistics)

Norway’s overall risk level against the assessed areas is **low**.

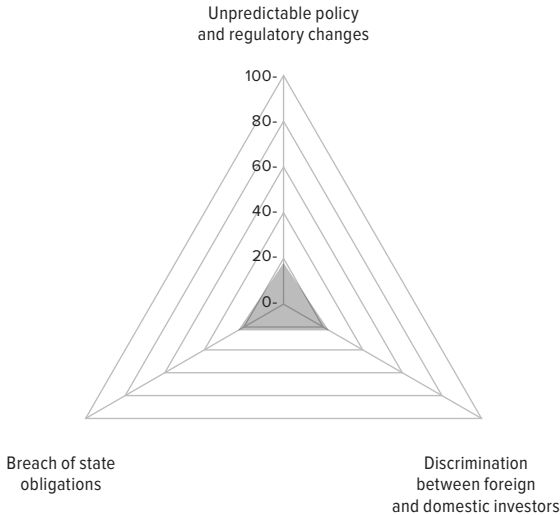
Among the three EIRA risk areas, *unpredictable policy and regulatory change* is lower compared to *discrimination between foreign and domestic investors* and *breach of State obligations*.

Norway’s performance against EIRA’s four indicators is good. It has received 85 points on *management of decision-making processes* and 84 on *foresight of policy and regulatory change*. *Rule of law* stands at 78, while *regulatory environment and investment conditions* is at 68.

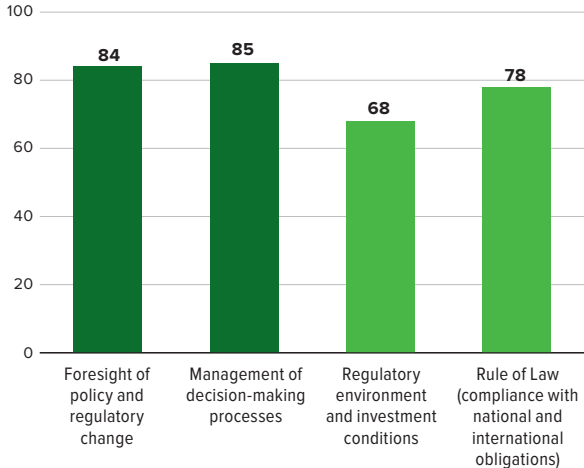
On a more detailed level, Norway’s sub-indicator performance is good. The highest scoring sub-indicator is *robustness of policy goals and commitments* with 94 points followed by *institutional governance* with 88 points. Norway has scored 83 points on *transparency* and 80 points on *management and settlement of investor-State disputes*. *Respect for property rights* and *restrictions on FDI* are at 75 points. A good score has been obtained on *communication of vision and policies* (74) and *regulatory effectiveness* (61).

The performance of Norway against the assessed indicators is very good and the country provides attractive conditions for investors. Attention should be given to strengthening its regulatory effectiveness.

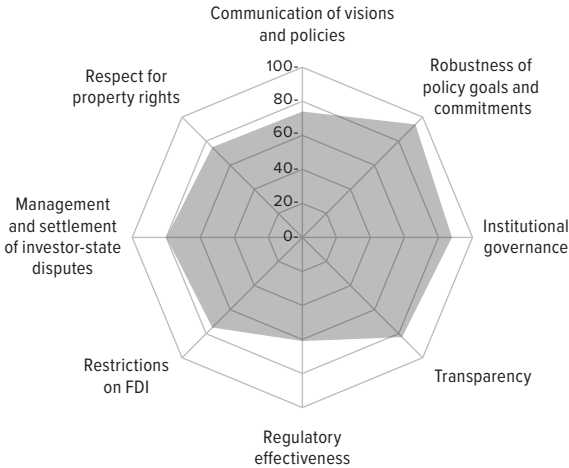
**RISK LEVEL**



**INDICATOR PERFORMANCE**



**SUB-INDICATOR PERFORMANCE**



## Foresight of policy and regulatory change

### QUICK FACTS

The key energy strategy documents for Norway are White Paper no. 25 "Power to change: Energy policy towards 2030" (adopted in 2016) and White paper no. 28 "An industry for the future – Norway's petroleum activities" (adopted in 2010).

The Law on Climate Goals (Climate Act) entered into force in January 2018 with the aim to promote the implementation of Norway's emission reduction targets.

Norway ratified the Paris Agreement in 2016. Its NDC covers all economic sectors, including energy.

### STRENGTHS

The White Paper on Energy Policy envisages both short- and long-term targets. It lists numerous cross-sectoral instruments and measures for achieving these goals, such as a comprehensive set of research and development programmes. Norway devotes considerable attention to the sound management of its oil and gas reserves, boosting industrial development and maintaining a high share of power generation from renewable sources. Moreover, ambitious objectives for reducing greenhouse gas emissions by 2030 and 2050 have been established under the Climate Act which also contains a yearly reporting obligation on meeting these objectives. The emissions covered are those reported by Norway under the Paris Agreement.

The Norwegian Parliament oversees the implementation of the energy priorities. Monitoring is also performed by the Ministry of Petroleum and Energy and the Office of the Auditor General which reports the results of its auditing and monitoring activities to the Norwegian Parliament. Furthermore, Statistics Norway is an agency under the Ministry of Finance responsible for collecting data and publishing statistical releases.

### AREAS OF IMPROVEMENT

Currently, the Office of the Auditor General has a broad mandate that spans auditing and monitoring tasks in a number of sectors, including energy. The Office of the Auditor General publishes reports on environmental issues but these are primarily available in Norwegian. The energy market actors would benefit more from the outcomes of the review process if the Office of the Auditor General published more frequent reports on the activities and programmes in all energy sub-sectors. Moreover, the availability of these reports in English or other foreign languages would increase their visibility to foreign investors.

## Management of decision-making processes

### QUICK FACTS

The Ministry of Petroleum and Energy is responsible for implementing the Government's policy in relation to energy, including power generation, petroleum and natural gas production.

The responsibility for the overall investment policy is predominantly with the Ministry of Finance.

*Invest in Norway* was established in 2013 to promote investment and provide a wide array of investment facilitation services.

The Freedom of Information Act 2009 guarantees the right to access documents and records of public administration.

### STRENGTHS

The legislative power is exercised by a unicameral Parliament. Bills proposed by the Government undergo a thorough process of inter-ministerial debate and input. The Ministry of Climate and Environment takes the lead in the implementation of the climate change policy. It collaborates with the Norwegian Environment Agency on issues of pollution and nature management. Climate mitigation goals are reviewed and updated every five years to reflect best scientific practices. *Innovation Norway*, a semi-governmental body, offers various economic incentives to investors aimed at promoting innovation in energy and climate technology.

There is a very narrow list of exemptions to the principle of maximum disclosure of information which allow the ministries and public agencies to withhold only pieces of information rather than an entire document. Legal and regulatory information gets published in the Official Gazette and becomes available on a centralised portal. Draft laws and proposals for the adoption of Schengen and the European Economic Area-related legislation are submitted to public consultation with civil society. Rules and regulations of the Norwegian Water Resources and Energy Directorate (NVE) are also subject to consultations with stakeholders, for instance with municipal and other authorities on environmental impact programmes. The Norwegian Petroleum Directorate (NPD) publishes annual reports on the outcome of its monitoring activities and the petroleum activities on the Norwegian continental shelf.

### AREAS OF IMPROVEMENT

Availability of draft and enacted legislation as well as energy documents in English and/or other languages may assist foreign investors in the participatory process by giving them a better understanding of the national legal framework.



## Regulatory environment and investment conditions

### QUICK FACTS

The Ministry of Petroleum and Energy oversees and coordinates the regulatory activities in the energy sector as a whole. Under the Ministry, there are subordinate directorates with more specific competences.

The NVE is the national regulatory authority for the electricity market in Norway.

The NPD has significant functions in relation to the management of petroleum resources.

Foreign investors are guaranteed equal treatment in accordance with the Agreement on the European Economic Area and under Norway's BITs.

### STRENGTHS

The NVE is an independent legal entity which acts within the scope of competences delegated to it pursuant to the Energy Act of 1990 no. 50. Its budget is approved by the Parliament and is not shared with other state agencies. The NVE publishes annual reports on the outcome of its monitoring activities and the developments in the network industry. It collaborates with the Norwegian Competition Authority in overseeing market behaviour in the power sector. Similarly for the petroleum sector, the NPD acts within the scope of powers delegated to it under the Petroleum Act 1996 no. 72 (as amended in 2011) and has its budget decided by the Parliament.

The legislative framework is generally positive toward foreign investment in all sectors of the economy, including offshore petroleum. Several foreign investment restrictions, including the mandatory employment of local personnel and the procurement of products and services from local producers, were repealed in the 1990s according to EU regulations. Norway imposes no currency and foreign exchange controls. Subject to taxation, funds are freely and fully remittable.

### AREAS OF IMPROVEMENT

Norway's regulatory setup is well-organized. To align itself with international best practices, the Government may consider in future creating a degree of separation between the regulatory and decision-making functions.

## Rule of law

### QUICK FACTS

Norway is a signatory the Energy Charter Treaty since 1995 but is yet to ratify it.

Norway ratified the Convention on the Settlement of Investment Disputes between States and Nationals of Other States in 1967.

Norway acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 1961 subject to reservations.

The Act of 14 May 2004 no. 25 relating to Arbitration provides a framework for arbitration.

### STRENGTHS

The Arbitration Act is based on the UNICITRAL Model Law. It governs both domestic and international arbitration provided that the proceedings take place in Norway. The choice to arbitrate a dispute with public authorities is not contingent on prior exhaustion of local remedies. Foreign judgements are recognised and enforced on a multilateral or bilateral basis. Domestic and foreign arbitral awards are enforceable in Norway. Retroactive laws are prohibited by the Norwegian Constitution.

The Constitution authorises expropriation only for "public purpose" and against full compensation. Norwegian law allows expropriation for private purpose provided there is an indirect public interest involved. The Expropriation Act 1959 describes the procedure to be followed. The affected party must be informed in due time and afforded the right to complain about the procedure or the outcome to the Valuation Court. Intellectual property as a form of investment is protected under BITs.

### AREAS OF IMPROVEMENT

In general, Norwegian courts ensure that cases are dealt with in a swift, cost-effective and sound manner. The introduction of timeframes for the completion of proceedings and the delivery of judgements at all stages will further minimise the risk of delays and guarantee the reasonableness of the case duration.

There are certain measures that could render the expropriation procedure more robust. Currently, the Valuation Court calculates the amount of compensation in accordance with the valuation guidelines in the Expropriation Compensation Act 1984. The involvement of a chartered group of professionals, the adoption of calculation tools and a legally imposed deadline will ensure that sufficient compensation is paid to affected investors in a timely fashion.



# Republic of Moldova

Population <sup>1</sup>	3,549,750
Area (km <sup>2</sup> ) <sup>1</sup>	33,850
GDP per capita (USD) <sup>1</sup>	2,289,88
TPES (Mtoe) <sup>2</sup>	3,38
Energy intensity (toe/10 <sup>3</sup> 2010 USD) <sup>2</sup>	0,48
CO <sub>2</sub> emissions - energy (MtCO <sub>2</sub> ) <sup>2</sup>	7,58

Sources:

1. The World Bank 2017

2. ©OECD/IEA 2017, [www.iea.org/statistics](http://www.iea.org/statistics)

Moldova’s overall risk level against the assessed areas is **very low**.

Among the three EIRA risk areas, *breach of State obligations* and *discrimination between foreign and domestic investors* are lower compared to *unpredictable policy and regulatory change*.

Moldova’s performance against EIRA’s four indicators is very good. It has received 90 points on the indicator *rule of law*. *Regulatory environment and investment conditions* and *management of decision-making processes* stand at 85 and 83, respectively. The indicator score for *foresight of policy and regulatory change* is 64.

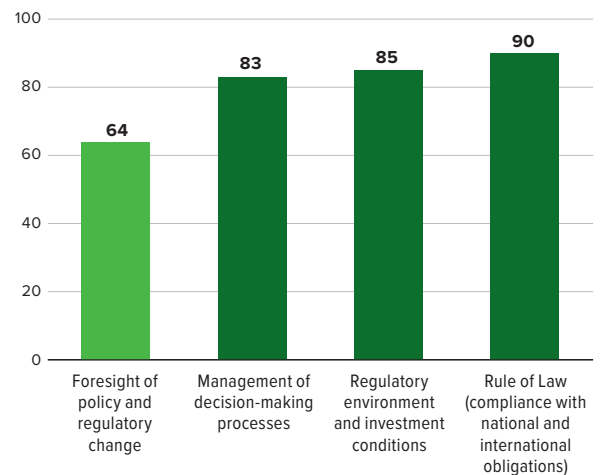
On a more detailed level, Moldova’s overall sub-indicator performance is very good. The highest scoring sub-indicators are *regulatory effectiveness* and *respect for property rights* with 100 points. *Transparency*, *institutional governance* and *management and settlement of investor-State disputes* are at 85, 81 and 80 points. On *restrictions on FDI*, the score stands at 70. Good scores have been obtained on the sub-indicators *communication of vision and policies* (65) and *robustness of policy goals and commitments* (63).

