EXECUTIVE SUMMARY

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

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

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

The scope and methodology of EIRA 2021 are the same as last year. Like its predecessors, this fourth edition of EIRA does not delve into commercial and other market-related risks as well as geopolitical issues. Despite this, its application remains comprehensive and covers investment across the entire spectrum of the energy sector.

Highlights of EIRA 2021

Participation in EIRA increased from 30 countries in 2020 to 34 in 2021. Twenty-seven countries participating this year were also assessed in EIRA 2020, while two countries – Viet Nam and Mongolia – are returning from 2019. Apart from these, five countries are taking part in EIRA for the first time: Burundi, Mali, Mauritania, South Sudan and Yemen.

The ECS invited 160 external parties to participate in EIRA 2021 after conducting extensive research on various aspects, such as their expertise, renown, and participation in other international publications. Of these, 60% were shortlisted and agreed to participate in EIRA 2021. All the participants contributed to the report pro bono.

EIRA 2021 gives the latest information on energy projects, programmes, policies and action plans developed by the participating countries between April 2020 to April 2021. The report includes an annex that synthesises the actions taken by governments to mitigate the risks assessed in EIRA and address the improvements suggested in the previous editions of the report. Depending on the progress made in each country, the annex categorises the work done as fully implemented, partially implemented, ongoing, or pending.

Compared to EIRA 2020, there is more information available on investment trends in the participating countries. Apart from providing data on the number of energy projects and deals completed between 2015-2021, the country profiles also give information on the energy sub-sectors that received the investment, its value, and the source country of the investment. The information has been derived and compiled from the Orbis Crossborder Investment database.

Key findings

Unpredictable policy and regulatory change is the highest risk assessed in EIRA for the fourth consecutive year. It is the topmost risk in 19 out of the 34 countries assessed this year.

The risk is lowest in **Rwanda** and the **Republic of Moldova,** and it is the highest in **Yemen** and **Palestine.**

Although unpredictable policy and regulatory change is the most prominent risk in countries, at the same time, its level has reduced in 20 out of the 29 countries that previously participated in EIRA. Only in two countries, **Nigeria** and the **Republic of Moldova**, the risk level has increased by a point. **The Gambia**, which had the highest risk of unpredictable policy and regulatory change in EIRA 2020, has shown maximum improvement. Its risk level decreased by 7 points due to the recently adopted Strategic Plan (2021-2025) of the Ministry of Petroleum and Energy. The Plan sets quantifiable targets to improve power reliability, reduce electricity network losses and increase the share of renewables in the power generation mix.

In 16 countries, the risk of unpredictable policy and regulatory change decreased because their performance improved on the underlying "foresight of policy and regulatory change" indicator. In six countries, the indicator score improved due to recently adopted long-term energy strategies for 2030 or 2050 (**Armenia**, **Colombia**, **Jordan**, **Kazakhstan**, **Mongolia** and **Rwanda**). Four countries adopted long-term strategies addressing climate change and setting a roadmap for low carbon development and energy transition (**Croatia**, **Panama**, **Sierra Leone** and **Uzbekistan**). The COVID-19 pandemic was one of the primary causes for policy and legal uncertainty in countries. Therefore, it is unsurprising that countries also took measures to streamline their future actions and mitigate the instability resulting from the pandemic. In ten countries (**Afghanistan**, **Albania**, **Bangladesh**, **Belarus**, **Bosnia and Herzegovina**, **Mongolia**, **Nigeria**, **Senegal**, **The Gambia** and **Ukraine**), governments prepared national development plans and energy sector strategies and programmes considering the adverse effects of the pandemic and taking financial and policy measures to address these.

In the previous editions of EIRA, 18 countries received recommendations to set quantifiable long-term strategies and targets to achieve a progressive and predictable clean energy transition. Commendably, five countries (**Albania**, **Bosnia and Herzegovina**, **Croatia**, **Jordan** and **Uzbekistan**) fully implemented the recommendations in this respect. Work is ongoing in nine countries (**Eswatini**, **The Gambia**, **Kazakhstan**, **Nigeria**, **Palestine**, **Panama**, **Republic of Moldova**, **Sierra Leone** and **Uganda**), and the recommendations are pending only in four countries (**Afghanistan**, **Belarus**, **Guyana** and **Tajikistan**).

