EIRA MONITORING REPORT
BELARUS

2020

COMMON RULES FOR GLOBAL ENERGY SECURITY

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Within the context of the EU4Energy Initiative, and based on the principles of the Energy Investment Risk Assessment (EIRA), the Energy Charter Secretariat has developed this EU4Energy EIRA Monitoring Report 2020 for Belarus. It monitors the recommendations provided to Belarus in the EU4Energy EIRA 2017 Extended Country Risk Profile as well as the areas for improvement outlined in Belarus’ country profile in the EIRA 2018 report, the first public edition of our flagship publication. EIRA provides governments with an efficient and effective tool to analyse and mitigate investment risk for their energy sector.

The overall risk level against the assessed areas in Belarus is low, and in recent years, we have witnessed some progress in the implementation of market-oriented reforms that reflect environmental costs and benefits, as well as in the use of renewable energies and clean technologies. The Government has also taken steps to enhance production and distribution energy efficiency and to phase out subsidies for electricity, heat and gas, which is expected to make the energy sector more attractive for private investment. Future improvement of the energy sector management structure is aimed at a gradual transition to market principles, and includes energy system restructuring with the establishment of wholesale and retail markets. I encourage Belarus to pursue its efforts to provide reliable and sustainable energy for the national economy while reducing energy import dependence and improving the sector’s financial stability.

I hope that the EU4Energy EIRA Monitoring Report 2020 for Belarus will serve as a set of guidelines for further improving energy sector management and attracting foreign investment in the country’s energy sector.

Dr Urban Rusnák
Secretary General
Energy Charter Secretariat
Brussels, November 2020
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INTRODUCTION
About EIRA

EIRA is a publication of the Energy Charter Secretariat that evaluates specific risks affecting energy investment which can be mitigated through adjustments to policy, legal and regulatory frameworks.

It aims to identify policy gaps, provide learning opportunities, and stimulate reforms that can make the investment climate of countries more robust and reduce the risk of investor-state disputes.

To date, more than 40 countries from Europe, Africa, the Middle East, Asia and Central America have participated in the assessment. In 2019, a website dedicated to EIRA was launched (eira.energycharter.org). Its purpose is to offer extensive and updated information on the regulatory environment of the energy sectors of the assessed countries.

EIRA evaluates three types of risk:

- Unpredictable policy and regulatory change;
- Discrimination between domestic and foreign investors; and
- Breach of State obligations.

Four indicators are used to calculate the risk level for each of the three risk areas, as follows:

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

Each indicator consists of two sub-indicators. These sub-indicators measure the ability of governments to identify whether the assessed risks exist and the extent to which they can be mitigated. Commercial and other market-related risks or geopolitical issues fall outside the scope of the publication. Since its official launch in 2018, EIRA has been published on an annual basis.

About the EU4Energy Initiative

The EU4Energy Initiative covers all support from the European Union to improve energy supply, security and connectivity, as well as to promote energy efficiency and the use of renewables in the Eastern Partnership countries (Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine) as well as the five states of Central Asia (Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan).

As one of the implementing parties, the Energy Charter Secretariat cooperates with the Governments of Armenia, Azerbaijan and Belarus to provide technical assistance to improve the rules and regulations governing their energy sector.
About the EIRA monitoring report

Under the EU4Energy Initiative, and within the context of the Program of Work of the Energy Charter Secretariat, the Government of Belarus has participated in EIRA since the assessment was piloted in 2017. A number of proposed reforms are indicated in Belarus’ EIRA country profiles from 2017 and 2018 in the form of recommendations and areas for improvement to reduce policy, regulatory and legal risks. The EIRA Monitoring Report for Belarus (hereinafter “the Monitoring Report”) aims to assess the progress of the implementation of:

- Areas for improvement and recommendations identified in the EIRA extended profile for Belarus prepared in 2017 with the support of EU4Energy (hereinafter “EIRA 2017”); and

- Areas for improvement highlighted in the country profile of Belarus in the 2018 EIRA Report (hereinafter “EIRA 2018”).

The Monitoring Report includes a qualitative analysis of reforms that have been undertaken and identifies actions needed to achieve the country’s goals as outlined in the above-mentioned EIRA editions.

The Monitoring Report is prepared by the Investment Unit of the Energy Charter Secretariat in cooperation with the EU4Energy Project Management Unit.

