****

**Energy Investment Risk Assessment**

**2017**

**Questionnaire**

**EIRA Project Risk areas, indicators and questionnaire**

**Scope:**

The Energy Investment Risk Assessment (EIRA) aims at assessing policy, regulatory and legal risks in relation to foreign investment in the energy sector. The EIRA focusses on the legal and regulatory environment, as well as compliance by the state with its obligations. Not included in the scope are risks like economic risks, geopolitical risks and natural hazards.

**Risk areas:**

1. **Unpredictable policy/regulatory change** – This pertains to the risk of unforeseen change in laws and regulations which have the potential to materially impact investors in the energy sector. Investors feel more confident when a state has solid goals. Policy changes occur, but what counts for investors is the predictability of the changes and being given the ability to adapt. Unexpected changes in laws or regulations by the state or a regulatory body can increase the costs of operating a business, reduce the attractiveness of investment and/or change the competitive landscape. It follows thatinvestors therefore face risks when there is uncertainty of legal and regulatory change in a country. As a result, they might become hesitant, place investments elsewhere or seek risk reducing measures. States face the risk of underinvestment in vital areas of the energy sector or disputes arising from regulatory change.
2. **Discrimination between domestic and foreign investors** –Foreign investors need clarity on the true extent to which markets are competitive within the host state. This would include the likelihood of not being treated equally which would entail an unfair advantage to domestic investors as recipients of certain rights and privileges granted by the host state to the exclusion of foreign investors. When foreign investors are faced with discrimination, which can result from biased decision-making, discriminatory market rules or anti-competitive behaviour (including currency and capital restrictions), free flow of capital is potentially hindered and countries might not be able to attract the needed investment. Discrimination also includes ‘protectionism’ which refers to government actions and policies that would restrain any trade and investment with the intent of protecting local businesses and investments from foreign competition which would be onerous to any foreign investor and the investment climate in general.
3. **Breach of state obligations** – Breach of state obligations including losses arising out of breach or repudiation of a contract with the investor (e.g. a concession or a power purchase agreement). This would also include breach of contractual obligations by state-owned enterprises acting as an arm-extension of the state or an arm-length basis as opposed to acting in pure commercial capacity. In the event of an alleged breach or repudiation, where the investor invokes the dispute resolution mechanism (i.e. arbitration) set out in the underlying contract, in the case where an award has been obtained, here the risk would entail the inability of an investor to enforce the award, whether it orders payment or reinstatement of a contract.

**Contribution of EIRA towards reducing policy, legal and regulatory risks:**

Conclusions and recommendations of EIRA aim to assist countries and investors on:

1. Competitive markets where foreign investment is treated equally relative to domestic investment;
2. Effective management of legal and regulatory change;
3. Efficient institutional governance and policy making;
4. Consistency and effective implementation of energy sector policy and regulation;
5. Effective prevention or management of disputes, avoiding costly arbitration and with objective of retaining trust between parties, necessary for further future investment;
6. Respect of obligations by the host state;
7. Improvement of energy investment climate.

**Main indicators:**

For the risk areas four main indicators have been identified:

1. **Policy priorities and specific goals relevant to the energy sector**
2. **Decision-making processes**
3. **Oversight of market functioning, private sector and regulated companies**
4. **Rule of law** **(compliance with national and international obligations)**

The risk areas and the main indicators relate as follows:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **RISK AREAS**/Main indicators | 1. Policy priorities and specific goals relevant to the energy sector | 2. Decision-making processes | 3. Oversight of market functioning, private sector and regulated companies | 4. Rule of law (compliance with national and international obligations) |
| **A. Unpredictable policy/ regulatory change** | x | x |  | x |
| **B. Discrimination between foreign and domestic investors** | x | x | x | x |
| **C. Breach of state obligations** |  |  |  | x |

For each main indicator sub-indicators have been identified:

**Main indicator 1: Policy priorities and specific goals relevant to the energy sector**

Sub-indicator 1: Existence of policy priorities and specific goals relevant to the energy sector