Fourteen countries have long-term energy strategies in place but are missing action plans to implement the objectives underlined in these strategies. As a result, these countries received recommendations to develop action plans that help them reach their energy objectives, set timeframes to achieve the objectives, and establish indicators to verify and measure the progress made. The improvement made by these countries on the recommendations was promising and indicated that governments remain committed to meeting their policy objectives. **Croatia** fully implemented a recommendation on this issue by adopting in 2020 its final Integrated National Energy and Climate Plan 2021-2030. Another country that fully addressed a recommendation was **Senegal**. As advised by the EIRA report, the Government of Senegal adopted the revised Petroleum Code in 2019, the Priority Action Plan 2019-2023 and the Energy Sector Development Policy Letter 2019-2023. Work is ongoing in ten countries (**Albania**, **Armenia**, **Bangladesh**, **Bosnia and Herzegovina**, **Colombia**, **Kyrgyzstan**, **Montenegro**, **Republic of Moldova**, **Ukraine** and **Viet Nam**), and pending only in two countries (**Afghanistan** and **Jordan**).

The performance of 10 countries improved on the "robustness of policy goals and commitments" sub-indicator, contributing to a lower risk of unpredictable policy and regulatory change (**Armenia**, **Croatia**, **The Gambia**, **Jordan**, **Mongolia**, **Palestine**, **Panama**, **Senegal**, **Sierra Leone** and **Uganda**). **The Gambia**, **Palestine**, and **Sierra Leone** made the maximum progress in this respect by proactively publishing policy impact assessments, submitting the government's financial and performance audit reports to the legislature for an independent review, and reporting periodically on energy statistics. In the previous editions of EIRA, four countries had received recommendations to publish the policy and regulatory impact assessments, audits, and performance reports of ministries and State agencies. Three of these countries are currently working to implement these recommendations (**Afghanistan**, **Bangladesh** and **Nigeria**).

On the other hand, meaningful progress was not made towards establishing independent policy monitoring and evaluation institutions and processes. Out of the 17 returning participants who received a recommendation in this respect, only **Albania** fully implemented it by operationalising and fully staffing the independent Energy Efficiency Agency set up in 2016. **Rwanda** partially implemented the recommendation by ensuring that the Monitoring & Evaluation Unit in the Ministry of Infrastructure received external expertise and support in preparing the Energy Backward Looking Joint Sector Review Report 2019-2020. In ten countries, the recommendation remains pending (**Bangladesh**, **Belarus**, **Jordan**, **Kazakhstan**, **Kyrgyzstan**, **Mongolia**, **Palestine**, **Ukraine**, **Uzbekistan** and **Viet Nam**), and work is ongoing in five (**Armenia**, **Benin**, **Eswatini**, **Montenegro** and **the Republic of Moldova**).

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

Rwanda and **the Republic of Moldova** have the least risk in this area, whereas **South Sudan** and **Palestine** have recorded the highest risk.

Three countries have a “very good” score on the underlying indicator “rule of law”, 16 have a “good” score, and 15 are in the “moderate” zone.

In 25 of the 29 recurrent EIRA participants, the risk of breaching State obligations is on the same level as in last year’s assessment. It has reduced most in **Eswatini** and **Jordan** due to better dispute management mechanisms and access to multiple fora for resolving investor-State disputes.

The last three editions of EIRA noted that the pace of reform in the management and settlement of investor-State disputes was slow. However, this year, the results were more optimistic as countries made some measurable progress in implementing judicial reforms.

Twenty-three countries evaluated in EIRA 2021 are undertaking reforms to streamline case management mechanisms, provide high-quality judicial services, and encourage alternative dispute resolution. Seven countries introduced alternative dispute resolution mechanisms in their national laws and regulations (**Benin**, **Eswatini**, **Kazakhstan**, **Senegal**, **Ukraine**, **Uzbekistan** and **Viet Nam**). Four others adopted regulatory measures to improve domestic case management mechanisms (**Afghanistan**, **Colombia**, **Mongolia** and **Ukraine**).

Two countries made commitments on the international level to boost investors’ confidence in the management and resolution of investor-State disputes. **Belarus** ratified the United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention) in 2020, while **Sierra Leone** acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards on 28 October 2020.