Moldova provides attractive conditions for investors and is working in the right direction. Attention should be given to better communicating the country’s policies to investors and strengthening their robustness.

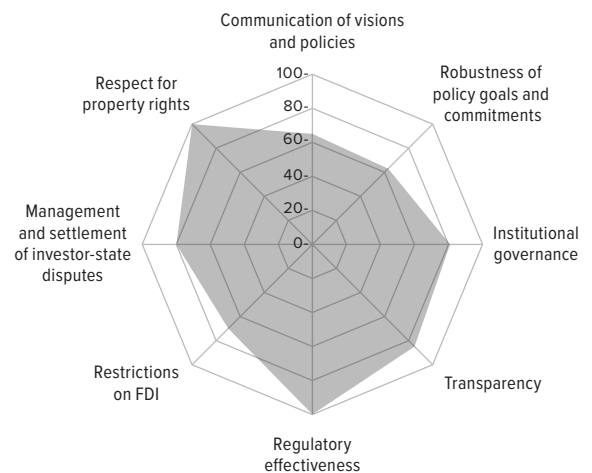
## RISK LEVEL



## INDICATOR PERFORMANCE



## SUB-INDICATOR PERFORMANCE



## Foresight of policy and regulatory change

### QUICK FACTS

The primary strategy document for Moldova is the Energy Strategy of the Republic of Moldova to the year 2030 (adopted in 2012). It is complemented by the National Action Plan for Renewable Energy 2013-2020 (approved in 2013) and the National Energy Efficiency Plan 2011-2020 (adopted in 2010).

Moldova ratified the Paris Agreement in 2017 and submitted its first NDC.

Moldova's commitment to reduce greenhouse gas emissions is reflected in the Low Emissions Development Strategy of the Republic of Moldova until 2030 (adopted in 2016).

### STRENGTHS

Moldova has set concrete short- and medium-term targets regarding energy security, energy efficiency, the use of renewables and investment in energy infrastructure. Efforts are being made to implement the EU Third Energy Package. This will allow Moldova to integrate into the internal energy market of the EU, especially in the gas and electricity sub-sectors. The NDC submitted by Moldova is comprehensive with details of contributions on greenhouse gas emissions from various sectors including energy.

The Energy Strategy 2030 mandates regular qualitative and quantitative assessment on the progress towards achieving the energy targets. The responsibility of monitoring the implementation of the goals belongs to various national authorities as well as to international bodies such as the Energy Community Secretariat. They are encouraged to maintain open channels of dialogue and provide feedback.

### AREAS OF IMPROVEMENT

Clearly articulated long-term targets should be incorporated in the Energy Strategy 2030. The inclusion of specific timelines and a process for reviewing the energy objectives and action plans will allow Moldova to adequately address challenges in the energy sector beyond 2020.

Missing secondary legislation must be enacted to support the implementation of the primary legislation. The subordinate legislation, rules and procedures can provide more specific information on how the objectives will be met.

The Government may consider restructuring and increasing resources dedicated to public institutions in charge of monitoring and implementing the energy policy. There should be a clear delineation of responsibilities between the bodies performing these functions. This will ensure independence and objectivity in the evaluation process.

## Management of decision-making processes

### QUICK FACTS

The Ministry of Economy and Infrastructure is the central authority responsible for formulating the energy and investment policies.

The Moldovan Investment and Export Promotion Organisation (MIEPO) was established in 2014 to act as an investment promotion centre and a single window for investors.

### STRENGTHS

Energy and investment-related policies fall under the Ministry of Economy and Infrastructure, which allows coherence in cross-cutting issues. Public authorities are expected to coordinate with each other when issues of common concern arise. The Ministry of Agriculture, Regional Development and Environment assesses the status of the country's NDC. A regular reporting mechanism has been established to ensure that Moldova is aligned with its obligations under the Paris Agreement.

Law no. 239 of 2008 "On Transparency in Decision-Making" stipulates that citizens, public authorities and non-governmental institutions must be informed and consulted at all stages of the decision-making process. Draft legislation, enacted laws and regulations should be well-reasoned and published on the official website of public authorities unless there is a defined condition which limits information.

### AREAS OF IMPROVEMENT

The creation of a one-stop shop can help streamline administrative procedures and reduce the time for registration, licence and permit applications.

To increase awareness about the functioning of the energy sector, the Government should publish integrated reports as well as relevant data on the progress made towards accomplishing the energy goals and render them available to all interested stakeholders.

## Regulatory environment and investment conditions

### QUICK FACTS

The National Energy Regulatory Agency (ANRE) was established under Law no. 174 of 2017 “On Energy” and the Regulation on Organisation and Functioning of ANRE 2010 as the national regulator.

Law no. 81 of 2004 “On Investment in Entrepreneurial Activity” guarantees equal treatment to domestic and foreign investors.

### STRENGTHS

The ANRE has attributes of independence in terms of its structure, role and budget. Draft decisions are published in advance and all relevant stakeholders are invited to participate in the deliberation process. The decision to adopt or reject stakeholders’ opinion needs to be justified. The ANRE is managed by a Board of Directors appointed by the Parliament following a transparent procedure.

The legislative framework is favourable to FDI. Foreign investors are allowed to invest in the entire territory of Moldova and hold a majority stake in energy projects. The law does not require foreign investors to partner with the State or State-owned enterprises before undertaking projects in the energy sector. Capital, payments and profits of foreign investors are freely transferable upon fulfilment of tax liabilities.

### AREAS OF IMPROVEMENT

The Government may consider reducing specific restrictions currently in force, such as those imposed on the number of foreign personnel employed in projects of national importance. Greater clarity on the criteria for granting approvals in the electricity generation sub-sector can enhance transparency and attract market-driven investment.

The Law “On Energy” has been recently amended to reflect best practices and to enhance the independence of the ANRE. While this is a step in the right direction, the impact of these structural changes will largely depend on how effectively they are applied on the ground level. For this reason, the Government needs to ensure the consistent and progressive implementation of these reforms.

## Rule of law

### QUICK FACTS

Moldova ratified the Energy Charter Treaty in 1996.

Moldova ratified the Convention on the Settlement of Investment Disputes between States and Nationals of Other States in 2011.

Moldova acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 1998.

Arbitration of investment disputes is envisaged in Law “On Investment in Entrepreneurial Activity” and Law no. 23 of 2008 “With Regard to Arbitration”.

### STRENGTHS

ANRE can hear complaints against its regulatory decisions and disputes involving market participants in the first instance. Recourse to administrative courts is possible as a second step in the appeal process. Arbitration and voluntary mediation are provided for in domestic law. Foreign judgements are recognised and enforced on a multilateral or bilateral basis. National laws do not require the exhaustion of local remedies before recourse to international arbitration.

Expropriation of foreign investment in the energy sector is only permitted on “public interest” grounds. Law no. 488 of 1999 “On Expropriation for a Cause of Public Utility” contains explicit provisions for the conditions and the procedure of expropriation. Affected parties are allowed to negotiate compensation with public authorities. In case an agreement is not reached, an experts’ committee is constituted by a court order to determine the amount and timeframe for effecting compensation. Intellectual property rights are protected by international and bilateral agreements as a type of investment.

### AREAS OF IMPROVEMENT

Delivery of time bound decisions by domestic courts should be encouraged. Stipulations to this effect may also be incorporated in the domestic laws.

The establishment of an investment ombudsman or similar institution could prove useful in preventing and reconciling investor-State conflicts before they escalate into a dispute. It is also worth mentioning that while arbitration and mediation mechanisms are in place, the Government needs to pro-actively encourage their application and avail them fully.



# Romania

Population <sup>1</sup>	19.586.539
Area (km <sup>2</sup> ) <sup>1</sup>	238.390
GDP per capita (USD) <sup>1</sup>	10.813,72
TPES (Mtoe) <sup>2</sup>	31,91
Energy intensity (toe/10 <sup>3</sup> 2010 USD) <sup>2</sup>	0,17
CO <sub>2</sub> emissions - energy (MtCO <sub>2</sub> ) <sup>2</sup>	69,53

Sources:

1. The World Bank 2017

2. ©OECD/IEA 2017, [www.iea.org/statistics](http://www.iea.org/statistics)

Romania’s overall risk level against the assessed areas is **low**.

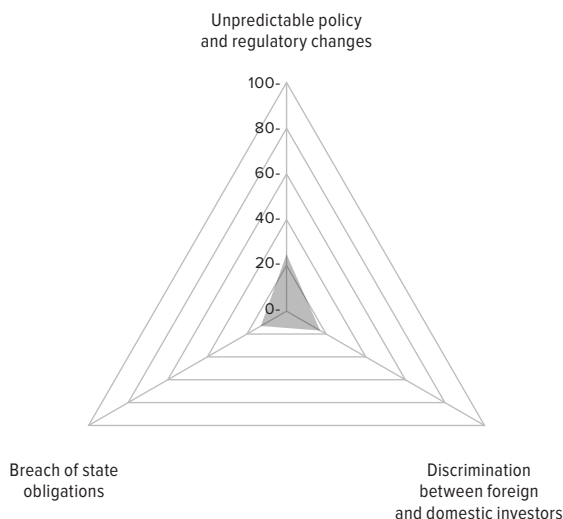
Among the three EIRA risk areas, *breach of State obligations* is lower compared to *discrimination between foreign and domestic investors* and *unpredictable policy and regulatory change*.

Romania’s performance against EIRA’s four indicators is good. It has received a score of 88 on the indicator *rule of law* and 81 on *regulatory environment and investment condition*. The score for *management of decision-making processes* is 80 while *foresight of policy and regulatory change* is at 59.

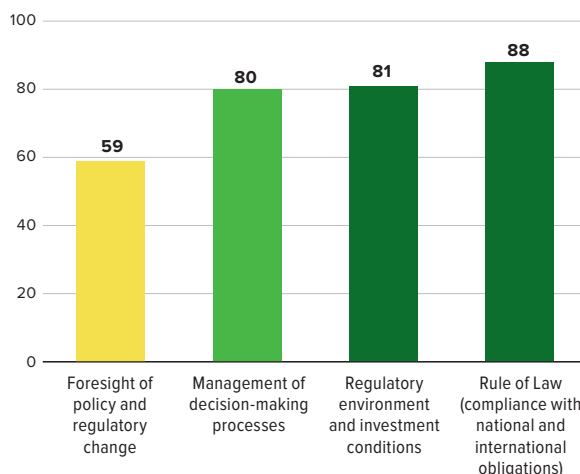
On a more detailed level, Romania’s overall sub-indicator performance is good. The highest scoring sub-indicator is *respect for property rights* with 100 points. The sub-indicators *restrictions on FDI* and *institutional governance* stand at 90 and 88, respectively. A good score has been obtained for *management and settlement of investor-state disputes* (75). Performance on *transparency and regulatory effectiveness* is good with a score of 72 points. Romania has received 68 points on the *robustness of policy goals and commitments* and 50 points on the *communication of vision and policies*.

While Romania has the relevant policies and measures in place, there is potential for improvement. Attention should be given to better communicating the country’s vision and policies.

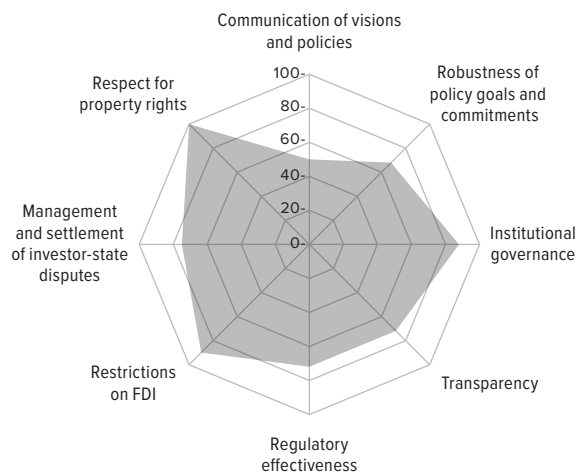
### RISK LEVEL



### INDICATOR PERFORMANCE



### SUB-INDICATOR PERFORMANCE



## Foresight of policy and regulatory change

### QUICK FACTS

The energy policy of Romania is guided by the Energy Strategy 2007-2020. The Romanian Energy Strategy 2018-2030, with an outlook to 2050 is currently under debate before the Working Group established by the Ministry of Energy.