Sub-indicator 2: Robustness of goals

Sub-indicator 3: Confidence in the implementation of goals

**Main indicator 2: Decision-making processes**

Sub-indicator 1: Institutional governance

Sub-indicator 2: Transparency

**Main indicator 3: Oversight of market functioning, private sector and regulated companies**

Sub-indicator 1: Regulatory effectiveness

Sub-indicator 2: Restrictions on FDI

**Main indicator 4: Rule of law (compliance with national and international obligations)**

Sub-indicator 1: Contract enforcement, domestic dispute settlement and ISDS

Sub-indicator 2: Respect for property rights

**Questionnaire**

**Main indicator 1:** **Policy priorities and specific goals relevant to the energy sector**

|  |  |  |
| --- | --- | --- |
| **Sub-indicators** | **Questions** | **Additional information/clarifications** |
| **1. Existence and robustness of energy specific goals**  *[Existence and clear definition of energy**policy goals relevant to the energy sector. Having long-term goals gives direction to investors and reduces uncertainty.]* | 1. Does the Government have key priorities or goals for the energy sector policy which fit to a long-term perspective ? [Y/N]  [e.g. goals for energy security, diversification, access to energy, CO2-reduction, renewable energy and energy efficiency] | Y, in 2017 Government developed Energy Strategy of Ukraine till 2035 (the Strategy), that includes short- mid- and long-term goals of the national energy complex that focuses on the achievement of priority targets for safety and efficiency, and can assure innovative upgrades and integration with the EU energy sector |
| 2. Are the reasons for the selection of these goals clearly stated and realistic? [Y/N] | Y, reasons are envisaged in the preamble of the Strategy , selecting of goals mainly were driven by global energy market changes |
| 3. Do the goals give guidance to investment in the energy sector? [Y/N] | No really, the Strategy rather indicates measures to be taken in order to improve investment climate than contains guidance for investors |
| 4. Are changes in the goals predictable? [Y/N] | Y |
| **2. Existence and robustness of investment goals**  *[This sub-indicator looks at the existance of the investment policy relevant to the energy sector. It relates to the predictability of the said goals and their linkage to the energy sector priorities.]* | 1. Does the government have a long-term investment strategy document? [Y/N] | N |
| 2. If yes, is this investment strategy document well based on actual needs in the energy sector of the host country? [Y/N] | - |
| 3. Does the investment strategy offer clear guidance for investors e.g. about what energy subsectors are to be targeted for investment promotion? [Y/N] | Such information can be found on the web-site of the Investment promotion office operated by the Government  <http://ukraineinvest.com/sectors/> |
| 4. Does the host country offer attractive incentives for foreign investors? [Y/N] | Y, country constantly announces through different means (the Strategy, media, conferences) its hospitability to investors; several investors’ support institutions have been launched  Legal framework for investment and development of private-state partnership is set up in Ukraine. The laws of Ukraine provide the guarantees for investors activity, economic and organizational foundation for the realization of private-state partnership as well as equal business conditions with local investors are granted. Foreign investments are not subject to nationalization. In case of shut down of investment activity return of investments are guaranteed to foreign investor. To enhance the protection of foreign investments, the Washington Convention of 1965 on the Settlement of Investment Disputes between States and Nationals of Other States was ratified by the Law of Ukraine No. 1547 adopted on 16 of March 2000. The intergovernmental agreements on promotion and mutual protection of investments are signed and ratified by the Verkhovna Rada of Ukraine with more than 70 countries of the world. |
| 5. If so, are these incentives stable? [Y/N] | Y |
| **Additional remarks:**  Are there any investment related risks in your country regarding *Policy priorities and specific goals relevant to the energy sector* which you want to bring to the attention? Please describe. | | **-** |