The Energy Charter Secretariat expresses its gratitude to the Ministry of Energy of the Republic of Belarus for facilitating the monitoring process, to other Governmental organisations who have contributed to this Report, and to stakeholders who provided their expertise and generous input. In particular, the team wishes to thank the representatives from KPMG Belarus, Cobalt Belarus, LegalTax, Sorainen, SPP, BelTEI, World Bank Minsk office, EBRD Moscow and the EU Representation in Minsk.
RECENT DEVELOPMENTS RELEVANT TO THE ENERGY SECTOR OF BELARUS
**Economic situation**

According to the World Bank’s latest economic update on Belarus, economic growth in 2019 slowed down to just 1% in Q1-Q3 2019 from 3.7% in January-September 2018. Since 2019, stagnant productivity and declining exports due to weaker external relations are holding back economic growth. Belarus also suffers from faltering domestic demand. The economy is anticipated to contract by at least 4%, and growth is expected to remain weak in the medium term due to deep ongoing contractions in its main trading partners (Russia and the European Union), the collapse of global oil prices, and the global financial volatility caused by the COVID-19 pandemic. Following the 2020 global COVID-19 outbreak, the Belarusian Government announced measures to ensure stable operation of the economy, including a moratorium on price increase of more than 0.5% per month for all Belarusian business entities, and a reduction of export duties on oil and petroleum products.

These challenges add to long-standing structural bottlenecks, namely the uncertainty about possible compensation for Russia’s new energy taxation system, growing public debt to GDP ratios (forecasted at 44.7% over 2019) and high contingent liabilities related to State-owned enterprises (SOEs) and commercial banks. More efficient spending, increased competitiveness – including restructuring of the State-driven enterprise sector – and diversification of exports are critical to securing fiscal sustainability and to preventing poverty and increased vulnerability.

**Energy sector**

In 2018, the total primary energy supply in Belarus was 27 Mtoe (38 Mtce). Natural gas is the main source of energy (62%), followed by oil (29%), biofuels and waste (6%), and coal and peat (3%). Despite having the world’s third largest production of peat (544 ktoe or 2,354 kt in 2018), small amounts of crude oil (1,678 ktoe in 2018) and natural gas production (128 ktoe in 2018), Belarus depends heavily on oil imports. Its energy dependence stands at 86%.

Industry (44%) and domestic use (25%, including transport) account for 70% of total final energy consumption, while transformation losses mount to 14%. Fuel consumption for electricity (4 Mtce) and heat (9 Mtce) totals 19 Mtce, of which 5 Mtce is considered as losses.

Domestic energy supply is dominated by a wide network of gas-fired power plants. Other generation comes from three hydropower plants. The country has two oil refineries (Mozyr Oil Refinery and OAO Naftan). Two major oil pipelines (the Polack and the Druzhba lines) and a number of major East-West gas transportation pipelines (e.g. the Yamal-Europe pipeline) transit the country.

Currently, Belarus’ first nuclear power plant (BelNPP) is being constructed. The project is financed by Russia and features two VVER-1200 reactors with a total output capacity of 2,400MW. By Ordinance of the Council of Ministers of the Republic of Belarus no. 260 of 25 April 2019, the Government has sought to update the “Comprehensive Development Plan for the Electricity Sector until 2025” to reflect the integration and contribution of BelNPP in reducing its reliance on Russia as a major energy supplier.

On 24 September 2019, the Presidential Decree no. 357 “On Renewable Sources of Energy” was adopted to reinforce the renewable energy regulations of Law no. 204-3 of 27 December 2010 “On Renewable Energy Sources”. According to this Decree, only renewable electricity generating companies that use new equipment are allowed to take part in tenders to allocate quotas to implement renewable energy projects; all contracted renewable electricity is purchased at incentive tariffs for ten years.

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5. See above note 3.
6. See above note 3.
Investment policy

The Law no. 53-3 of 2013 “On Investments” enshrines the basic principles of investment. Investors, whether Belarusian or foreign, benefit from equal legal treatment and have the same right to conduct business operations in Belarus by incorporating separate legal entities. The Law also guarantees protection from uncompensated nationalisation and requisition, as well as unrestricted transfer outside the territory of Belarus of compensation received as a result of nationalisation possible only in cases of natural disasters, accidents, epidemics, epizootic diseases and other cases of emergency in the interest of society at the discretion of State bodies. Most importantly, the Law explicitly confers foreign investors the right to submit investment disputes between investors and the Republic of Belarus to the ICSID or to conduct ad hoc arbitration pursuant to the UNCITRAL Arbitration Rules.

To improve the investment climate, the Presidential Decree no. 7 of 23 November 2017 “On Developing Entrepreneurship” was enacted. Its aim is to foster business activity by offering incentives, such as the ban on tax rate increases, as well by simplifying the interaction between investors and State entities, including the introduction of a “simple notification” for the start of doing business. Moreover, the Presidential Decree no. 8 of 21 December 2017 “On Developing the Digital Economy” was adopted to secure investments in the IT sector and IT education, and to implement new financial instruments and technologies.

Belarus is a member of the Eurasian Economic Union (EAEU). The EAEU includes free movement of goods, capital, services and people, and provides for common transport, agriculture and energy policies, with provisions for a single currency and greater integration in the future. In addition, a number of bilateral investment treaties guarantee reciprocal most-favoured-nation status, non-discrimination and fair and equitable treatment of foreign investors.