In six countries, steps were taken to operationalise institutional mechanisms that will improve domestic judicial processes and promote alternative dispute prevention. The International Chamber of Mediation and Arbitration of **Mauritania**, established under the 2012 Investment Code, became operational in 2020. **Albania** reconstituted the Constitutional Court and the High Court, which were vacant for more than two years. The Government of **Bangladesh** set up Case Coordination Committees that catalogue disputes and forward these to the appropriate venues to minimise case congestion in the domestic courts. The **Jordan** Investment Commission adopted Grievance Hearing Instructions in 2020, establishing a conflict resolution mechanism in the “pre-dispute” phase. In July 2020, the Investment Promotion Centre of **Mongolia** and the International Finance Corporation launched the Systemic Investor Response Mechanism, an investor grievance registration and monitoring platform that aims to streamline conflict resolution processes for investors and the public authorities. **Tajikistan’s** International Arbitration Court at the Chamber of Commerce and Industry, in April 2020, inaugurated the Mediation and Negotiation Centre to institutionalise mediation in the country and train the local mediators.

Nine countries received recommendations over the last three years on strengthening access to international arbitration. Of these countries, **Sierra Leone** fully implemented a recommendation in 2021. Work is ongoing in four countries (**Albania**, **Montenegro**, **Ukraine** and **Viet Nam**) and pending in four (**Armenia**, **Bosnia and Herzegovina**, **Kyrgyzstan** and **Nigeria**).

Moreover, the countries assessed in EIRA have established national legal frameworks to protect foreign investors’ private property and assets. There were no cases observed where States breached their national and international commitments in this respect. All 29 returning EIRA participants maintained the scores from the last assessment. The scores of seven countries were “very good” on the underlying sub-indicator “respect for property rights”, “good” for three, and “moderate” for 16. Only three countries received a “low” score on this sub-indicator.

On the other hand, more efforts are needed to implement the recommendations on setting dispute prevention policies and institutional mechanisms. Some countries have established investment promotion and facilitation agencies and even provide investor aftercare services. However, few have appointed an authority that acts as the first point of contact for an aggrieved investor, helps it navigate and resolve conflicts with public authorities at an early stage, and thereby prevents the escalation of grievances to disputes. Out of the 16 returning participants that received a recommendation on this point, **Jordan** was the only one to address it fully. Work is ongoing in four countries (**Bangladesh**, **Kazakhstan**, **Montenegro** and **the Republic of Moldova**) and pending in thirteen countries (**Afghanistan**, **Albania**, **Armenia**, **Belarus**, **Bosnia and Herzegovina**, **The Gambia**, **Guyana**, **Nigeria**, **Palestine**, **Panama**, **Rwanda**, **Tajikistan** and **Uganda**).

There is also scope to improve the legal regime on expropriation, which is at a nascent stage in some countries or outdated in others. This year, "respect for property rights" was the lowest-scoring sub-indicator in six countries (**Bangladesh**, **Eswatini**, **Mongolia**, **Nigeria**, **Palestine** and **Ukraine**). Moreover, of the 21 countries that received recommendations in this respect, only two addressed them in their entirety. The first was **Afghanistan** that introduced criteria in its domestic law to determine the compensation for expropriation. The second was **Croatia**, which simplified land registry procedures through its Joint Land Registry and Cadastre Information System. Four countries are implementing recommendations to streamline legal provisions on land administration and protection against the expropriation of private property (**Belarus**, **Colombia**, **The Gambia** and **Uganda**). In the remaining 15 countries, no progress has been made.

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

The Republic of Moldova and **Montenegro** have recorded the least risk in this area, whereas **South Sudan** and **Yemen** have the highest. Out of the 34 countries participating in EIRA this year, the risk level is "very low" in three countries, "low" in 19, and "moderate" in 12.

The risk of discrimination between domestic and foreign investors has reduced in 17 of the 29 recurring EIRA participants, with **Benin** and **Rwanda** showing the most improvement. **Benin's** lower risk level is particularly commendable because it was the only country in EIRA 2020 to have seen an increase in this risk. In 11 countries, the risk level is the same as last year, and in one country (**Armenia**), it has increased marginally by a point.

The robust performance of countries on the indicator "management of decision-making processes" has contributed substantially to the low risk of discrimination. Four countries (**Kazakhstan**, **Montenegro**, **Republic of Moldova** and **Rwanda**) have a "very good" score on this indicator, and 21 have a "good" score. Although nine countries performed moderately, no countries received a low score on this indicator. In particular, the scores of 14 countries improved due to more intensive stakeholder engagement in the decision-making process and greater public access to laws and regulations.

Over the last three years, 16 countries received recommendations through EIRA on creating a legal and institutional framework to formalise stakeholder engagement on draft laws and regulations. Of these, progress stalled only in two countries (**Sierra Leone** and **Uganda**). Three countries partially implemented the recommendations (**Afghanistan**, **Bangladesh** and **Jordan**), and work is ongoing in ten (**Belarus**, **Eswatini**, **The Gambia**, **Kazakhstan**, **Kyrgyzstan**, **Mongolia**, **Montenegro**, **Nigeria**, **Senegal** and **Uzbekistan**).