The Government has adopted the National Strategy on climate change and economic growth based on low carbon emissions 2016-2020.

Romania ratified the Paris Agreement in 2017 and submitted its NDC together with all Member States of the EU.

### STRENGTHS

The Energy Strategy of Romania contains quantifiable targets for energy security and energy investment. Additional targets in relation to energy efficiency, renewable energy, and reduction of greenhouse gas emissions have been set in accordance with the 2020 energy legislative package of the EU. Concrete implementation measures are contained in a number of cross-sectoral action plans, most notably the National Renewable Energy Action Plan 2010-2020, the National Action Plan on Climate Change 2016-2020 and the National Energy Efficiency Action Plan until 2020 (adopted in 2015).

The Ministry of Energy is the lead authority responsible for monitoring the implementation of the energy strategy of the country. It is assisted by the National Authority for Energy Regulation (ANRE) which publishes annual reports on the natural gas and electricity sectors.

### AREAS OF IMPROVEMENT

The Government will be able to give guidance on how the national energy sector is going to evolve over the next decades only if the proposed Romanian Energy Strategy 2018-2030, with an Outlook to 2050 gets adopted. The proposed Strategy is intended to be a comprehensive document with priority actions for the achievement of the country's goals in the short-, medium- and long-term.

The new Energy Strategy should be supplemented by strong implementation mechanisms, such as secondary legislation, action plans, fiscal and investment incentives and budgetary resources necessary for pursuing the objectives set forth in the Strategy. It should be ensured that the secondary legislation is aligned with the EU 2030 framework for climate and energy.

## Management of decision-making processes

### QUICK FACTS

The Ministry of Energy is responsible for the overall development of the energy sector, including framing laws and policies.

The Ministry for Business Environment, Commerce and Entrepreneurship is the central authority responsible for designing and implementing investment-related laws and policies.

*InvestRomania* was established in 2016 to provide professional support and advice to foreign investors.

Romania enacted Law no. 544/2001 regarding the free access to information of public interest and Law no. 52/2003 on decisional transparency in public administration.

### STRENGTHS

The division of roles and responsibilities between different levels of Government and the ministries is well-defined. For setting of policies, the Ministry of Energy cooperates with other ministries and regulatory bodies, such as the ANRE and the National Agency for Mineral Resources (ANRM). The Ministry of Environment has the overall responsibility for climate-change related issues, including the administration of the national greenhouse gas inventory and implementation of the relevant strategies and action plans.

Romanian law requires consultations with stakeholders, including business and professional associations. They are granted a 10-day comment period on draft laws. Public consultation announcements must be accompanied by a draft of the document, a feasibility study and an impact assessment. Proposed legislation is available on the websites of the two chambers of the Parliament. There is a centralised registry of laws that is accessible online.

### AREAS OF IMPROVEMENT

To reach a wider audience and ensure that participation in the decision-making process is open, the Government should consider publishing official translations of national legislation and energy strategy documents in languages relevant to foreign investors. Moreover, it should be ensured that the legal requirements regarding the duration of the comment period and the circulation of drafts and impact assessments are duly observed.



## Regulatory environment and investment conditions

### QUICK FACTS

ANRE is the regulatory authority dealing with electricity, gas and energy efficiency issues in accordance with Law no. 160/2012 for approval of Government Emergency Ordinance no. 33/2007 regarding organization and functioning of ANRE.

The ANRM regulates the mining and petroleum sub-sectors under Government Decision no. 1419/2009 on the organisation and functioning of ANRM, Mining Law no. 85/2003, and Petroleum Law no. 238/2004.

Equal treatment between domestic and foreign investors is provided in the Emergency Government Ordinance no. 92/1997 on the stimulation of direct investment.

### STRENGTHS

The ANRE is an autonomous administrative authority, with legal personality, and under parliamentary control. Its responsibilities and functions are stated in the law. The ANRE is financed from licensing, permits and certification fees, and annual contributions paid by the regulated undertakings. ANRE's management comprises a president and two vice-presidents, all appointed by the Parliament in a transparent procedure for a fixed tenure, renewable only once. The ANRE cooperates with the Competition Council in cases of breach of competition rules in the energy sector.

In general, the Romanian legal framework is conducive to FDI. The Government does not screen or restrict investment in any energy sub-sector. Foreign investors may hold a majority stake in energy projects and are not required to partner with local enterprises. They are also encouraged to participate in privatisation of State-owned enterprises in key sectors of the economy, including energy production and exploitation. There are no restrictions imposed on repatriation of capital abroad or convertibility of currency.

### AREAS OF IMPROVEMENT

The transposition of the Directive 2014/66/EU on the intra-corporate transfer (ICT) has introduced greater clarity and flexibility concerning the hiring and deployment of foreign workers in Romania, as well as their obligations and mobility. Nevertheless, there are still certain labour-related policies which may be perceived as burdensome by foreign investors. For instance, ICT workers who are assigned to Romania can only stay for a maximum of three years in leadership positions, while trainees can reside for one year from the date of their assignment. The Government should consider facilitating the mobility of foreign workers by relaxing or extending the right of temporary residence of ICTs.

## Rule of law

### QUICK FACTS

Romania ratified the Energy Charter Treaty in 1996.

Romania ratified the Convention on the Settlement of Investment Disputes between States and Nationals of Other States in 1975.

Romania acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 1961.

### STRENGTHS

The Civil Procedure Code 2013 constitutes the basic legal framework for all forms of arbitration. Foreign investors may opt to conduct their arbitration on an ad hoc basis or refer their dispute to a specialised institution such as the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry. The Civil Procedure Code also provides the possibility of mediation in civil and commercial matters. Neither domestic laws nor international investment agreements, to which Romania is a party, require exhaustion of local remedies before recourse to international arbitration. The Romanian courts enforce foreign judgements and foreign arbitral awards.

Protection of private property is a constitutional right. Expropriation of immovable assets is governed by two different legal acts. Grounds of "public interest" are enumerated in both the acts. Moreover, special laws contain provisions on expropriation undertaken for public utility projects in line with national, regional or local interest objectives. The expropriation procedure and the calculation of compensation are thoroughly described in the laws. The aggrieved investor can approach the competent courts to challenge the determined value of the expropriated assets or the compensation amount. Romania is a signatory to international conventions concerning intellectual property rights and has enacted national legislation to protect patents, trademarks and copyrights.

### AREAS OF IMPROVEMENT

Alternative investment dispute settlement entities, such as an investment ombudsman, may be constituted to promote cost-effective and quick extra-judicial resolution of complaints against public authorities.

Under the amended Civil Procedure Code 2013 judges are required to estimate the duration of the trial at the first court hearing and set close court hearings, even on consecutive days. To further expedite the delivery of court judgements and reinforce the reliability of the national judicial system, binding time limits should be set for all court proceedings and for the delivery of the final judgements.



# Rwanda

Population <sup>1</sup>	12.208.407
Area (km <sup>2</sup> ) <sup>1</sup>	26.340
GDP per capita (USD) <sup>1</sup>	748,39
TPES (Mtoe) <sup>2</sup>	N/A
Energy intensity (toe/10 <sup>3</sup> 2010 USD) <sup>2</sup>	N/A
CO <sub>2</sub> emissions - energy (MtCO <sub>2</sub> ) <sup>2</sup>	N/A

Sources:

1. The World Bank 2017

2. ©OECD/IEA 2017, [www.iea.org/statistics](http://www.iea.org/statistics)

Rwanda’s overall risk level against the assessed areas is **low**.

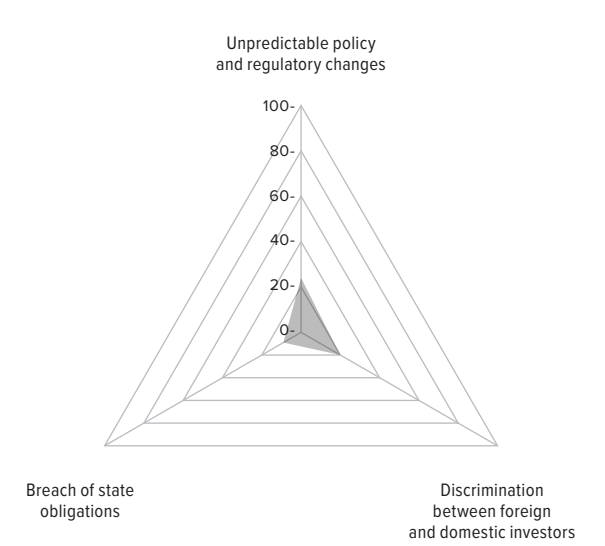
Among the three EIRA risk areas, *breach of State obligations* is lower compared to *unpredictable policy and regulatory change* and *discrimination between foreign and domestic investors*.

Rwanda’s performance against EIRA’s four indicators is good. It has received a score of 91 on the indicator *rule of law*. The indicators *regulatory environment and investment conditions* and *management of decision-making processes* are at 77 and 73 points, respectively. The score for *foresight of policy and regulatory change* is 64.

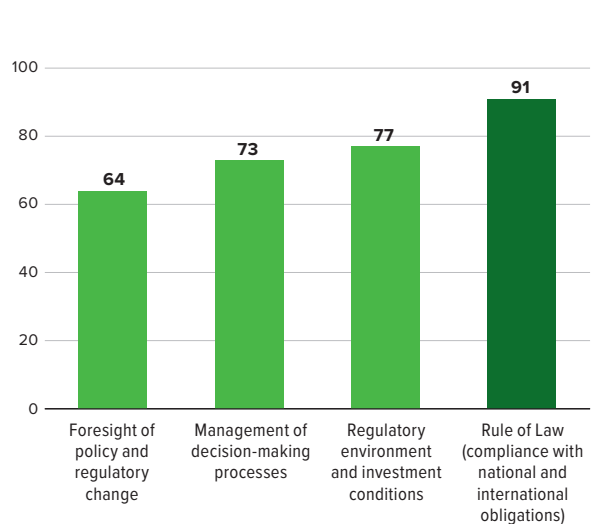
On a more detailed level, Rwanda’s overall sub-indicator performance is good. The highest scoring sub-indicator is *respect for property rights* with 92 points, followed by *management and settlement of investor-State disputes* at 90. The sub-indicator *restrictions on FDI* stands at 83. On *communication of vision and policies* and *transparency* the score is 80, while *regulatory effectiveness* is at 72. A good score of 66 has been obtained on *institutional governance*. Performance on *robustness of policy goals and commitments* is moderate with a score of 49.

Rwanda provides attractive conditions for investors and is working in the right direction. Attention should be given to strengthening the robustness of its policy goals and commitments.

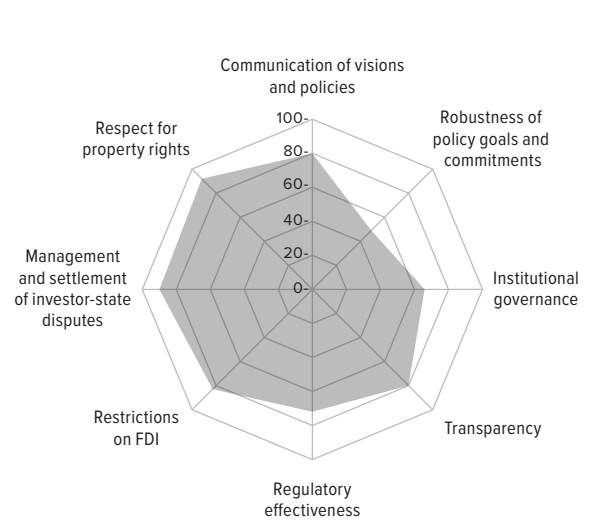
**RISK LEVEL**



**INDICATOR PERFORMANCE**



**SUB-INDICATOR PERFORMANCE**



## Foresight of policy and regulatory change

### QUICK FACTS

The primary policy documents for Rwanda's energy sector are the National Energy Policy 2015 and the Energy Sector Strategic Plan 2015.

The main body responsible for translating the energy policies into actual projects is the Rwanda Energy Group Ltd, a government-owned holding company.

Rwanda ratified the Paris Agreement in 2016 and submitted its first NDC.

### STRENGTHS

There are well-defined short-term targets for different energy priorities. While the National Energy Policy outlines the country's high-level goals, the Energy Sector Strategic Plan provides a blueprint for how these goals will be realised. Mitigation and adaptation to climate change are key objectives of the Government. For this reason, it has formulated the National Green Growth and Climate Change Resilience Strategy. This Strategy covers all the sectors of the economy and will be implemented by 2050.