In 2020, Belarus’ investment regime is expected to undergo a thorough overhaul. In fact, the Ministry of Economy, in consultation with stakeholders, delivered the draft of the “2025 Strategy for Attracting Foreign Direct Investment” and the draft of the “Action Plan on Improving the Investment Climate in the Republic of Belarus in the Mid-term”. Both instruments focus on creating a more competitive business and investment environment. The immediate priorities are to digitise the process of obtaining the permissions and approvals needed for investment activities and to step up work on preparing infrastructure projects, including through the use of progressive public-private partnerships.
EIRA recommendations on improving the investment climate in the energy sector and reducing risks

In 2017, an EIRA extended country profile was prepared for Belarus as part of the EU4Energy governance project. The assessment of the country’s performance is detailed in the table below:

Table 1: Assessment of the four main indicators in the 2017 EIRA Extended Country Profile for Belarus

<table>
<thead>
<tr>
<th>MAIN INDICATOR 1 – POLICY PRIORITIES AND SPECIFIC GOALS RELEVANT TO THE ENERGY SECTOR</th>
<th>MAIN INDICATOR 2 – MANAGEMENT OF POLICY-MAKING PROCESSES</th>
<th>MAIN INDICATOR 3 – OVERSIGHT OF MARKET FUNCTIONING, PRIVATE SECTOR AND REGULATED COMPANIES</th>
<th>MAIN INDICATOR 4 – RULE OF LAW</th>
</tr>
</thead>
<tbody>
<tr>
<td>SUB-INDICATORS</td>
<td>SCORE</td>
<td>SUB-INDICATORS</td>
<td>SCORE</td>
</tr>
<tr>
<td>Existence of policy priorities and specific goals relevant to the energy sector</td>
<td>-</td>
<td>Institutional governance</td>
<td>60.7</td>
</tr>
<tr>
<td>Robustness of goals</td>
<td>35.8</td>
<td>Transparency</td>
<td>73.8</td>
</tr>
<tr>
<td>Confidence in the implementation of goals</td>
<td>50.0</td>
<td>OVERALL ASSESSMENT</td>
<td>42.9</td>
</tr>
</tbody>
</table>

Source: EIRA Extended Country Profile for Belarus, 2017

The methodology of the EIRA report has been slightly modified for the 2018 and following editions, and some of the indicators have been changed or updated. In this regard, the scores for the 2017 and following editions are not comparable.

The methodology of the EIRA report has been slightly modified for the 2018 and following editions, and some of the indicators have been changed or updated. In this regard, the scores for the 2017 and following editions are not comparable.

9 Investor-State Dispute Settlement
10 Foreign Direct Investment

In the 2018 and 2019 editions of EIRA, the level of risk for all three risk areas, as well as the performance against the EIRA indicators, remained flat.
Table 2: Assessment of the three risk areas for investments in the energy sector in Belarus

<table>
<thead>
<tr>
<th>RISK AREAS</th>
<th>2018</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unpredictable policy and regulatory change</td>
<td>34</td>
<td>34</td>
</tr>
<tr>
<td>Discrimination between foreign and domestic investors</td>
<td>30</td>
<td>30</td>
</tr>
<tr>
<td>Breach of State obligations</td>
<td>31</td>
<td>31</td>
</tr>
</tbody>
</table>

Source: EIRA 2018, EIRA 2019

Table 3: Belarus’ performance against the EIRA indicators

<table>
<thead>
<tr>
<th>INDICATORS</th>
<th>2018</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>INDICATOR 1: FORESIGHT OF POLICY AND REGULATORY CHANGE</strong></td>
<td>57</td>
<td>57</td>
</tr>
<tr>
<td>Sub-Indicator 1.1: Communication of vision and policies</td>
<td>65</td>
<td>65</td>
</tr>
<tr>
<td>Sub-Indicator 1.2: Robustness of policy goals and commitments</td>
<td>48</td>
<td>48</td>
</tr>
<tr>
<td><strong>INDICATOR 2: MANAGEMENT OF DECISION-MAKING PROCESSES</strong></td>
<td>72</td>
<td>72</td>
</tr>
<tr>
<td>Sub-indicator 2.1: Institutional governance</td>
<td>69</td>
<td>69</td>
</tr>
<tr>
<td>Sub-indicator 2.2: Transparency</td>
<td>75</td>
<td>75</td>
</tr>
<tr>
<td><strong>INDICATOR 3: REGULATORY ENVIRONMENT AND INVESTMENT CONDITIONS</strong></td>
<td>69</td>
<td>69</td>
</tr>
<tr>
<td>Sub-indicator 3.1: Regulatory effectiveness</td>
<td>39</td>
<td>39</td>
</tr>
<tr>
<td>Sub-indicator 3.2: Restrictions on FDI</td>
<td>100</td>
<td>100</td>
</tr>
<tr>
<td><strong>INDICATOR 4: RULE OF LAW</strong></td>
<td>69</td>
<td>69</td>
</tr>
<tr>
<td>Sub-indicator 4.1: Management and settlement of investor-State disputes</td>
<td>85</td>
<td>85</td>
</tr>
<tr>
<td>Sub-indicator 4.2: Respect for property rights</td>
<td>53</td>
<td>53</td>
</tr>
</tbody>
</table>