**Main indicator 2:** **Decision-making processes**

|  |  |  |
| --- | --- | --- |
| **Sub-indicators** | **Questions** | **Additional information/clarifications** |
| **1. Institutional governance**  *[The key pre-requisites for effective policy making are the existence of strong institutions, and effective co-ordination between these institutions. Strong institutions help to maintain a predictable and transparent environment for investors. Similarly, effective co-ordination decreases the risk of policy duplication, and contradictory objectives and targets, which can undermine investor confidence. Complex government systems may result in red tape, long procedures and uncertain outcomes.*  *Overlapping and sometimes conflicting rules, procedures*  *and regulations across ministries and levels of government, including between the central and provincial levels can also create administrative burdens on investors.]* | 1. Do you consider roles and responsibilities between different levels of government clear enough where more than one institution/agency is responsible for policy formulation with respect to investing in energy? [Y/N]  1a. Is the governmental structure too complex and thereby leading to long delays in decision-making? [Y/N] | Y  1a. delays are caused not by complexity of structure but by other reasons (e.g. absence of political compromise between political parties) |
| 2. Does the country have regular consultation with investors throughout the entire project lifetime to address complaints by investors which may require changes in the investment legislation? [Y/N]  2a. If yes, is such consultation mandatory under a law/regulation? [Y/N] | Y, round table discussions between industry and authorities are conducted on a regular basis, NGOs are always invited to provide their opinions.  Country successfully implements “Open Government Partnership” initiative.  2a. public hearings are mandatory before adoption of any legislation act on the issues of social and economic development, implementation and protection of citizens’ rights and freedoms, execution of political, social, cultural and other rights. There are several regulations which provide mandatory public involvement, the main are the Law “On principals of state policy of the economic activity” #1160-15 and the Cabinet of Ministers Resolution “Order of conduction public consultations on the issues of state policy development and implementation” dated 03.11.2010 #996.  Draft documents proposed for public discussions are available of official sites of all Ministries, the Parliament and self-governing authorities and are collected on a specially  devoted web-site <http://civic.kmu.gov.ua/consult_mvc_kmu/news/article/img_lst/3419> |
| 3. Does the country conduct periodic and regular reviews of investment procedures and policies ? [Y/N] | Y Plans of the Government for 2017 and for 2017-2020 have not been revised. However Plans of the Government for 2016 have been revised 3 times during a year. |
| 4. Is there dedicated investment agency/body responsible for monitoring the overall investment policy formulation process and developing investment strategy? [Y/N]  4a. If yes, does this agency/body have direct access to the centre of government and key ministries to facilitate its role? [Y/N]  4b. If yes, does this agency/body have an efficient coordination mechanism in place for inter-governmental cooperation? [Y/N]  4c. Is this investment agency effectively cooperating with other government stakeholders to address complaints raised by investors? [Y/N]  4d. If there is no lead investment promotion authority, has the country assigned clear responsibilities over investment promotion to a lead ministry to develop investment strategy and establish favourable procedures for investors? [Y/N] | Y, Council of exporters and investors under the Ministry for Foreign Affairs of Ukraine  <http://rei.mfa.gov.ua/en>  Ministry of Economic Development and Trade under the Cabinet of Ministers of Ukraine  <http://www.me.gov.ua/?lang=en-GB>  4a Y, Government Commissioner on Investments holds of Ukraine Investment Promotion Office at the same tine position of the First Deputy Minister of Finance  4b Y  4c Y |
| 5. Has the host country established an investment promotion authority? [Y/N] | Y, Ukraine Investment Promotion Office under the Cabinet of Ministers of Ukraine  <http://ukraineinvest.com/> |
| 6. Has the host country established a one-stop-shop investment approval authority? [Y/N] | N  However, a dedicated document service center was opened in 2016 and provides support for a wide range of activities – registration of legal entities, individual entrepreneurs, property registration and information on land management to name a few.  Information can be found at [Gotovo.net.ua](https://gotovo.net.ua/). |