Monitoring of energy sector targets is jointly conducted by the Ministry of Infrastructure and the Ministry of Finance and Economic Planning. Evaluation of the Energy Sector Strategic Plan is conducted at least annually. The Rwanda Energy Group Ltd is required to provide the Ministry of Infrastructure with accurate and up-to-date information and reports. Based on the data collected, the Ministry reviews the performance by comparing the outcomes against the pre-defined targets.

### AREAS OF IMPROVEMENT

While Rwanda has a monitoring process in place, there is a need to increase the visibility and accessibility of the evaluation reports. For better planning, it is essential that all interested individuals and organisations can review the country's performance and provide feedback to the Government on how to improve implementation processes. This will also help potential investors to assess the achievement of the set goals, manage risk and make informed decisions.

## Management of decision-making processes

### QUICK FACTS

Rwanda has a bicameral legislature.

The Ministry of Infrastructure is responsible for formulating energy policies.

The Ministry of Finance and Economic Planning framed the National Investment Policy 2017.

Law no. 04/2013 Relating to Access to Information enables public access to information of government agencies and certain private bodies.

### STRENGTHS

The Parliament has the power to initiate and pass legislation. The Rwanda Law Reform Commission has the responsibility to ensure laws are appropriately drafted, do not contradict each other and are periodically reviewed. The mandate of each ministry is stipulated in legislation. There are specific working groups to facilitate cross-sectoral coordination in the decision-making process. There is a one-stop shop centre under the aegis of the Rwanda Development Board.

Information from public authorities is available and accessible. Laws are published not only in the local dialect but also in multiple foreign languages. Public participation in the law-making process is encouraged. The Energy Sector Wide Approach Programme Secretariat brings together stakeholders that wish to make a contribution to draft policies and laws.

### AREAS OF IMPROVEMENT

To manage the transition to low carbon technologies, the Government needs to have an implementation plan for achieving its NDC targets. While the Rwanda Green Fund has been created to promote green growth, the NDCs Technical Coordinating Committee and the Centre for Climate Knowledge for Development are yet to come into existence. Work should be expedited in this regard, including the adoption and publication of the new strategic plan for the environment.

## Regulatory environment and investment conditions

### QUICK FACTS

The Rwanda Utilities and Regulatory Authority (RURA) is a multi-sectoral body that regulates the electricity, renewables, gas and downstream petroleum sub-sectors.

For implementing large energy projects approval is needed from the Rwanda Environment Management Authority (REMA) regarding its impact on the environment.

Law no. 06/2015 Relating to Investment Promotion and Facilitation establishes the framework for investment in the country.

### STRENGTHS

The RURA is an autonomous body governed by Law no. 09/2013 Establishing Rwanda Utilities Regulatory Authority and Determining its Mission, Powers, Organisation and Functioning. The financial and administrative independence of the RURA is guaranteed in the law. Among other things, it has a right to impose penalties and enforce regulatory obligations. Members of its Board are appointed based on professionalism and expertise. There is an explicit conflict of interest policy applied to staff that leave the RURA once their term of office is over. In terms of accountability, RURA is responsible to the Office of the Auditor General.

The legal and regulatory environment is conducive to FDI. Investment in energy is encouraged under the national laws, especially because it is a priority sector. There is a wide range of rights available to foreign investors, such as the right to freely establish business management and to recruit or dismiss employees. While there are no local content requirements per se, foreign investors that employ local workforce are offered incentives.

### AREAS OF IMPROVEMENT

Efforts must be made to limit the role of policy institutions in regulatory functions. While Rwanda has taken measures in this regard, by placing downstream petroleum activities under the authority of the RURA, the same degree of independence should be encouraged in the upstream sector.

## Rule of law

### QUICK FACTS

Rwanda ratified the Convention on the Settlement of Investment Disputes between States and Nationals of Other States in 1979.

Rwanda acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 2008.

Access to arbitration is provided in Law no. 005/2008 on Arbitration and Conciliation in Commercial Matters.

Provisions against expropriation are incorporated in the Law no. 32/2015 Relating to Expropriation in the Public Interest.

### STRENGTHS

The dispute management and settlement processes are effective. There are time limits prescribed for domestic courts to deliver judgements. Alternate dispute resolution mechanisms are encouraged. Foreign investors may bring disputes against the Government to domestic courts or opt for international arbitration. National courts enforce foreign judgements on a reciprocal basis. There have been no retroactive changes to laws in the last five years.

The Law Relating to Expropriation in the Public Interest has introduced a timeframe for the payment of compensation. It also stipulates a detailed mechanism for the valuation of the expropriated property. The Law contains a list of activities which constitute "public interest". Intellectual property is protected against expropriation under the Law Relating to Investment Promotion and Facilitation. BITs, such as with Belgium-Luxembourg, United States, and the Republic of Korea define the term "investment" broadly to include movable property, financial stocks and intellectual property. Domestic legislation actively promotes technology transfer and innovation.

### AREAS OF IMPROVEMENT

An investment ombudsman or similar institution may be established to address grievances of foreign investors and provide advisory services. This forum may also constructively represent the views of investors to the Government.



# Senegal

Population <sup>1</sup>	15.850.567
Area (km <sup>2</sup> ) <sup>1</sup>	196.710
GDP per capita (USD) <sup>1</sup>	1.033,07
TPES (Mtoe) <sup>2</sup>	4,09
Energy intensity (toe/10 <sup>3</sup> 2010 USD) <sup>2</sup>	0,26
CO <sub>2</sub> emissions - energy (MtCO <sub>2</sub> ) <sup>2</sup>	6,65

Sources:

1. The World Bank 2017

2. ©OECD/IEA 2017, [www.iea.org/statistics](http://www.iea.org/statistics)

Senegal’s overall risk level against the assessed areas is **low**.

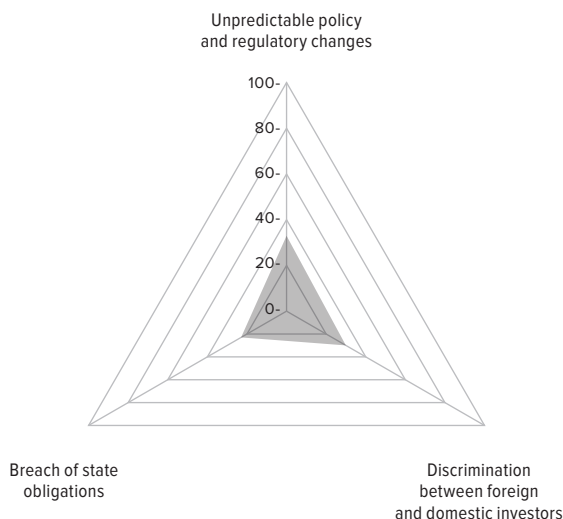
Among the three EIRA risk areas, *breach of State obligations* is lower compared to *discrimination between foreign and domestic investors* and *unpredictable policy and regulatory change*.

Senegal’s performance against EIRA’s four indicators is good. It has received 78 points on *rule of law* and 70 points on *management of decision-making processes*. *Regulatory environment and investment conditions* is at 63, while *foresight of policy and regulatory change* stands at 53.

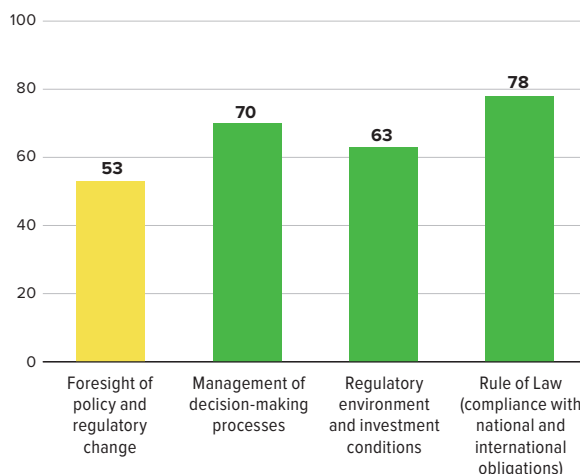
On a more detailed level, Senegal’s overall sub-indicator performance is good. The highest scoring sub-indicator is *institutional governance* with 94 points followed by *management and settlement of investor-state disputes* with 80 points. *Restrictions on FDI* and *respect for property rights* have each received a score of 75. The performance on *communication of vision and policies* and *robustness of policy goals and commitments* is moderate with 56 and 51 points, respectively. Senegal has obtained 50 points on *regulatory effectiveness* and 46 points on *transparency*.

While Senegal has the relevant policies and regulations in place, there is potential for improvement. Attention should be given to strengthening the country’s regulatory effectiveness and enhancing transparency.

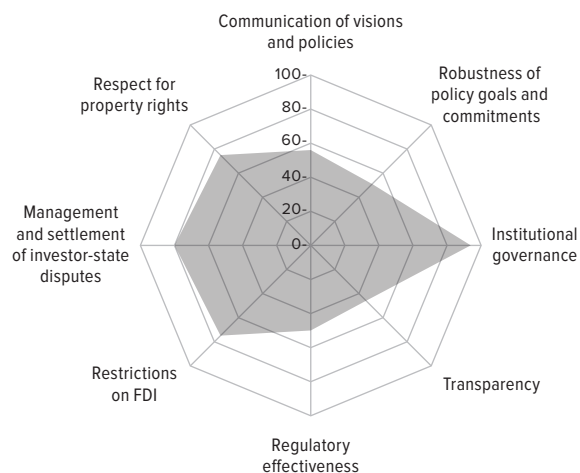
### RISK LEVEL



### INDICATOR PERFORMANCE



### SUB-INDICATOR PERFORMANCE



## Foresight of policy and regulatory change

### QUICK FACTS

The Emerging Senegal Plan 2014-2035 was adopted as the strategic framework for the country's long-term economic and social development.

The Energy Sector Development Policy Letter 2012 outlines the energy sector policy objectives. It has been integrated into the Emerging Senegal Plan.

Senegal ratified the Paris Agreement in 2016 and submitted its NDC.

### STRENGTHS

The overarching objective of the national policy is to improve the reliability and affordability of access to modern electricity services in a sustainable manner. To achieve this, the Energy Sector Development Policy Letter sets forth medium- and long-term goals to ensure energy security and energy access, develop a policy mix combining thermal generation, bio-energy, coal, gas and renewables, accelerate the liberalisation of the energy sector and strengthen its regulation. Moreover, the Energy Sector Development Policy Letter contains objectives for the oil and gas sub-sectors. Action plans provide details on the implementation of these goals.

The overall monitoring responsibility is entrusted to the Ministry of Petroleum and Energy. Public companies operating under the technical supervision of the Ministry, such as the National Oil Corporation of Senegal (PETROSEN) and COS-PETROGAS, oversee policies regarding hydrocarbon development.

### AREAS OF IMPROVEMENT

The recent oil and gas discoveries bring great potential for the country's development. However, the Government should maintain a balance between the need to attract investment in its nascent upstream sub-sector and at the same time pursue its renewable energy targets. Finalising the revision of the Petroleum Code 1998 would be a step in this direction since the new draft takes into account international best practices including social and environmental standards.

The inclusion of a review mechanism in policy documents and action plans will allow the Government to critically assess the current status of energy policies employed and planned approaches to achieving its targets. Further, when targets are not met, it will help the Government understand the reasons for such failure, identify the areas which need readjustment and incorporate lessons learnt when setting new targets.

## Management of decision-making processes

### QUICK FACTS

The Ministry of Petroleum and Energy is responsible for the implementation of the Government's policy for the oil and gas sector.

The Ministry of Investment Promotion, Partnerships and the Development of the State Teleservices prepares and implements the national investment policies.

The Agency for the Promotion of Investment (APIX) was created in 2000 with the aim to provide information on investment conditions and procedures and assistance in obtaining permits and approvals.

### STRENGTHS

Law and policy formulation is the prerogative of the Central Government. Despite the involvement of several governmental bodies in the energy sector, their institutional roles and responsibilities are well-defined. Inter-ministerial coordination takes place in the context of internal committees convened to discuss draft legislation. The National Climate Change Committee (COMNACC) has become a central platform for inter-ministerial cooperation on climate change. It also plays a key role in assisting with the development of national and subnational climate change projects. Several state agencies, NGOs, and civil society organizations are members of the COMNACC.

Enacted legislation is published in the Official Journal of the Republic of Senegal. The Senegalese Regulatory Commission of Electricity (SERC) presents an annual report of its activities and spending to the President. It also publishes an official bulletin with all its regulatory decisions.

### AREAS OF IMPROVEMENT

Although inter-ministerial coordination on cross-cutting issues does take place, there is no formal document regulating collaboration among the various governmental entities. The adoption of such a document would institutionalise the coordination process and help the Government secure a seamless path from the development to the execution of national policies.

Access to information is a key component of open and transparent governance. The public must be able to gain access to legal documents. For this reason, the Government should intensify its efforts to create a single harmonised legislation on access to information.