Source: EIRA 2018, EIRA 2019
ANALYSIS OF THE IMPLEMENTATION OF RECOMMENDATIONS
Methodology

The objective of this analysis is to monitor the implementation of the recommendations given in the EIRA 2017 extended country profile for Belarus, produced within the EU4Energy Governance Project, and the EIRA 2018 regular country profile for Belarus. The analysis is based on a review of the existing legal and regulatory framework in the country in relation to the energy sector and investment climate, and on the results of the corresponding survey.

The methodological tools employed in the Monitoring Report are similar to those used in EIRA. More specifically, information was collected through:

- Questionnaires provided to the Government and stakeholders in Belarus;
- Round-table meetings on the ground involving Government officials and stakeholders from the financial, legal and energy sector; and
- Interviews with the World Bank office in Minsk, the European Bank for Reconstruction and Development (EBRD) in Moscow (responsible for Belarus) and the EU Representation in Minsk.

Following the gathering of relevant information, experts from the Energy Charter Secretariat analysed, verified and assessed the answers provided by the respondents. The Monitoring Report was sent for review to all the above-mentioned parties.

The implementation status is depicted through an overview of the areas for improvement identified in EIRA 2017 and EIRA 2018, and the recommendations from the EIRA 2017 extended country profile. Given their complementary nature, the issues raised in 2017 and 2018 are consolidated where possible. Progress towards the implementation of each suggested area for improvement was assessed against five benchmarks representing the current status of the implementation. It should be noted that the implementation status is relevant but not identical to the performance under a specific indicator, which is an aggregate of the score on the subindicators and their underlying questions. This means that the implementation status of a single recommendation is not a measure of the performance under the whole indicator. As such, the country’s performance on a specific indicator can be satisfactory, whereas the status of implementation of a particular recommendation may be low due to the Government’s inaction.
Table 4. Explanatory table: implementation status for each suggested area of improvement

<table>
<thead>
<tr>
<th>STATUS OF IMPLEMENTATION</th>
<th>DESCRIPTION</th>
<th>GRAPHIC IMAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recommendation implemented</td>
<td>This status indicates full and complete implementation of the recommendation outlined in the EIRA publication.</td>
<td></td>
</tr>
<tr>
<td>Implementation in progress</td>
<td>This status indicates that some elements of a specific recommendation have been implemented, while others have not (or not yet).</td>
<td></td>
</tr>
<tr>
<td>No substantial changes observed</td>
<td>No action aimed at the implementation of a specific recommendation was identified. The status is the same or very similar to that in the year of the EIRA publication.</td>
<td></td>
</tr>
<tr>
<td>Opposite action in progress</td>
<td>Actions have been taken that may lead to outcomes that are opposite to those intended in the EIRA recommendation.</td>
<td></td>
</tr>
<tr>
<td>Opposite action implemented</td>
<td>Actions have been completed leading to outcomes that are opposite to those intended in the EIRA recommendation.</td>
<td></td>
</tr>
</tbody>
</table>
Implementation status of the areas for improvement identified in 2017 and 2018

<table>
<thead>
<tr>
<th>AREA FOR IMPROVEMENT 1</th>
<th>STATUS OF IMPLEMENTATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belarus should develop a coherent and long-term investment plan that encompasses the energy sector (EIRA 2017)</td>
<td>Implemented</td>
</tr>
<tr>
<td>It must include performance indicators for all sub-sectors, highlight those with the most potential, and indicate the programmes and interventions in place to attract the needed investment (EIRA 2018)</td>
<td>No substantial changes observed</td>
</tr>
</tbody>
</table>

FINDINGS

In 2017, the 2017-2030 National Infrastructure Strategy (NIS) was updated. The NIS provides guidance to the business community and is designed to attract funding for the construction of new infrastructural facilities and the reconstruction of existing ones based on the principles of public-private partnership. It includes goals, objectives and priorities for the development of energy infrastructure, the actions planned, and the need for investment (USD 1.6 billion until 2020 and USD 4.7 billion USD in 2021-2030).

In 2018, a draft “Strategy on Attraction of Foreign Direct Investment up to 2025” was published. In 2020, an updated draft of this Strategy was tabled for public consultation. The priority areas include, among others, the energy sector and innovative/new technologies. It defines long-term goals, objectives, principles, and anticipated results in terms of attracting foreign investments. It also includes Action Plan on Improving the Investment Climate in the Republic of Belarus in the Mid-term. It includes a SWOT analysis of existing factors impacting the investment climate and a recommendation to shift from planned economy to a Key Performance Indicator (KPI) approach for planning.