| **2. Transparency**  *[This sub-indicator gauges the level of transparency in formulation of policies. It highlights that policies are more likely to be sound and not produce unintended side effects if they are formed in a structured and transparent way and after gathering inputs from all interested parties.]* | 1. Is there clearly defined mechanism for consultation about policy formulation between governmental institutions and private sector stakeholders ? [Y/N]  1a. Is this mechanism provided under a law or regulation? [Y/N]  1b. Are the procedures for policy and decision-making efficient and transparent? [Y/N]  1c. Do investor/private sector stakeholders have equal right to submit their proposals in these consultations? [Y/N]  1d. Do private sector stakeholders get enough time to properly study new laws and regulations which may affect their business operations in the host country? [Y/N] | Y, envisaged by the Cabinet of Ministers Resolution “Order of conduction public consultations on the issues of state policy development and implementation” dated 03.11.2010 #996.  1a Y  1b Y  1 c Y it is guaranteed by the legislation  1d Y |
| 2. Does the government provide clear, structured and up-to date information on the investment conditions/regime? [Y/N]  2a. Are draft laws made available to the industry on time (electronically or otherwise) and well in advance before the laws come into force? [Y/N]  2b. Are relevant (draft) policies laws made available in languages which are most relevant for foreign investors (e.g. English)? [Y/N] | Y  2a Y draft documents proposed for public discussions are available of official sites of all Ministries, the Parliament and self-governing authorities and are collected on a specially  devoted web-site <http://civic.kmu.gov.ua/consult_mvc_kmu/news/article/img_lst/3419>  2b N, in Ukrainian only |
| 3. Is there a single window for all enquiries concerning investment policies and applications to invest ? [Y/N]  3a. Does the host country provide structured and easy access to information on legal and regulatory matters, financing options and bureaucratic conditions? [Y/N]  3b. Does the host country provide clear information on necessary steps to start or expand business activity or streamline license procedures for both foreign and domestic investors? [Y/N] | Y  Council of exporters and investors under the Ministry for Foreign Affairs of Ukraine  <http://rei.mfa.gov.ua/en>  Ukraine Investment Promotion Office under the Cabinet of Ministers of Ukraine  <http://ukraineinvest.com/>  3a Y  3b Y |
| 4. Does the country have a centralized registry of laws and regulations which are available electronically ? [Y/N]  4a. If no, are they available on request? [Y/N]  4b. If yes, are they available in English and other foreign languages? [Y/N] | Y, official web-site of the Parliament <http://rada.gov.ua/>  4b Y, in English, but the list is not complete  <http://zakon3.rada.gov.ua/laws/anot/en/annot/page> |
| 5. Is there a prior notification mechanism before enacting new laws/regulations/procedures/applicable standards ? [Y/N]  5a. If yes, is this provided under any law or regulation? [Y/N] | Y, under the general rule, orders of the President and laws of the Parliament enter into force 10 days after their publications in the official media sources. CMR resolutions enter into force on the day of publication unless otherwise provided by the resolutions. This general rule is established by the Presidents’ Order № 503/97as of 10.06.1997  <http://zakon3.rada.gov.ua/laws/show/503/97>  There is a long list of exemptions from this rule, for instance, extended official publication is envisaged for any amendments to the Customs Code (45 days min). |
| 6. Are stakeholders consulted while formulating regulatory changes of interest to them? [Y/N]  6a. If yes, do stakeholders have an opportunity to comment on proposed new laws/regulations/policies prior to their implementation ? [Y/N]  6b. Do government officials meet sufficiently often with business representatives to discuss concerns and proposed regulatory changes? [Y/N] | Y  6a Y  6b Y public discussions are often organized by the Ministries in charge, central government authorities or relevant Parliament Committees. Information regarding public discussions are available on web-sites. Any person may register and attend discussion. In addition, invitations are sent to business associations, recognized experts and NGOs. |
| 7. Are there clear criteria and transparent procedures for administrative decisions including investment project screening and approval mechanisms ? [Y/N]  7a. If yes, are they stated in any law and/or regulation? | N, unified procedure does not exist, decision making process varies depending on project and authorities involved |
| 8. Does the host country conduct regular stakeholder exchange on regulatory environment and institutional performance? [Y/N]  8a. If yes, is this conducted under any law and/or regulation? | N |
| **Additional remarks:**  Are there any other investment related risks in the energy sector regarding *Decision making processes*? Please describe. | | Constant reorganization of some authorities and revisions of legislation cause delays in decision-making process. |