An outstanding performer was **Mongolia** that in 2020 revised its Law on Policy and Planning and its Management, making it legally mandatory for the Government to engage with all categories of stakeholders in drafting the national development policies and plans. **Benin** adopted its Electricity Code in 2020, requiring the energy regulator to publish all tariff-related information and ensure public participation in framing electricity sector regulations. Similarly, **Eswatini** adopted a new Petroleum Code in 2020 that requires the energy regulatory authority to publish its decisions on petroleum licensing, pricing, and sanctions in the Official Gazette. Two countries made visible progress by improving transparency in public procurement processes. The first was **Eswatini** that published new Public Procurement Regulations in 2021 to align with international best practices. The other was **Senegal**, which enacted the Public-Private Partnership Law of 2021, establishing an agency responsible for the a priori control of public procurement. In some countries, stakeholder engagement by the energy regulator increased prominently. For example, in 2020, the **Bangladesh** Energy Regulatory Commission published the electricity and gas tariffs and invited comments from the public on its Draft Dispute Resolution Regulations. Another example is **Nigeria**, where the electricity regulator democratised the newly introduced service-based tariff structure to ensure that the tariff rates cannot be changed without consultations with the affected customers.

Three countries took measures to increase financial disclosures in the extractive sector and de-classify contractual information. **Afghanistan** became the only country to implement a recommendation in this respect by receiving its second EITI membership validation on 28 October 2020. Apart from this, **Uganda** made the most substantial progress towards implementing the EIRA recommendations in this area by becoming an EITI implementing country in August 2020. The Government of **Uganda** has also produced its EITI Multi-Stakeholder Group Workplan for 2020-2022. It is already implementing some of the activities under the Workplan and setting up a dedicated UG-EITI website. In **The Gambia**, work is moving forward to give the public access to the extractive industry contracts in line with the EIRA recommendations. The Ministry of Petroleum and Energy's Strategic Plan sets a target to ensure compliance with the EITI standards increases from 0% in 2020 (baseline) to 80% by 2023 and 100% by 2025.

Four countries made notable progress in addressing corruption (**Kazakhstan**, **Jordan**, **The Gambia** and **Viet Nam**). **Kazakhstan** amended its laws in 2021 to explicitly prohibit State officials and their family members from taking gifts and introduce penalties for violating rules and requirements on the reporting of corruption cases. Similarly, **Jordan** approved in June 2020 a draft law amending the Integrity and Anti-Corruption Law of 2016. The amendment enhances the financial and institutional independence of the Integrity and Anti-Corruption Commission. It also addresses the abuse of power exercised in obtaining public offices, public services, bids, contracts, or any other undue advantage from the Government. **The Gambian** government also took steps to implement anti-corruption measures. In 2021, it submitted the Anti-Corruption Bill to the country's Parliament for its approval. **Viet Nam** launched, in 2020, the National Reporting System (NRS) and the Government Operations Center (GOC) to fight against corruption in public administration. The GOC is linked to the NRS and other public authorities' databases. It allows the Prime Minister and other officials to interact directly with ministries and local governments' representatives.

Although the progress of countries in strengthening transparency was visible, at the same time, compared to last year, not many reforms were observed in the institutional governance of countries. **Rwanda** was the only country that improved its performance significantly in this respect. Its score increased by 12 points following the release of its updated NDC that creates an institutional framework to implement the country's NDC and monitor the progress. **Ukraine** also streamlined the institutional framework on climate change adaptation and mitigation by establishing, in May 2020, the Ministry of Ecology and Natural Resources was established to, among other things, ensure compliance with the Paris Agreement commitments. Another country that improved its public sector administration was **Colombia** by launching, in 2021, the National System of Accountability (SNRdC) to coordinate State and private activities on accountability.

Fifteen countries received recommendations through EIRA to set up one-stop shops for all pre- and post-investment services in the energy sector. Only **Bangladesh** fully implemented the recommendation by adopting the One-Stop Service Act in 2018 and making the Online One-Stop Service operational in 2019. **Viet Nam** partially implemented an EIRA recommendation on this issue by ensuring that its National Single Window is fully operational with 200 administrative procedures of 13 ministries and sectors connected to it by the end of 2020. Work is ongoing in five countries (**Afghanistan**, **Armenia**, **Panama**, **the Republic of Moldova** and **Ukraine**) but is still pending in eight (**Belarus**, **Bosnia and Herzegovina**, **Colombia**, **Croatia**, **The Gambia**, **Guyana**, **Kyrgyzstan** and **Tajikistan**).