The Government has drafted a new Electricity Law, which sets out new market rules and establishes a regulating body. However, the adoption of the draft Electricity Law has experienced delays.

In 2020, the interim stage of the “Comprehensive Development Plan for the Electricity Sector until 2025” is to be completed.

Stakeholders have identified the following barriers to investment in the energy sector:

- It is unclear how the energy sector will develop after the commissioning of the BelNPP nuclear power plant;
- The investment climate for renewable energy is not considered to be stable or predictable, especially with regards to revision of tariffs and coefficients, allocation of quota, and power purchase agreements (PPAs) which do not take into account the characteristics of renewable energy, such as intermittency. The goals for renewable energy are not seen as very ambitious (9% by 2035, mainly through small-scale hydropower).
Strengthening the effective implementation of identified goals (EIRA 2017)

FINDINGS

A new edition of the “Development Programme for the Electricity Sector for 2016-2020” was approved on 4 September 2019 by Ordinance no. 31 of the Ministry of Energy of the Republic of Belarus. Also, a new version of the “Comprehensive Development Plan for the Electricity Sector until 2025” was approved per Government Decision no. 587 dated 2 September 2019. It contains an updated list of measures aimed at increasing electricity consumption.

The commissioning of the first unit of the BelNPP nuclear power plant is expected to reinforce the country’s energy security.

While the Government has stepped up its efforts to create a conducive business environment (e.g. significant amendments to the Law “On Investments” are under consideration), remaining barriers include access to financial resources, insufficient guarantees for investors, and issues related to grid connection.

Though mid-term and longer-term goals are set for energy security, power reliability, investment in the energy sector, renewable energy and energy efficiency, no clear targets have been identified for the Government’s other priorities in the energy field: access to energy, affordability, integration into the global fuel and energy complex, improvement of the management system of the fuel and energy complex and its organisational structure, and innovation. Also, it is hard to reconcile the country’s ambitions for improving energy efficiency with the recently adopted list of measures to increase electricity consumption.
Granting sector-specific incentives for promoting energy investment (EIRA 2017)

FINDINGS

The Law no. 204-3 of 27 December 2010 “On Renewable Energy Sources” and the resulting feed-in tariffs have encouraged investments in the renewable energy sector. Under this Law, investors were guaranteed that RES installations would be connected to the State’s energy grids and purchased by the State energy supplying organisations in accordance with the allocated quotas. As a result, by 2021 the output capacity of renewable energy sources outside the State energy system was expected to increase by more than 30 times compared to 2012 (from 20 MW to 670 MW). However, the recent Presidential Decree no. 357 dated 24 September 2019 “On Renewable Sources of Energy”, while aiming to improve the policies on renewable energy and to maintain attractiveness of investments in this field, adopted a stricter approach towards development of renewable energy and the quantity of quotas.


As indicated, a draft “Strategy on Attraction of Foreign Direct Investment up to 2025” was published. Though the energy sector is included in its priority areas, only cross-sectoral measures are being introduced.
In light of the Government’s commitment to reducing 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 (EIRA 2018).

**FINDINGS**

Belarus is a party to the United Nations Paris Climate Agreement under the Decree of the President of Republic of Belarus no. 245 of 20 September 2016 “On the Adoption of an International Treaty”. In its NDC and its “National Strategy for Sustainable Development of the Republic of Belarus”, Belarus has pledged to reduce greenhouse gas emissions by 28% in 2030 compared to 1990. Implementation and priorities of the energy policy are linked to achieving Sustainable Development Goal 7 where technically and economically possible.

Also, it is expected that the operation of the BelNPP nuclear power plant will allow for CO₂ emissions to be reduced by 10 million tonnes per year. Moreover, many Belarusian cities joined the Covenant of Mayors aiming to reduce carbon emissions on a local level.

However, none of the strategic documents determine a specific contribution from the energy sector in the reduction of greenhouse gases.
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 (EIRA 2018)

**FINDINGS**

The monitoring of progress according to the indicators of the “2035 Energy Security Concept of the Republic of Belarus” is performed by the National Academy of Sciences of Belarus jointly with the Ministry of Economy, the Ministry of Energy, the State Committee for Standardization, the Belarusian State Conglomerate for Oil and Petro-chemistry, regional executive committees and the municipal executive committee of Minsk. The National Academy of Sciences – subordinate to the President of the Republic of Belarus – submits an annual consolidated summary to the Council of Ministers on the status of energy safety along with proposals for its improvement.

No institutional reforms have been undertaken to make the monitoring authorities independent of the policy-making bodies.