**Main indicator 3: Oversight of market functioning, private sector and regulated companies**

|  |  |  |
| --- | --- | --- |
| **Sub-indicators** | **Questions** | **Additional information/clarifications** |
| **1. Regulatory effectiveness**  *[This sub indicator addresses the existence of a regulator, whether it is independent, transparent and established in law. This is to ensure that there is a monitoring process in place for the energy sector. It reduces the risk of biased decision-making, discriminatory market rules or anti-competitive behaviour of market participants.]* | 1. Does the host country efficiently enforce and implement regulations in the energy sector? [Y/N] | Y |
| 2. Do you consider the energy regulatory authority (e.g. for tariffs and permits) independent from the government? [Y/N] | Y As a result of cooperation of Ukraine and the Secretariat of the Energy Community, the Parliament of Ukraine on 22 September 2016 adopted Law No. 2966-d "On National Commission for State Regulation of Energy and Public Utilities" (the Regulator). The Regulator is to perform state regulation, monitoring and control over the activities of economic entities in the energy and public utilities sectors independently from any state authority. The rotation scheme with element of public vacancy announcement for Members of Regulator is elaborated. Currently rotation of Members is ongoing. Independence of the Regulator is to be tested.  <http://www.nerc.gov.ua/> |
| 3. If there is no dedicated regulatory authority, has the country assigned clear regulatory responsibility to a lead ministry to develop sound regulatory regime? [Y/N] | Y Despite the Regulator, energy field is regulated by the Ministry of Energy and Coal Industry of Ukraine  <http://mpe.kmu.gov.ua/> |
| 4. Does the energy regulatory body publish its proposals and decisions affecting market actors well in advance prior to their implementation? [Y/N] | Y, publications are obligatory by law  <http://www.nerc.gov.ua/?id=23088> |
| 5. Does the energy regulatory body conduct periodic and regular consultations on regulatory matters with private sector stakeholders? [Y/N] | Y, consultations are obligatory by law  <http://www.nerc.gov.ua/?id=25546> |
| 6. Does the energy regulatory body deal with competition issues? [Y/N]  6a. If no, is there a separate governmental body dealing with competition issues, including the energy sector? [Y/N] | N The Regulator promotes and creates conditions for competition, however antitrust and competition cases are investigated by the Antimonopoly Committee of Ukraine |
| 7. Is there a process for appealing against the regulatory decisions if private sector stakeholders/investors believe that implemented changes seriously (will) affect their business activities? [Y/N]  7a. If yes, is this conducted under the purview of any law and/or regulation? [Y/N] | Y, under the Law No. 2966-d "On National Commission for State Regulation of Energy and Public Utilities" such decisions can be challenged through the court.  <http://zakon2.rada.gov.ua/laws/show/1540-19/print1475361847358062>  Application to the court, court hearings and decisions are regulated by general procedural legislation. |
| 8. Does the host country have efficient procedures in place for approval of business licenses and permits? [Y/N] | N, Permitting process is overregulated and often lack transparency |
| **2. Restrictions on FDI**  *[This sub-indicator intends to capture regulatory restrictiveness. It reflects the extent of countries’ commitments not to discriminate in the treatment afforded to domestic and foreign investors while granting (1) market access (2) in operations during the post establishment phase.]* | 1. Does the country gives equal treatment in the application of laws and regulations between domestic and foreign investors? [Y/N]  1a. If yes, is this equal treatment established in law? | Y, the regulatory framework for the establishment and operation of businesses in Ukraine by foreign investors is similar to that for domestic investors (apart from the ownership of agricultural land). It is provided by the law On Foreign Investment Regime. |
| 2. Are investors not allowed to invest in certain zones or regions in the energy sector within the? [Y/N]  2a. If yes, has it been applicable to domestic and foreign investors alike? [Y/N] | N |