To foster public deliberations in the decision-making process, a general framework should be developed to outline standards for the participatory process and ensure that it will be executed effectively. For instance, draft documents can be disseminated in advance, lists of interested parties to be engaged in the process can be prepared and timeframes for soliciting public comments and opinions be established.



## Regulatory environment and investment conditions

### QUICK FACTS

The SERC was constituted under Law no. 98-29 of 1998 “On the electricity sector”, as amended in 2002. It regulates the activities of generation, transmission, distribution and sale of electric energy.

The Ministry of Petroleum and Energy is the regulator for the upstream sub-sector. Under the umbrella of the Ministry, PETROSEN drafts and negotiates oil contracts and the National Committee of Hydrocarbons (Comité national des hydrocarbures) is concerned with downstream activities.

The Law no. 2004-06 of 2004 “Establishing the Investment Code” prohibits discrimination between national and foreign investors.

### STRENGTHS

The competences of the SERC are stated in its governing law. It has a dedicated budget for its activities that is paid directly by the license holders. It is headed by a board of commissioners whose mandate is time-bound and renewable only once. The role of the SERC is expected to expand to include regulation of hydrocarbon fuels.

The Investment Code protects and provides fiscal and non-fiscal benefits to foreign investors. It also guarantees the free transfer of funds for commercial operations and the repatriation of any capital derived from an investment in Senegal. Majority ownership in energy projects is open to foreign investors. Although the holders of concessions or service contracts are encouraged to hire local personnel, they are not prohibited from engaging foreign professionals in technical and managerial positions.

### AREAS OF IMPROVEMENT

The SERC should be granted greater institutional and functional autonomy. To achieve this, its Commissioners should not receive instructions from any governmental entity. Moreover, they should be selected on merit through a public procedure and be held accountable to the Parliament instead of the Ministry of Petroleum and Energy. Given the predominant role of the National Electricity Company of Senegal in the transmission and distribution network and the purchase and sale of wholesale power, the reinforcement of SERC’s institutional independence is a critical element for the liberalisation of the power sector.

Currently, local content requirements in terms of employment of local personnel as well as supply agreements with local companies are in place. The Government will be able to reap the benefits of these policies only if they are made part of an overall development strategy, are tailored to the size of the energy sector and are accompanied by training and education programmes. To this end, local content policies should be communicated and consulted upon with the actors in the sector.

## Rule of law

### QUICK FACTS

Senegal ratified the Convention on the Settlement of Investment Disputes between States and Nationals of Other States in 1971.

Senegal acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 1994.

Senegal is a member state of the OHADA which has designed and enforced a substantial body of commercial laws among its Member States.

### STRENGTHS

The Investment Code and the OHADA Uniform Act on Arbitration 1999 give foreign investors the right to opt for international arbitration should a dispute with the Government arise. Mediation can be pursued under the OHADA Uniform Act on Mediation 2017. In addition, investors may appeal to the Ombudsman to investigate a public agency on the grounds of maladministration. National laws do not require the exhaustion of local judicial remedies before recourse to international arbitration. Foreign judgements and arbitral awards are recognised and enforced in Senegal.

Foreign investors are protected against expropriation and nationalisation except for reasons of public utility which are stated in the law. In case of expropriation, just compensation must be paid in advance. The State Property Operations Control Commission gives its opinion on the amount of compensation proposed for expropriation for reasons of public utility. In general, there are no restrictions on the transfer of technology. Senegal maintains a legal framework for the protection of intellectual property rights, including national laws, BITs and other international agreements.

### AREAS OF IMPROVEMENT

Important steps to speed up civil and commercial adjudication have already been taken, such as the introduction of Decree no. 2013/1071 amending the Code of Civil Procedure. The said amendment gives judges the duty and power to conclude pre-trial proceedings in four months and reject cases based on insufficient evidence in the first hearing. Setting deadlines for the completion of judicial proceedings will further reduce delays and increase the celerity of justice in Senegal.



# Slovakia

Population <sup>1</sup>	5.439.892
Area (km <sup>2</sup> ) <sup>1</sup>	49.035
GDP per capita (USD) <sup>1</sup>	17.604,95
TPES (Mtoe) <sup>2</sup>	16,39
Energy intensity (toe/10 <sup>3</sup> 2010 USD) <sup>2</sup>	0,16
CO <sub>2</sub> emissions - energy (MtCO <sub>2</sub> ) <sup>2</sup>	29,44

Sources:

1. The World Bank 2017

2. ©OECD/IEA 2017, [www.iea.org/statistics](http://www.iea.org/statistics)

Slovakia’s overall risk level against the assessed areas is **low**.

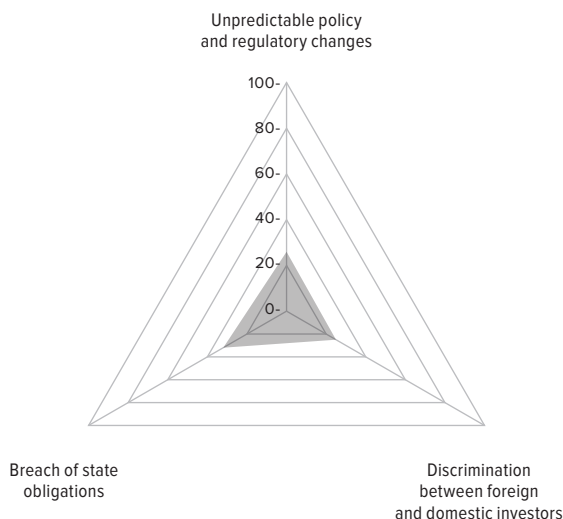
Among the three EIRA risk areas, *discrimination between foreign and domestic investors* and *unpredictable policy and regulatory change* are lower compared to *breach of State obligations*.

Slovakia’s performance against EIRA’s four indicators is good. It has received a score of 81 on the indicator *regulatory environment and investment conditions*. Two indicators, namely *foresight of policy and regulatory change* and *management of decision-making processes* are at 77 and 76. The indicator score for *rule of law* is 68.

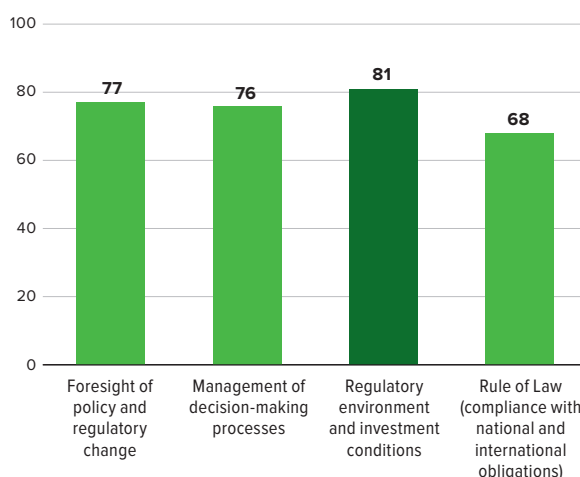
On a more detailed level, Slovakia’s overall sub-indicator performance is good. The highest scoring sub-indicator is *restriction on FDI* with 90 points. It is followed by *robustness of policy goals and commitments* and *transparency* at 87 and 78 points. The performance on the sub-indicator *institution governance* stands at 75 while *regulatory effectiveness* is at 72 points. The sub-indicator *management and settlement of investor-State disputes* has a good score of 70. *Communication of vision and policies* and *respect for property rights* sub-indicators are at 67 and 66 points, respectively.

While Slovakia has the relevant policies and measures in place, there is potential for improvement. Attention should be given to re-enforcing the respect for property rights and better communicating the country’s vision and policies.

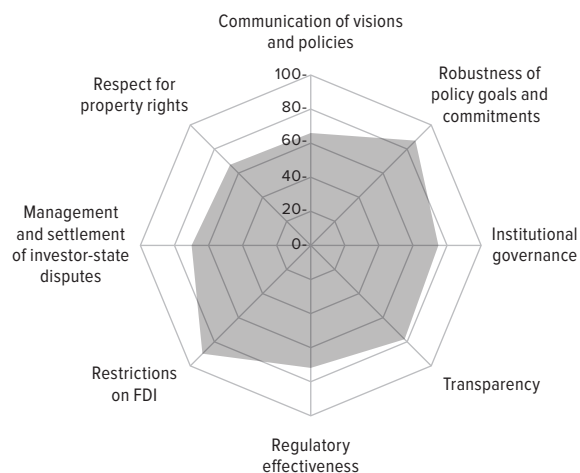
### RISK LEVEL



### INDICATOR PERFORMANCE



### SUB-INDICATOR PERFORMANCE



## Foresight of policy and regulatory change

### QUICK FACTS

The key strategy documents for Slovakia's energy sector are the Energy Policy of the Slovak Republic 2014 and the Energy Security Strategy 2008.

As an EU Member State, Slovakia ratified the Paris Agreement in 2016.

### STRENGTHS

The pillars of Slovakia's energy policy are competitiveness, energy security and sustainability. To comply with EU legislation, the Government has set targets for increasing the share of renewable sources in its final energy consumption and enhancing energy efficiency by 2020. Action plans for the achievement of these particular goals are in place. The Government is currently setting targets for 2030 and ultimate outcomes for the priority areas as required by the Governance Regulation.

The Ministry of Economy, the Regulatory Office for Network Industry (RONI) and the Nuclear Regulatory Authority are responsible for the implementation and monitoring and of the energy objectives and targets. Data collection for the assessment is carried out by the Statistical Office Slovakia. Periodical review and update of these energy priorities takes place on a need basis and at least once in five years, as required by the relevant EU directives and regulations.

### AREAS OF IMPROVEMENT

Since the Government is currently setting long-term targets for the energy sector, it is a timely moment to consider certain issues. For instance, the upcoming Integrated National Energy and Climate Plan should provide quantifiable targets as well as details of the programmes and projects that will help achieve them. Moreover, given the country's ambition of energy transition, the support schemes offered to some of the energy sub-sectors may be re-evaluated.

## Management of decision-making processes

### QUICK FACTS

The Ministry of Economy is the responsible for formulating energy and investment policies.

The Slovak Investment and Trade Development Agency (SARIO) was established in 2001 under the Ministry of Economy as the investment promotion agency of the country.

Slovakia adopted Act no. 211/2000 Coll. the Freedom of Information Act for governing the conditions, procedures and extent of information access.

### STRENGTHS

The decision-making process is centralised. Draft laws are subject to comments from relevant ministries and submitted to the Parliament. Implementing decrees to the legislation are drafted and issued by the RONI and the Ministry of Economy. The Ministry of Economy, as a competent authority for Projects of Common Interest, is responsible for the coordination of permit granting procedures for projects designated as such under the EU Regulation no. 347/2013.

Slovakia has adopted robust legislation on the free access to information. The principle of transparency is reflected in several laws, including in the area of public procurement. Additionally, agreements entered into by the State are subject to mandatory publication. The legislative procedure requires public consultation on proposed laws before they are published. To increase transparency, the RONI recently adopted Decree no. 18/2017 Z. z. (effective from July 2018) which contains defined rules and procedures applied to price regulation as well as the disclosure of price information and the conditions for its application.

### AREAS OF IMPROVEMENT

Efforts can be made by the Government to improve the implementation of transparency measures. For instance, to reduce the perception of opacity among market players, it should be ensured that decisions of the RONI on tariffs methodology and market indicators contain all the relevant information and provide detailed reasoning. Moreover, the selective involvement of stakeholders on proposed laws, policies and regulations should be avoided, and discussions with wider groups encouraged. Finally, strategy documents, national plans and enacted laws can be made available in foreign languages and a consistent approach adopted for this purpose. At present, some of the public authorities provide the English translations of the relevant laws on their website, but these cannot be used for official purposes.

## Regulatory environment and investment conditions

### QUICK FACTS

The RONI is responsible for regulating the network industries including the electricity, gas, and heat power sub-sectors.

The general rule of equal treatment for domestic and foreign investors is established in the Constitution.

### STRENGTHS

The RONI's constitution, functions and powers are established through Act no. 250/2012 Coll. on Regulation of Network Industries. The primary functions of the RONI include, among other things, licensing and supervising power and natural gas companies as well as the setting the prices for these sub-sectors. The Act on Regulation of Network Industries also mandates the RONI to adopt measures for the protection of vulnerable consumers. Money allocated to the RONI from the State budget cannot be transferred or shared with other governmental entities. To ensure transparency in its management, the Chairman and the Council of RONI is appointed for a fixed tenure. The Slovak Supreme Audit Office is empowered to control the use of financial resources granted to the RONI under the State budget.