However, it should be noted that the EAEU Commission is now also monitoring the implementation of energy-related obligations by EAEU member states (including Belarus).
Increasing coordination between various government agencies and ministries (EIRA 2017)

More specifically:

- Partnership on ministerial level is of paramount importance in cross-cutting areas such as investment and energy where more than two ministries are involved in the decision-making process. Coordination creates a size advantage – concerted action by several ministries is more powerful and efficient than fragmented and uncoordinated initiatives. Cooperation can exist in different phases of government operations: the planning and decision-making phase, the organisation and preparatory phase, as well as the service and outcome stage.

- There are various mechanisms that can ensure cooperation, such as a steering committee to determine policy control, a central management body, or a coordinating ministry in charge of inter-ministerial relations.

FINDINGS

Horizontal and vertical interaction among Government agencies is regulated by the Decision of the Council of Ministers of the Republic of Belarus no. 193 dated 14 February 2009. Such mechanisms may include coordination committees, programmes, a separate coordinating ministry, special interagency committees, special working groups, etc.

Article 46 of the Law no. 130-3 of 17 July 2018 “On Normative Legal Acts” refers to coordination of a draft regulatory legal act with the interested State bodies (organisations).

In 2018, the EU4Energy Project developed and presented a Code of Good Practice for stakeholder consultations and inter-ministerial coordination. According to respondents from the public sector, the adoption of the Code has created a positive momentum towards increasing transparency and improving cooperation at “government agency to government agency” level, as well as at “government agency to civil society and business” level. Stakeholders have witnessed better cooperation between State authorities in the decision-making process. However, such cooperation is not common practice and no particular mechanism was established to enhance and streamline the process.

<table>
<thead>
<tr>
<th>AREA FOR IMPROVEMENT 6</th>
<th>STATUS OF IMPLEMENTATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Increasing coordination between various government agencies and ministries (EIRA 2017)</td>
<td></td>
</tr>
<tr>
<td>More specifically:</td>
<td></td>
</tr>
<tr>
<td>Partnership on ministerial level is of paramount importance in cross-cutting areas such as investment and energy where more than two ministries are involved in the decision-making process. Coordination creates a size advantage – concerted action by several ministries is more powerful and efficient than fragmented and uncoordinated initiatives. Cooperation can exist in different phases of government operations: the planning and decision-making phase, the organisation and preparatory phase, as well as the service and outcome stage.</td>
<td></td>
</tr>
<tr>
<td>There are various mechanisms that can ensure cooperation, such as a steering committee to determine policy control, a central management body, or a coordinating ministry in charge of inter-ministerial relations.</td>
<td></td>
</tr>
</tbody>
</table>
**AREA FOR IMPROVEMENT 7**

**Granting stakeholders the possibility to participate in the decision-making process (EIRA 2017)**

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 (EIRA 2018)**

More specifically:

Seamless cooperation between ministries and various Governmental bodies needs to be complemented by stronger involvement of stakeholders in the decision-making process. Only if investors are well informed and consulted in a meaningful and effective way will they feel confident that the Government exercises its powers responsibly. Consequently, it is recommended that consultation with stakeholders take place at the earliest possible stage in the decision-making process, when there is scope to influence the policy outcome. The type of consultation and the number of the stakeholders involved should be proportionate to the scale and impact of the respective legislative/regulatory initiative.

**FINDINGS**

There is no requirement to consult stakeholders about draft laws. However, Article 7 of the Law no. 130-3 of 17 July 2018 “On Normative Legal Acts” stipulates that a draft legal act can be submitted for online consultation though the website of the Legal Forum of Belarus, as well as through Parliamentary hearings. The organiser of the public discussion is supposed to ensure that comments and (or) suggestions received are duly considered. Section 7 of the Law provides that the regulatory legal acts are subject to official publication.

In 2018, the EU4Energy Project developed and presented a Code of Good Practice for stakeholder communication, consultation and inter-ministerial coordination. It includes recommendations on institutionalising regular stakeholder communication, consultation during the law-drafting process, including strengthening the position of the Public Advisory Committee (PAC), as well as timeframes and rules for consultation. Shortly after the work on the gap analysis commenced, changes were introduced in the composition of the PAC, and its membership has grown considerably (see below).
On 27 April 2018, the Resolution of the Ministry of Energy no. 11 was adopted to establish the Public Advisory (Expert) Committee (PAC) on the Development of Entrepreneurship, adjunct to the Ministry of Energy. The purpose of the Committee, among others, is to foster public dialogue on new policies, legislation and/or regulations in the energy field. The meetings of the PAC are organised by the Ministry of Energy. Representatives of NGOs are welcomed on its board. Information on the PAC’s meetings is regularly published in a dedicated section of the Ministry’s website, which contains a link to all legislative documents under consultation as well as detailed minutes from the meetings held (http://minenergo.gov.by/deyatelnost/sostav-sovetov).