Another indicator contributing to a lower risk of discrimination between domestic and foreign investors in some countries was "regulatory environment and investment conditions". Three countries have a "very good" score on this indicator (**Armenia**, **Montenegro** and **the Republic of Moldova**), 12 have a "good" score and 14 "moderate".

Overall, 24 countries maintained their scores from last year on this indicator. Four countries improved their performance compared to last year (**Benin**, **Nigeria**, **Rwanda** and **Viet Nam**). Only in **Eswatini**, the scores dropped by 5 points due to new local content requirements imposed through the Petroleum Act of 2020.

Nineteen countries received recommendations to establish organisationally and financially independent energy regulators. **Bangladesh's** energy regulatory partially implemented a recommendation in this respect by increasing its operation revenue over the last years and reducing government funding. **Nigeria** also partially implemented a recommendation on this issue by fully deregulating the downstream oil sector. Eight other countries are currently implementing the recommendations in this area (**Afghanistan**, **Benin**, **Colombia**, **Eswatini**, **Rwanda**, **Senegal**, **Ukraine** and **Uzbekistan**). On the other hand, implementation of the recommendations is pending in nine countries (**Armenia**, **Belarus**, **The Gambia**, **Jordan**, **Kyrgyzstan**, **the Republic of Moldova**, **Sierra Leone**, **Uganda** and **Viet Nam**).

Twenty-four countries received recommendations through EIRA to lower restrictions to the entry and establishment of FDI, increase market competition and introduce cost-reflective electricity tariffs. Four countries fully implemented these recommendations. As advised, **Albania** unbundled its electricity supply and distribution activities. **Bangladesh** adopted legislative amendments that allow the energy regulator to approve tariff determinations at more regular and predictable intervals, thereby securing the financial stability of energy utilities. **Benin's** newly adopted Electricity Code formally vested the energy regulator with authority to ensure healthy and legal competition in the sector and protect the interests of consumers and the State. **Ukraine** took legislative measures in 2020 to lower currency controls and restrictions on capital transfer applicable to foreign investment.

Four countries partially implemented recommendations on these issues. **Armenia** partially implemented a recommendation by setting new wholesale electricity market rules in 2021. In **Jordan**, the Companies Control Department relaxed the investment screening procedures as advised in EIRA. It launched in 2020 an electronic portal through which investors can submit a company's registration request and data, allowing it to perform an automatic audit of the request. **Nigeria** introduced in September 2020 a service-based tariff regime under which distribution companies can review electricity tariffs of metered customers only after consulting them and assuring them of a guaranteed level of electricity service based on hours of supply. Finally, **Uganda** addressed, to a large extent, the EIRA recommendation on setting similar eligibility requirements for registering and issuing investment licenses to domestic and foreign companies.

It is encouraging that apart from the countries mentioned previously, seven others are currently implementing the EIRA recommendations in this respect (**Afghanistan**, **Palestine**, **Panama**, **Republic of Moldova**, **Tajikistan**, **Uzbekistan** and **Viet Nam**). However, it is equally important to note that progress has stalled in nine countries (**Belarus**, **Croatia**, **Eswatini**, **The Gambia**, **Kazakhstan**, **Kyrgyzstan**, **Mongolia**, **Montenegro** and **Sierra Leone**).

Five countries were recommended to set clear policy and institutional frameworks to regulate local content requirements in the energy sector. Of these, **Benin** fully implemented a recommendation by enacting a new Investment Code in 2020, which clarifies the legal regime of local content requirements and grants incentives to investors if they contribute to local employees' training and technology transfers. **Guyana** partially implemented its recommendation on this issue. In August 2020, it appointed a new Panel on Local Content that reviewed the existing and draft local content policies in the petroleum sector. The Panel prepared guidelines to develop an updated local content policy and legislation based on consultations with various stakeholders. Work towards implementing the EIRA recommendations on this issue is ongoing in **Nigeria** and **Senegal** and is pending in **Kazakhstan**.

In summary, unpredictable policy and regulatory change continues to be the most predominant risk in the assessed countries. It is also the area that has seen the most improvement and progress in terms of risk mitigation. Most countries fall in the "low" to "moderate" risk zone on the other two risk areas, namely, discrimination between domestic and foreign investors and breach of State obligations.