The legislative framework establishes an open and supportive environment for foreign investment. The Constitution grants protection to all business activities of investors. Act no. 513/1991 Coll. Commercial Code provides that foreign persons can conduct business activities in Slovakia under the same conditions and to the same extent as Slovak nationals. There is no restriction of transfer of capital. Performance requirements for local employment are not imposed on foreign investors.

### AREAS OF IMPROVEMENT

The RONI's autonomy may need to be re-examined, particularly with regard to its financial resources. Legislation must recognise its right to set its budget without governmental approval and to exercise freedom in spending its revenue. This will not only increase RONI's impact but also assist in improving the legislative and regulatory environment of the energy sector.

## Rule of law

### QUICK FACTS

Slovakia ratified the Energy Charter Treaty in 1995.

Slovakia ratified the Convention on the Settlement of Investment Disputes between States and Nationals of Other York Conventions in 1994.

The Constitution contains provisions protecting property against unlawful expropriation.

### STRENGTHS

Positive measures have been taken to encourage arbitration, voluntary mediation and conciliation. The Act no. 244/2002 Coll. on Arbitration is based on the UNCITRAL model law. Mediation is included in a separate law, namely the Act no. 420/2004 Coll. on Mediation. Judgments in civil and commercial matters issued by courts of other EU member states are recognised and enforced in Slovakia. Moreover, court judgments rendered in countries with which Slovakia has a treaty on judicial cooperation, such as Russia, are also recognised and enforced as per the rules of these treaties. National laws do not require the exhaustion of local judicial remedies before the initiation of arbitration proceedings.

The Constitution allows expropriation only to the necessary extent and in public interest, based on the law and with compensation. Act no. 50/1976 Coll. the Building Act and the Act no. 282/2015 Coll. on the Expropriation of Land and Buildings stipulate the process through which real estate can be expropriated and the valuation method for the compensation. Under Slovakia's any investor affected by an act of expropriation has the right to approach a judicial or other independent authority for a review of the decision and the valuation of its investment. There are several laws in place to protect intellectual property rights.

### AREAS OF IMPROVEMENT

To resolve issues between foreign investors and public authorities, the Government may consider establishing a designated investment ombudsman. Currently the SARIO provides some services, such as assistance with identification of suitable real estate and with the implementation of investment projects. However, a dedicated body with functions including grievance settlement, provision of mediation services and representation of investors' views to the Government could significantly help attract and retain investment.

The conditions granting protection against expropriation may be explained further. While the right of countries to determine what constitutes "public purpose" is paramount, clarity on the context in which the concept may be applied will provide investors greater legal security. Moreover, provisions against expropriation of intangible property should be explicit. At present the emphasis is primarily on the protection of immovable property.



# Uganda

Population <sup>1</sup>	42.862.958
Area (km <sup>2</sup> ) <sup>1</sup>	603.550
GDP per capita (USD) <sup>1</sup>	604,04
TPES (Mtoe) <sup>2</sup>	N/A
Energy intensity (toe/10 <sup>3</sup> 2010 USD) <sup>2</sup>	N/A
CO <sub>2</sub> emissions - energy (MtCO <sub>2</sub> ) <sup>2</sup>	N/A

Sources:

1. The World Bank 2017

2. ©OECD/IEA 2017, [www.iea.org/statistics](http://www.iea.org/statistics)

Uganda’s overall risk level against the assessed areas is **moderate**.

Among the three EIRA risk areas, *breach of State obligations* and *unpredictable policy and regulatory change* are lower compared to *discrimination between foreign and domestic investors*.

Uganda’s performance against EIRA’s four indicators is moderate. It has received a score of 67 on the indicator *management of decision-making processes* and 59 on *rule of law*. *Foresight of policy and regulatory change* has received 49 points while *regulatory environment and investment conditions* is at 37.

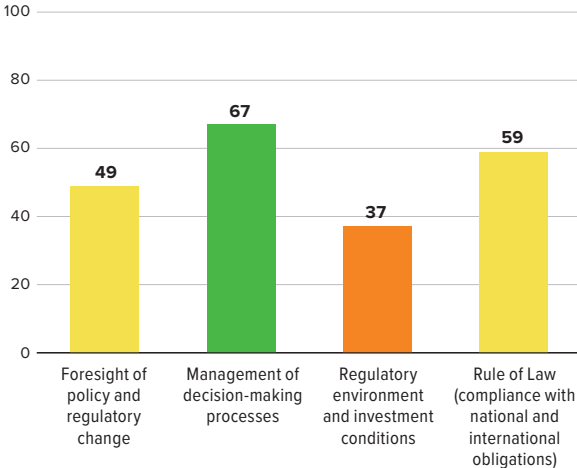
On a more detailed level, Uganda’s overall sub-indicator performance is moderate. The highest scoring sub-indicator is *institutional governance* with a good score of 75. The performance on *management and settlement of investor-State disputes* is at 60. The sub-indicators *transparency* and *respect for property rights* have both scored 58, while *robustness of policy goals and commitments* is at 54. A moderate score of 44 has been obtained on the sub-indicator *regulatory effectiveness*, followed by *communication of vision and policies* at 43. The performance on the sub-indicator *restrictions on FDI* is the lowest with 30 points.

While there are some policies and measures in place, more concrete steps must be taken to strengthen Uganda’s performance across all indicators and underlying sub-indicators. Particular attention should be given to lowering the restrictions on FDI which are currently in effect.

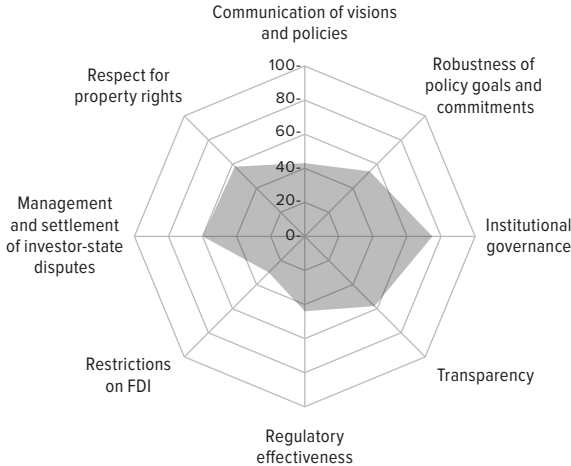
**RISK LEVEL**



**INDICATOR PERFORMANCE**



**SUB-INDICATOR PERFORMANCE**



## Foresight of policy and regulatory change

### QUICK FACTS

Uganda Vision 2040 (published in 2013) states the socio-economic aspirations of the country.

The Energy Policy of Uganda 2002 provides the framework for the energy sector. It is currently under review by the Government.

Sub-sectoral laws and policies include the Electricity Act 1999, the Renewable Energy Policy 2007, the Mineral Policy 2001, the Mineral Act 2003, the National Biomass Energy Strategy 2013. Some of these documents are also under review.

Uganda ratified the Paris Agreement in 2016 and submitted its first NDC.

### STRENGTHS

Uganda's Vision 2040 provides a roadmap for achieving the country's aspiration of transforming to a modern and prosperous economy. Its implementation is intended through a series of five-year national development plans. Currently, the Second National Development Plan 2015/16-2019/20 is underway. The different energy sub-sectors are combined into the Energy and Mineral Development (EMD) sector which supports the objectives of the Vision 2040. The country has created action plans for some of its key priorities. For instance, the Rural Electrification Strategy and Plan 2013-2022 provides a detailed programme for reaching the goal of universal electrification by the year 2040.

The Directorate of Monitoring, Evaluation and Inspection, under the Office of the Prime Minister, monitors the implementation of policies and projects across ministries, departments and public agencies. The local governments have implemented a community-based information programme for evaluating performance. It provides stakeholders and citizens with a forum to participate in the policy development cycle.

### AREAS OF IMPROVEMENT

Since Uganda is updating its energy policies and laws, some issues need to be taken into account. Objectives and targets should be realistic and supported by a reliable framework to drive action towards their realisation. A thorough evaluation of the country's resource potential, existing and needed infrastructure, and institutional capacity should be undertaken before making policy adjustments.

Targets and their implementation plans should be framed or altered bearing in mind the broader socio-cultural context of the country. This will ensure they are workable and will produce the intended results. For instance, though the country has framed ambitious rural electrification targets, these will only be achieved if the Government designs energy delivery systems that are compatible with the local conditions.

## Management of decision-making processes

### QUICK FACTS

The Ministry of Energy and Mineral Development is responsible for framing and implementing policies related to minerals and petroleum.

The Ministry of Finance, Planning and Economic Development formulates the economic policies of the country.

The Uganda Investment Authority (UIA) was established in 1991 as an investment promotion agency.

The Access to Information Act 2005 stipulates the procedure for obtaining information from public authorities.

### STRENGTHS

The law-making process in Uganda is straightforward. Ministers or Members of the Parliament may initiate legislation. The Manual on the Legislative Process 2014 consolidates and explains the different steps involved in proposing, drafting and adopting laws. The Department of Policy Implementation and Coordination, under the Office of the Prime Minister, encourages and facilitates cooperation among the different ministries, government departments and public agencies. It ensures that policies and programmes are implemented harmoniously and coherently.

Laws are published in the Official Gazette upon enactment. Records of the official parliamentary debates are available online. Decisions of courts and tribunals are also electronically accessible. Tariff review reports are published on a quarterly basis. The Government holds informal consultations with interested stakeholders on proposed legal and regulatory changes. To guarantee accountability, ministries are required to submit annual reports to the Parliament on requests made for information access to their respective departments and agencies. The reports must indicate whether access was granted or denied in each case and state the reasons for the decision.

### AREAS OF IMPROVEMENT

The Government may consider making extractive industry contracts accessible to the public in accordance with best practices. This will help create accountability since communities likely to be affected by planned projects will be able to obtain information on the procedures for awarding exploration and production rights. They will also get an opportunity to assess the potential environmental impact of the projects, their economic benefit, and the planned allocation of revenue by the Government.



## Regulatory environment and investment conditions

### QUICK FACTS

The Ministry of Energy and Mineral Development is the overarching regulator for the energy sector.

The Electricity Regulatory Authority (ERA) was formed under the Electricity Act 1999 to regulate the sub-sector.

The Petroleum (Exploration, Development and Production) Act 2013 established the Petroleum Authority of Uganda (PAU) for regulating and monitoring the sub-sector.

The Investment Code Act 1991 lays down the conditions for local and foreign investment in the country.

### STRENGTHS

The functions and duties of the ERA and the PAU are stated in their respective governing laws. They have the right to set the management rules for their staff. The Board members of each regulator are appointed for a limited duration and cannot be re-appointed more than once. At the end of every financial year, they are required to submit a statement of accounts to the Auditor General of the country.

In recent years, the Government has taken steps to promote public-private partnerships across various sectors. The energy sector has attracted the greatest number of these projects. There are fiscal benefits offered for certain plants machinery and raw materials used in energy projects. BITs extend treatment to foreign investments according to the principles of international law. The Foreign Exchange Act 2004 grants investors the unqualified right to transfer capital abroad.

### AREAS OF IMPROVEMENT

Greater functional and budgetary independence must be granted to the ERA and the PAU. While the ERA exercises some degree of autonomy in performing its duties, this right is subject to any policy of the Government that declares otherwise. Moreover, the salaries of PAU's Board must not be subject to governmental approval to re-enforce the impartiality of the Board.

The Government should expedite the adoption of the competition bill pending since 2004. Additionally, it must create the necessary conditions for organising a competition commission as envisaged under the bill. The passage and implementation of this law will help provide systematic market oversight and prevent practices which unduly restrict or distort competition.

Measures should be taken to level the playing field between foreign and domestic investors. For instance, difference in eligibility requirements for an investor license should be lowered or removed. Screening of foreign workers hired for key positions and similar performance requirements may be reduced. Finally, the land tenure system should be streamlined to ensure that planned projects are realised.

## Rule of law

### QUICK FACTS

Uganda ratified the Convention on the Settlement of Investment Disputes between States and Nationals of Other States in 1996.

Uganda acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 1992.

The Constitution of Uganda 1995 grants protection from deprivation of property.

### STRENGTHS

Disputes can be settled by domestic law when the contracting parties choose to be bound by it. Appeals against regulatory decisions are permissible under the law. For instance, decisions of the ERA may be appealed before the Electricity Dispute Tribunal. The Arbitration and Conciliation Act 2000 provides for domestic and international commercial arbitration. Domestic courts enforce judgements from reciprocating jurisdictions such as the United Kingdom and other Commonwealth countries.

The Constitution safeguards investors against acts of expropriation which do not meet the conditions established by law. The Investment Code Act guarantees prompt payment of compensation at fair market value, within a period not exceeding twelve months from the date of taking possession or acquisition. An appeal mechanism exists to challenge expropriation decisions before the Ministry of Justice within 15 days of the expropriation order. Uganda is a member of the African Intellectual Property Organization and guarantees protection to various forms of intellectual property. The Investment Code Act prohibits conditions within agreements which restrict the use of competitive techniques.