To guarantee the objective review and open discussion of the drafts submitted by NGOs or developed by the Ministry of Energy, the Ministry – together with the business community – have established a board of 24 members: 14 of them are NGOs, private practice and business associations (ODO ENEKA, OOO MNVCE Energotechno, ODO MT Technologi, BelAPP, ROO BNPA; international law firms: LegalTax, COBALT; the Association of Renewable Energy; the Belarusian trade union of employees of the energy sector; electro-technical and fuel industries; the National Public Association of Belaya Rus, the Centre of Ecological Solutions, etc.).

To improve the conditions for investment activity in Belarus, the Foreign Investment Advisory Council under the Council of Ministers of the Republic of Belarus (FIAC) was established by Resolution of the Council of Ministers no. 1795 dated 12 December 2001. It is headed by the Prime Minister. FIAC members include heads of central Governmental bodies and some other subordinate State organisations; heads of international organisations and foreign investors also participate in the FIAC.

A draft Decree of the President the Republic of Belarus “On the Foreign Investment Council” is currently under consideration. According to the Decree, the FIAC is to be reshaped into a Foreign Investment Council with a less complex structure. The Foreign Investment Council will operate under the aegis of the President as a permanent platform for direct dialogue with foreign (international) organisations. It will be headed by the Prime Minister and the EBRD. This reform is expected to improve the status and effectiveness of the Foreign Investment Council. Like its predecessor, the new Council will also develop proposals to improve legislation governing investment activities and will participate in relevant law-making processes.

Though significant improvements have taken place, stakeholders have reported that in general, authorities maintain a formalistic approach towards participation in the decision-making process. For example, draft laws are circulated among stakeholders for comments, but the laws may be shared at a late stage. This, in practice, prevents stakeholders from effectively providing comments. Also, comments/proposals can be withdrawn by the authorities without justification.
FINDINGS

The Government-run National Agency of Investment and Privatization (NAIP) has been established to attract investment and support privatisation. According to the national agenda for social and economic development, the NAIP supports investors at all stages of investment projects and assists them in communicating with authorities on project approvals.

The draft “Strategy on Attraction of Foreign Direct Investment up to 2025” includes measures to reduce the administrative burden of the approval procedures.

The Law no. 53-3 of 12 July 2013 “On Investments” does not refer to pre-screening or prior authorisation. The Decree of the President of Belarus no. 8 of 12 November 2015 “On Creation of Additional Conditions for Investments” refers to submission of a business plan before the investment is approved by the authorities. The State also has to carry out a comprehensive examination of the investment project. As a consequence, there is a large degree of discretion for the Government to screen and approve project proposals.
**Enhancing the role of the investment promotion authority (EIRA 2017)**

The role of the National Agency of Investment and Privatization can be better defined. For instance, its functions as a one-stop-shop should be improved and increased, and the services rendered made widely known to investors (EIRA 2018).

**FINDINGS**

As noted above (see Area for improvement 8), the NAIP has been established to attract investments and support privatisation. It supports investors at all stages of investment projects and assists them in communicating with authorities on project approvals.

The official responsibilities of the NAIP have not changed. However, the Agency has gained experience, and stakeholders report that in practice, its role has been enhanced.

The Presidential Ordinance no. 273 of 25 May 2010 “On Establishing the National Agency of Investment and Privatization” is currently under revision, with the latest update having taken place in October 2019.
Eliminating screening of foreign investment (EIRA 2017)

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 (EIRA 2018)

FINDINGS

The Decree of the President of Belarus no. 8 dated 12 November 2015 “On the Creation of Additional Conditions for Investments” requires that a business plan be submitted before the investment is approved by the authorities. The State has to carry out a comprehensive examination of the investment project.

In accordance with the city planning certificate of the land plot the bidder is tendering for.

The Ordinance of the Council of Ministers no. 563 dated 19 July 2016 introduced a procedure for entering into, amending and terminating investment agreements between investor(s) and the Republic of Belarus. It contains a provision on competitive tendering to select the investor(s). According to the said provision, the key criteria for assessing tender bids are: the compliance of the investment project with the prioritised types of business (sector of economy); the declared investment volume; the number of workplaces to be created; the financial and organisational capacities of bidders; and the compliance of the investment project with the regulations on the exploitation of land plots.
Publishing decisions related to energy regulation (EIRA 2017)

More specifically:

Free and complete access to both enacted and draft legislation is an essential element of an inclusive, responsive and participatory decision-making process in the areas of investment and energy. However, stakeholders have argued that access to legal and regulatory information is irregular, draft legislation is not always available and that, in certain cases, access is contingent upon the payment of fees.

It would therefore be advisable to render legal and regulatory information – in its entirety – permanently available to investors. To this end, the scope and content of the national registry of legal acts could be extended to include draft legislation, ideally at no cost. This would ensure that all relevant legal information is available to investors in a coherent, convenient and timely fashion.