| 3. Does government provide any outward investment support or any other facilitation services? [Y/N] | N |
| 4. Are foreign investors required under a law or regulation to partner with the State/state owned enterprises or local enterprises before undertaking projects in the energy sector? [Y/N] | N |
| 5. Is employment of foreign personnel permitted under a law or regulation? [Y/N]  5a. If yes, is employment of foreign personnel time bound? [Y/N]  5b. Does the country help investors to remove bureaucratic obstacles i.e. facilitating visa, work permits? [Y/N] | Y  N, it takes from 5 to 15 days  Y, obtaining work permits for the top management (director and his deputies, members of the management board), founders (shareholder), high-level specialists has been significantly simplified |
| 6. Is land ownership permitted to foreign investors for setting up energy projects under a law or regulation? [Y/N]  6a. If no, can foreign investors acquire land by other means (for example lease)? [Y/N] | Ownership of agriculture land is prohibited for foreigners and legal entities with foreign investments. Non-agriculture land can be acquired for real estate replacement.  6a all other means (servitudes, lease, permits for exploration works) are available for foreign investors on equal conditions with local investors |
| 7. Is there local content requirement imposed upon foreign investors in the energy sector under law? [Y/N]  7a. If yes, is it more than 50%? [Y/N]  Please provide details if such requirements are imposed in only one or few energy sub-sectors. | PSA law provides obligations of investor to give preferences to local service providers and goods suppliers if available and compared by their quality, price and other parameters to international market. Local employees are to be involved in PSA projects and trained, however quota for local employees is not envisaged. |
| 8. Are there any currency restrictions and/or foreign exchange controls applied to foreign investors under a law or regulation? [Y/N]  8a. If yes, do these exchange controls include:   * Banning use of foreign currency? [Y/N] * Limiting currency exchange to government approved exchangers? [Y/N] * Fixed exchange rates? [Y/N] | Currency control restrictions and measures can be divided in two groups:   1. General currency control, measures (bank control over export and import transactions, bank control over purchase of foreign currency, some of the transactions require prior individual license of the National Bank of Ukraine). Foreign currency transactions are regulated by the Decree of the Cabinet of Ministers On the System of Currency Regulation and Currency Control dated 9.02.1993 #15-93, Law of Ukraine #185/94-VR On Procedure of Payments in Foreign Currency, dated September 23, 1994 and a number of rules issued by the National Bank of Ukraine.   <http://zakon2.rada.gov.ua/laws/show/15-93>  <http://zakon3.rada.gov.ua/laws/show/185/94-%D0%B2%D1%80>   1. Anti-crisis temporary restrictions, which were introduced in 2013 in order to stabilize Ukrainian currency Hryvna and economy in general. Starting from 2016 National Bank of Ukraine has declared gradual elimination of such temporary currency control measures and some of them has already been eased. However many of them are still effective (limitations on withdrawal of cash from bank accounts and for the purchase of foreign currency by private individuals; obligatory sale of 50% of receivables in foreign currency; ban of early payment of loans from non-residents, prohibition of netting under export foreign economic agreements, a number of restrictions to repatriate foreign investments, etc). Temporary restrictions currently are set in National Bank Regulation #410 dated 13.12.2016 “Regarding Regulation updates in Ukrainian Monetary-and-Credit and Foreign Currency Market situation”, however it is constantly revised and amended.   <http://zakon3.rada.gov.ua/laws/show/v0410500-16>  8a Y  N  N |
| 9. Does the state have capital control measures that restrict the flow of capital in and out of a domestic economy?  9a. If yes, what do these capital controls include:   * Taxes [Y/N] * Tariffs [Y/N] * Legislation [Y/N] * Volume [Y/N] | N |
| **Additional remarks:**  Are there any other investment related risks in your country’s energy sector regarding *Oversight of market functioning, private sector and regulated companies*? Please describe. | | **-** |