### AREAS OF IMPROVEMENT

Alternative dispute resolution mechanisms should be promoted for resolving deadlocks between investors and governmental authorities. For this purpose, an investment ombudsman may be established and entrusted with the responsibility of mediating between the parties. It will provide them with time- and cost-effective solutions and allow investment projects to run smoothly.

The term "public purpose" may be defined more elaborately. The explanation provided in the Constitution has a wide scope which leaves room for interpretation. The list of activities which constitute "public purpose" may be incorporated in the law. Moreover, the procedure for ascertaining whether an acquisition is for a public purpose activity or not and who will be the key decision-makers in this process should be outlined. This will provide clarity and security to investors regarding the legal regime on expropriation.



# Ukraine

Population <sup>1</sup>	44.831.159
Area (km <sup>2</sup> ) <sup>1</sup>	241.550
GDP per capita (USD) <sup>1</sup>	2.639,82
TPES (Mtoe) <sup>2</sup>	90,09
Energy intensity (toe/10 <sup>3</sup> 2010 USD) <sup>2</sup>	0,74
CO <sub>2</sub> emissions - energy (MtCO <sub>2</sub> ) <sup>2</sup>	189,44

Sources:

1. The World Bank 2017

2. ©OECD/IEA 2017, [www.iea.org/statistics](http://www.iea.org/statistics)

Ukraine’s overall risk level against the assessed areas is **low**.

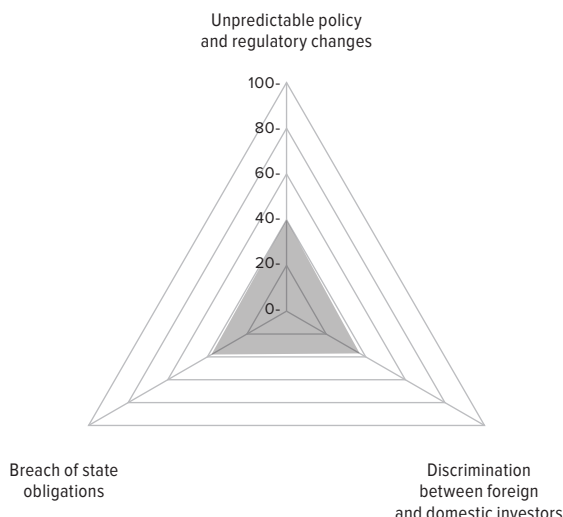
Among the three EIRA risk areas, *discrimination between foreign and domestic investors* and *breach of State obligations* are lower compared to *unpredictable policy and regulatory change*.

Ukraine’s performance against EIRA’s four indicators is good. It has received a score of 67 on the indicator *regulatory environment and investment conditions* and 63 on the indicator for *rule of law*. On the *management of decision-making processes*, it has scored 59 while *foresight of policy and regulatory change* is at 57 points.

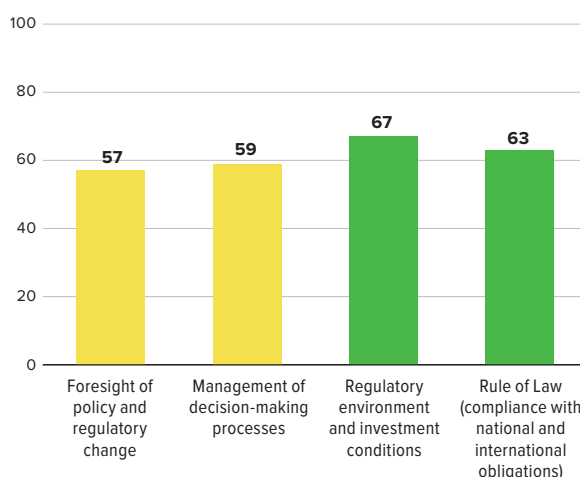
On a more detailed level, Ukraine’s overall sub-indicator performance is good. The highest scoring sub-indicator is *regulatory effectiveness* with 83 points. *Transparency* is at 78, followed by *management and settlement of investor-state dispute* at 75 points. *Communication of vision and policies* has also received a good score of 64. The sub-indicators *robustness of policy goals and commitments*, *restrictions on FDI* and *respect for property rights* have a moderate score of 50 each. The lowest scoring sub-indicator is *institutional governance* with 41 points.

While Ukraine has the relevant policies and measures in place, there is potential for improvement. Attention should be given to strengthening the institutional governance of the country.

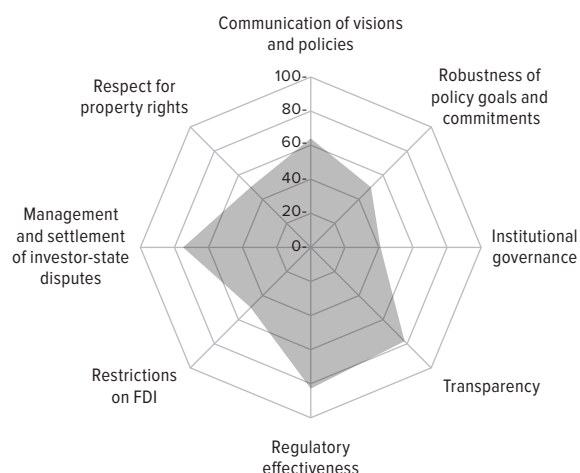
### RISK LEVEL



### INDICATOR PERFORMANCE



### SUB-INDICATOR PERFORMANCE



## Foresight of policy and regulatory change

### QUICK FACTS

The Energy Strategy of Ukraine through 2035: Security, Energy Efficiency, Competitiveness was adopted in 2017 to set the strategic goals of the country.

Ukraine ratified the Paris Agreement in 2016 and submitted its first NDC.

### STRENGTHS

The Energy Strategy of Ukraine proposes guidelines for the development of the energy sector until 2035. It envisages cross-sectoral cooperation to meet the energy needs of the national economy through efficient and reliable resources. To support this ambitious strategy, the Government has recently adopted an action plan for implementing its first phase (until 2020). Consistent with its commitments under the Paris Agreement, the Government is also drafting a law titled "On the Basic Elements of Monitoring, Reporting and Verification of Greenhouse Gas Emissions." The Concept for the implementation of the state policy in the field of climate change for the period up to 2030 and the Action Plan on Concept implementation have been developed and approved.

The monitoring and evaluation mechanisms are streamlined. Coordination and control over the implementation of the energy goals are carried out by the Cabinet of Ministers and the Council of National Security and Defense of Ukraine. The Ministry of Energy and Coal Industry is required to produce a report on the implementation status of the energy policy. The report analyses in detail the effectiveness of the measures taken (or the reasons for their non-fulfilment), and recommendations for enhancing performance.

### AREAS OF IMPROVEMENT

The Government must work on an action plan for implementing the Energy Strategy of Ukraine through 2035 beyond the first phase (until 2020). Targets that are progressive and workable should be set for the period between 2021 to 2035. This will allow seamless implementation of the country's short- and long-term actions and ensure that goals are effectively met. Moreover, consequences for the non-fulfilment of goals should be defined. Compliance and enforcement measures must be incorporated in binding documents to ensure concrete efforts are made towards achieving the final goals.

While the implementation status of energy targets is evaluated regularly, steps may be taken to make the monitoring authorities independent of the Government. Functional and substantive independence of monitoring frameworks is guaranteed when monitoring entities are self-funded and have sufficient technical and skilled human resources to support them.

## Management of decision-making processes

### QUICK FACTS

The Ministry of Energy and Coal Industry is the main central executive body responsible for the formation and implementation of the country's energy policy.

The Ministry of Economic Development and Trade is in charge of implementing the national investment policy.

Ukrenergo, the system operator of the United Energy System of Ukraine, provides single window services to simplify the procedure for connecting electrical installations and optimise processes.

Law No. 2939 "On Access to the Public Information" determines the procedures for securing access to information from government agencies.

Criteria for classifying information as secret is provided in Law No. 183 "On State Secrets" 1994 as amended in 2003.

### STRENGTHS

Laws are adopted exclusively by the Parliament. Policies for the energy sector are framed by the Ministry of Energy and Coal Industry in collaboration with other relevant ministries and the State Agency on Energy Efficiency and Energy Saving of Ukraine. Public authorities and local self-government bodies are required to give due consideration to the country's overall objectives when granting approval for individual projects.

The law and policy-making process in Ukraine follow general transparency standards. Draft laws are made available electronically on the Parliament's website. All laws in force are integrated within the centralised registry of statutes. There is a clearly defined mechanism for stakeholder consultation. According to the Resolution of the Cabinet of Ministers "About Approval of Regulations of the Cabinet of Ministers of Ukraine", prior notification to the public is essential before enacting new laws and regulations. A draft law "On Ensuring Transparency in the Extractive Industries" is currently under discussion before the Parliament.

### AREAS OF IMPROVEMENT

Pro-active measures should be taken towards reaching the NDC targets stipulated by the Government. For this purpose, a unit in charge of implementing the NDCs should be appointed. Concrete and well-defined actions and support schemes will also help bring clarity on how the country intends to uphold its NDC commitments.

A one-stop shop can be established and empowered to grant approvals and licences for energy investment activities which are outside the purview of Ukrenergo. Presently, Ukraine has a document service centre, which provides support for few investment activities, such as the registration of legal entities. Moreover, a unified procedure for administrative decisions, such as for investment project screening, must be created and discretionary choices avoided to the extent possible.

## Regulatory environment and investment conditions

### QUICK FACTS

The National Energy and Utilities Regulatory Commission (NEURC) is the regulator vested with functions of licensing and tariff setting for utilities.

The Antimonopoly Committee of Ukraine is a public authority which ensures protection of business competition.

The Law on Foreign Investment Regime lays the legal foundation for foreign investment in Ukraine.

### STRENGTHS

The duties and powers of the NEURC are defined in the law. Control over its activities, including the budget, is carried out by the Parliament. After its recent reorganisation, NEURC enjoys independence in its mode of management, the appointment of board members and reporting procedures. To eliminate the “revolving door” scenario, the Commissioners of NEURC cannot be employed in business entities or enter into a contract with them within two years after termination of duty with NEURC.

The legal regime in Ukraine is conducive to FDI. The domestic law provides national treatment to foreign investment in the country. In some instances involving priority goals set by the Government, a special and more beneficial treatment can also be granted to foreign investors. Partnering with the State is not mandatory, but may appear desirable to some investors. The BITs signed by Ukraine generally contain provisions guaranteeing *fair and equitable* as well as *most favoured nation* treatment.

### AREAS OF IMPROVEMENT

Further structural changes should be implemented to increase the institutional, functional and financial independence of the NEURC. In particular, budgetary approval from the Committee on State Budget of the Parliament should be granted within the time frame stipulated in the law (1 month). All decisions of the NEURC should be published on time in the Official Gazette to ensure they are effected without delay.

Steps may be taken to reduce the remaining restrictions on foreign investors operating in the country. For instance, the Government may consider increasing the scope of land ownership for foreign companies, lowering currency controls and restrictions on capital transfer and removing local content requirements in certain energy sub-sectors.

## Rule of law

### QUICK FACTS

Ukraine ratified the Energy Charter Treaty in 1998.

Ukraine has been a signatory and a Contracting Party to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States since 2000.

In 2009 the Parliament adopted the Law of Ukraine “On alienation of privately owned land plots and real estate located on them for public needs and for social necessity.”

### STRENGTHS

Ukraine has a streamlined court case management system. Ukrainian courts have jurisdiction to hear disputes involving foreign investors, in addition to international arbitration. There are specific timelines for hearing cases in the first instance and on appeal. All administrative and judicial decisions are available to the public on the website of the State Registry of Court Decisions. In 2014, the Government established an advisory Business Ombudsman Council which investigates complaints from investors against the State or public authorities.