**Main indicator 4: Rule of Law (compliance with national and international obligations)**

|  |  |  |
| --- | --- | --- |
| **Sub-indicators** | **Questions** | **Additional information/clarifications** |
| **1. Contract enforcement, domestic dispute settlement and ISDS**  *[This sub-indicator attempts to answer the following issues:*  *In case of breach of contract by the host state is recourse available to foreign investors; are there adequate domestic dispute resolution mechanisms available (arbitration, mediation etc.) to foreign investors; is the judicial system transparent and time bound; in case of breach whether the investor have recourse to international arbitration.]* | 1. Is appeal mechanism in place for private sector stakeholders if they disagree with proposed regulatory changes which may affect their business activities in the host country? [Y/N]  1a. If yes, is appeal mechanism established by any law/regulation? [Y/N] | 1. Y.  1a. Y. Law ”On the Principles of the State Regulatory Policy in Business Sector”: <http://zakon3.rada.gov.ua/laws/show/1160-15>  The Code of Administrative Legal Proceedings:  <http://zakon3.rada.gov.ua/laws/show/2747-15> |
| 2. Do you consider judiciary proceedings efficient enabling national courts and arbitral tribunals to deliver decisions in an effective manner ? [Y/N] | Y, mainly due to the specialization principle of courts of general jurisdiction, and the rules of judiciary proceedings detailed in a number of Procedure Codes – Commercial, Civil, Criminal, the Code of Administrative Justice. |
| 3. Are administrative, judicial and arbitral decisions related to the energy sector publically accessible? [Y/N] | Y, all administrative / judicial decisions are available in the State Registry of Court Decisions <http://reyestr.court.gov.ua/>  Not aware of public access to arbitral decisions |
| 4. Does the state have a positive stance on mediation with private investors in case of a dispute? [Y/N] | Y, as a rule public authorities are ready to handle disputes in amicable manner.  Based on the agreement on cooperation between ACC and Tax Authorities, complains of ACC members related to taxation are collected and submitted to Tax Authorities in a periodical basis. According to the figures presented by the Tax Authorities more than 50% of such complains are resolved in favor of tax payers. |
| 5. Is there an investment ombudsman or a similar institution to which foreign investors can refer in case of conflict? [Y/N] | Y |
| 6. Do private sector stakeholders have confidence in the host country to allow enforcement of foreign judgments and foreign arbitral awards? [Y/N] | Y, in case of compliance to all requirements of the Code of Civil Legal Proceedings, the Law “On Foreign Commercial Arbitration” |
| 7. Has an arbitral award/judicial decision ever been enforced against the state in the energy sector? [Y/N] | Y |
|  | 8. Have private sector stakeholders in the energy sector experienced a breach of contract event (by the government) in the last 5 years? [Y/N]  8a. If yes, In which sector(s) have you experienced a breach of contract event?   * Oil, gas, mining [Y/N] * Electricity and power [Y/N] * Transportation [Y/N] * Other energy subsectors [Y/N] | Not aware |
|  | 9. Have private sector stakeholders in the energy sector had to renegotiate a contract with a host government in the last 5 years? [Y/N]  9a. If yes, In which sector(s) have you experienced a need to renegotiate a contract with a host government:   * Oil, gas, mining [Y/N] * Electricity and power [Y/N] * Transportation [Y/N] * Other energy subsectors [Y/N] Which? | Not aware |
| **2.Respect for property rights**  *[Risk of loss arising from certain government actions or restrictions that may inhibit an investor’s rights to title of ownership or reduce or eliminate ownership of, control over, or rights to the investment. This also relates to the risk of inappropriate compensation to the investor for the property (i.e. which is not based on the market value of the investment).]* | 1. Does the host country provide in its laws a clear mechanism for determining compensation in the event of expropriation in the energy sector? [Y/N] | Y, expropriation is prohibited by law except for cases of emergency.  Mechanism of  compensation is set in the article 10 of the Law “On the regime of foreign investments” dated 19.03.1996 № 93/96-ВР  <http://zakon2.rada.gov.ua/laws/show/93/96-%D0%B2%D1%80> |
| 2. Does the host country provide in its laws a clear obligation on a time frame within which compensation needs to be made in case of expropriation? [Y/N] | Y, Amount of compensation shall be determined in the decision regarding expropriation and shall be confirmed by the independent auditor, compensation is to be paid immediately, delay of payment automatically leads to  interest appliance  [http://zakon2.rada.gov.ua/laws/show/93/96-%D0%B2%D1%8](http://zakon2.rada.gov.ua/laws/show/93/96-%D0%B2%D1%258) |
| 3. Do private sector stakeholders face any restrictions under law or regulation on the transfer of technology or intellectual property rights in the energy sector? [Y/N] | N |
| **General questions:**  Is the host country a party to the Energy Charter Treaty? [Y/N] If not, would the industry/private stakeholders welcome the accession of the host country to the Energy Charter Treaty? | | Y <http://www.energycharter.org/who-we-are/members-observers/countries/ukraine/> |
| **Additional remarks:**  Are there any other investment related risks in your country regarding *Rule of Law (compliance with national and international obligations)*? Please describe. | | Not aware |

*\*\*Any and all information, whether written or verbal, shared, furnished or otherwise provided by the Energy Charter Secretariat to any and all recipients in relation to the Energy Investment Risk Assessment Project, shall not be disclosed to or otherwise disseminated among any third parties, or similarly used, reproduced or distributed without prior written consent of the Energy Charter Secretariat. For purposes of this Disclaimer, the Energy Investment Risk Assessment Project shall cover any and all activity undertaken by the Energy Charter Secretariat, its officials and staff, prior to, in the course of and at any moment following completion of the Project.*