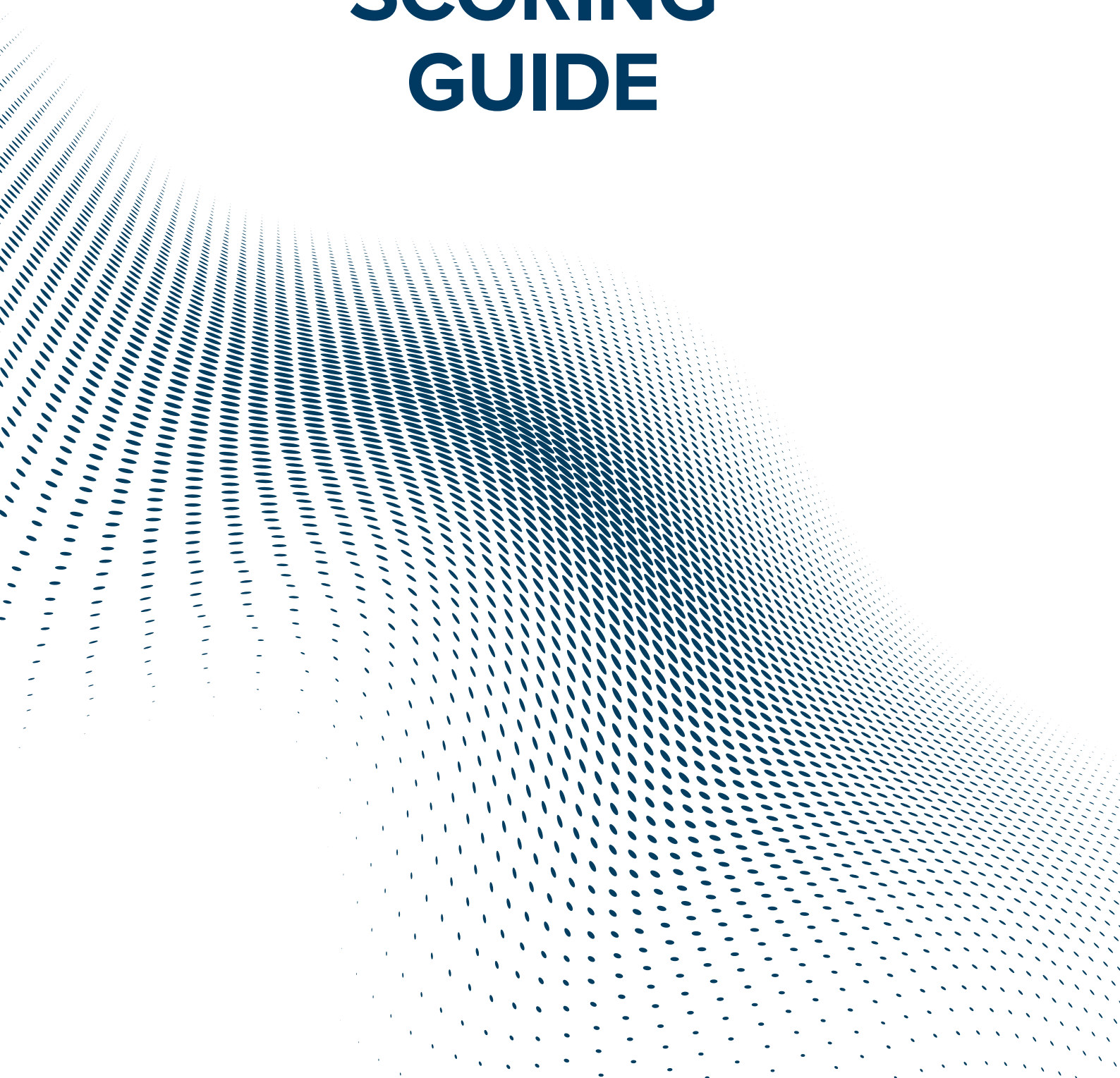
The Constitution grants protection to investors against expropriation. Ukraine has over 60 BITs, some of which contain details regarding maximum periods for payment of compensations as a result of expropriation. National laws safeguard all forms of intellectual property, including patents, trademarks and designs. Presently, there are no restrictions imposed on the transfer of technology.

### AREAS OF IMPROVEMENT

Mediation and conciliation as alternative dispute resolution methods may be encapsulated in a special law or as part of already existing procedural legislation. Mediation will allow the parties to identify their interests, develop settlement options and overcome barriers to settlement with minimum time and cost.

The government may define the term “public purpose” in its national laws. While the right of countries to determine what constitutes “public purpose” is indisputable, it is also important that a definition which is not overly broad or vague is stipulated in the law.

# **ANNEX I: 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>1a. Energy security [Y/N]</b> <b>1b. Power reliability [Y/N]</b> <b>1c. Affordability – energy poverty [Y/N]</b> <b>1d. Access to energy [Y/N]</b> <b>1e. Investment in the energy sector [Y/N]</b> <b>1f. CO<sub>2</sub> reduction [Y/N]</b> <b>1g. Renewable energy [Y/N]</b> <b>1h. Energy efficiency [Y/N]</b> <b>1i. Innovation [Y/N]</b> <b>1j. 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





**ANNEX II:  
EIRA  
QUESTIONNAIRE  
2018**

## Indicator 1: Foresight of policy and regulatory change

QUESTIONS	CLARIFICATIONS TO QUESTIONS	SCORING
<b>Sub-indicator 1.1: Communication of vision and policies</b>		
<b>1.1.1 What are the key priorities or goals of the energy sector policy?</b> 1a. Energy security [Y/N] 1b. Power reliability [Y/N] 1c. Affordability – energy poverty [Y/N] 1d. Access to energy [Y/N] 1e. Investment in the energy sector [Y/N] 1f. CO <sub>2</sub> reduction [Y/N] 1g. Renewable energy [Y/N] 1h. Energy efficiency [Y/N] 1i. Innovation [Y/N] 1j. Others issues related to the energy sector (like air quality, water quality job creation etc). Please specify.	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.	Not scored
<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>	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.	Based on the number of goals selected
<b>1.1.3 Has the country set any short-, medium- term targets for the priority areas selected above? [Y/N]</b>	This may include any specific short-, medium-term outcomes/targets for the energy sub-sectors.	Based on the number of goals selected
<b>1.1.4 Has the country set any ultimate/final outcomes for the priority areas selected above? [Y/N]</b>	This may include any specific final outcomes or end game for all energy sub-sectors.	Based on the number of goals selected
<b>1.1.5 Is there a timeframe for achieving the ultimate/final outcomes for the priority areas selected above? [Y/N]</b>		Based on the number of goals selected
<b>1.1.6 Is there a binding national action plan in place for implementing the priorities selected above? [Y/N]</b>		Based on the number of goals selected
<b>1.1.7 Is the country a party to the United Nations Paris Climate Agreement? [Y/N]</b>		Yes-50 No-0
<b>1.1.7a If yes, does the country's NDC contain details on energy sector CO<sub>2</sub> contribution? [Y/N]</b>		Yes-50 No-0
<b>Sub-indicator 1.2: Robustness of policy goals and commitments</b>		
<b>1.2.1 Is there a body responsible for monitoring the implementation of each energy priority? [Y/N]</b>		Based on the number of goals selected
<b>1.2.2 Is the monitoring body independent of the authority/ministry responsible for implementing the energy priorities selected above? [Y/N]</b>	For instance a technical/statistics body.	Based on the number of monitoring bodies
<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>		Based on the number of monitoring bodies
<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>	Please provide relevant legal acts/provisions.	Yes-100 No-0
<b>Additional remarks:</b> Are there any other risks in the energy sector relevant to <i>Foresight of policy and regulatory change?</i> Please describe.		

## 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>2.1.7 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>2.1.7a If yes, does it also give approval for the energy sector? [Y/N]</b>		Yes-50 No-0
<b>2.1.8 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>2.1.8a 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>2.2.2 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>2.2.2a 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 of Indicator 1, sub-indicator 2.	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 other risks in the energy sector relevant to <i>Management of decision- making processes</i> ? Please describe.		

## 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>3.1.8* Is there a fixed term appointment for the board of the energy regulator? [Y/N]</b>		Yes-50 No-0
<b>3.1.8a* 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>3.1.10 Does the energy regulator deal with competition issues? [Y/N]</b>		Yes-100 No-0
<b>3.1.10a 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>3.2.1 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>3.2.1a If yes, is this equal treatment established in law? [Y/N]</b>		Yes-50 No-0
<b>3.2.2 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>3.2.2a 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>3.2.3 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>3.2.3a 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>3.2.9 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>3.2.9a 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>3.2.10 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>3.2.10a If yes, do they apply equally on foreign and domestic investor?</b>		Yes-50 No-0
<b>Additional remarks:</b> Are there any other risks in the energy sector relevant to <i>Regulatory environment and investment conditions</i> ? Please describe.		

## 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 the website.	Yes-100 No-0
<b>4.1.7 Do national laws allow the recognition and enforcement of foreign judgments? [Y/N]</b>		Yes-50 No-0
<b>4.1.7a 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 this 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
4.2.4 Does the State include in its laws and/or International Investment Agreements protection against the expropriation of intellectual property rights? [Y/N]		Yes-50 No-0
4.2.4a Is the country a Member State of the World Intellectual Property Organization? [Y/N]		Yes-50 No-0
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]	Please provide the law which states this restriction.	Yes-0 No-100
4.2.6 Is the country a Member State/Contracting Party to: a. The World Trade Organization? [Y/N] b. The Energy Charter Treaty? [Y/N]		Yes-50 No-0 Yes-50 No-0
<b>Additional remarks:</b> Are there any other risks in the energy sector relevant to <i>Rule of Law (compliance with national and international obligations)</i> ? Please describe.		

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Victoria Ischenko - BAKER MCKENZIE



# ENERGY CHARTER PROCESS CHART

as of 1 April 2018

## MEMBERS (54)

Sig	Rat	EEC	IEC	Country
2007	2013	2006	2015	Afghanistan
1994	1997	1991	2015	Albania
1994	1997	1991	2015	Armenia
1994		1991		Australia
1994	1997	1991	2015	Austria
1994	1997	1991		Azerbaijan
1994		1991	2015	Belarus
1994	1998	1991	2015	Belgium
1995	2001	1995	2016	Bosnia and Herzegovina
1994	1996	1991	2015	Bulgaria
1994	1997	1993	2015	Croatia
1994	1998	1991	2015	Cyprus
1995	1996	1993	2015	Czech Republic
1994	1997	1991	2015	Denmark
1994	1998	1992	2015	Estonia
1994	1998	1991	2015	European Union
1994	1998	1991	2015	EURATOM
1994	1997	1991	2015	Finland
1994	1999	1991	2015	France
1994	1995	1991	2015	Georgia
1994	1997	1991	2015	Germany
1994	1997	1991	2015	Greece
1995	1998	1991	2015	Hungary
1994	2015	1991		Iceland
1994	1999	1991	2015	Ireland
1995	2002	1991	2015	Japan
1994	1995	1991	2015	Kazakhstan
1994	1997	1992	2015	Kyrgyzstan
1994	1995	1991	2015	Latvia
1994	1997	1991	2015	Liechtenstein
1995	1998	1992	2015	Lithuania
1994	1997	1991	2015	Luxemburg
1994	2001	1991	2015	Malta
1994	1996	1992	2015	Moldova
1998	1999	1997	2015	Mongolia
2013	2015	2012	2015	Montenegro
1994	1997	1991	2015	Netherlands
1995		1991	2015	Norway
1994	2000	1991	2015	Poland
1994	1997	1991	2015	Portugal
1994	1996	1991	2015	Romania
1994		1991		Russian Federation
1994	1995	1993	2015	Slovakia
1994	1997	1992	2015	Slovenia
1994	1997	1991	2015	Spain
1994	1997	1991	2015	Sweden
1994	1996	1991	2015	Switzerland
1994	1997	1991		Tajikistan
1997	1998	1996	2015	The FYR Macedonia
1994	2001	1991	2015	Turkey
1994	1997	1994	2015	Turkmenistan
1994	1998	1991	2015	Ukraine
1994	1996	1991	2015	United Kingdom
1995	1995	1991	2015	Uzbekistan

## INTERNATIONAL ENERGY CHARTER (2015)

## EUROPEAN ENERGY CHARTER (1991)

## ENERGY CHARTER TREATY (1994)

## ACCEDING COUNTRIES

## ECT SIGNATORIES

## OBSERVERS (41)

Country	EEC	IEC
Bangladesh		2015
Benin		2015
Burkina Faso		2017
Burundi	2015	2015
Cambodia		2015
Canada	1991	
Chad	2015	2015
Chile		2015
China		2015
Colombia		2015
EAC		2016
ECCAS		2016
ECOWAS		2015
G5 Sahel		2016
Gambia		2017
Guatemala		2016
Indonesia	2009	
Iran		2016
Iraq		2016
Italy	1991	2015
Jordan	2007	2015
Kenya		2017
Mali		2017
Mauritania	2014	2015
Morocco	2012	2015
Niger	2015	2015
Nigeria		2017
Pakistan	2005	2015
Palestine	2014	2015
Panama		2017
Rwanda		2016
Senegal		2016
Serbia	2001	2015
South Korea		2015
Swaziland		2015
Syria	2010	
Tanzania		2015
UAE		2017
Uganda		2015
USA	1991	2015
Yemen	2014	2015

## INTERNATIONAL ORGANISATIONS WITH OBSERVER STATUS (by decision of the Energy Charter Conference):



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