The Ministry of Energy should be equally bound to publish its proposals and decisions regarding energy regulation. The electronic publication of these proposals and decisions could be made either on the centralised national registry of legal acts or on a separate, easily accessible and well-maintained portal. The Government of Belarus could also consider making its (draft) laws and amendments available in other languages (e.g. one or more of the UN languages).

FINDINGS

Normative legal acts are officially published, except for classified regulatory acts. Enacted regulatory legal acts are available online through the National Legal Internet Portal (www.pravo.by, www.president.gov.by) and on websites of other Governmental institutions, including the Ministry of Energy (www.minenergo.gov.by – under "Legislation"). However, stakeholders have reported that certain regulations are available only upon subscription to private databases. Decisions of Government authorities of a non-normative nature are not published, nor are Government guidelines related to the interpretation of the law.

Decisions related to individual entities, as well as court decisions, are generally not published.

According to the Law no. 130-3 of 17 July 2018 “On Normative Legal Acts”, publication of a regulatory act in foreign languages is allowed only if there is an official translation available which is approved by the relevant legislative body. To date, however, no act has been officially published in a foreign language.

Although enacted legal acts are published, draft legislation is generally not accessible, with the exception of the draft law preparation plan, which includes a short, generic description of the document. Draft legislation is published selectively per decision of the authorities, and only for public discussion purposes. However, regulation proposals related to the energy sector are made available through the minutes of meetings of the Public Advisory Committee (PAC) and information on upcoming public hearings that is published on the website of the Ministry of Energy.
Extending property ownership rights to foreign investors (EIRA 2017)

**FINDINGS**

Foreign companies are legally allowed to hold a majority stake in new projects in the energy sector except in the case of State-owned assets (Law no. 169-3 of 15 July 2010 “On Assets and Activities That Are Exclusive Ownership and Right of the State”, Article 7).

Investors may exercise proprietary rights to real estate, except for land plots and other assets that belong to the State. In practice, this means that power grids and land plots allocated for energy production installations are owned by the State. Foreign investors may purchase and own land only in the “Great Stone” China-Belarus Industrial Park (www.industrialpark.by).
**FINDINGS**

Foreign investors have reported bureaucratic obstacles regarding visas and work permits. However, the NAIP has been established to support investors at all stages of investment projects and assist them in communicating with authorities on project approvals. Employees of the NAIP also provide legal assistance and the NAIP assists with issues of employment. Some of the bureaucratic obstacles may be eliminated by concluding an investment agreement with the Belarusian State or by special decision of the President, in the form of a Presidential Edict (on a case-by-case basis).

The official responsibilities of the NAIP have not changed. However, the Agency has gained experience, and stakeholders report that in practice, its role has been enhanced.

The Presidential Ordinance no. 273 of 25 May 2010 “On Establishing the Government-run agency of the National Agency of Investment and Privatization” is currently under revision, with the latest update having taken place in October 2019.

Additionally, in 2017-2018, Belarus established visa-free entry to the Republic of Belarus via the National Airport of Minsk for nationals of multiple states. The visa-free entry also applies to regional airports of Brest and Grodno for individuals visiting these regions. In November 2019, plans were announced to extend the regional visa-free regime to land border crossings and other regional airports. Also, in July 2019, Belarus announced a plan to introduce an eVisa system in 2020.

Residence permits can be obtained by foreign investors who have invested EUR 150,000 in activities in Belarus (as of 1 July 2020: about EUR 170,000). Also, experts from abroad will be able to obtain a permanent residence permit after three years of living in the Republic of Belarus (compared to seven years before the amendments were introduced).

For residents and investors of the “Great Stone” China-Belarus Industrial Park, Belarus has introduced a “one station” (one-stop-shop) full-service system for business activities. Investors in this zone enjoy a number of tax breaks and guarantees.
Area for Improvement 14

The EU4Energy recommendations on the setup of the energy regulatory authority provided in the Analysis on the Draft Electricity Law should be taken into account (EIRA 2017)

Belarus should increase its efforts to establish an independent energy regulator, separate from the Ministry of Energy

The autonomy of the regulator will ensure distance from any potential undue influence and will promote public confidence in the regulatory framework (EIRA 2018)

FINDINGS

The Ministry of Antimonopoly Regulation and Trade monitors compliance with the legislation related to the operation of natural monopolies.

As far as the regulation of the energy sector is concerned, responsibility lies with the Ministry of Energy of Belarus (including for proposals to the Ministry of Antimonopoly Regulation and Trade on price and tariff setting). The powers, functions, and role of the Ministry of Energy are described in the Resolution of the Council of Ministers no. 1595 of 31 October 2001 “On Approval of the Regulation on the Ministry of Energy of the Republic of Belarus”. In accordance with this document, the major objective of the Ministry of Energy is the implementation of the Government policy on electrical power and natural gas supply to consumers in the Republic of Belarus, including preparation of tariff policies and regulation of the generation and distribution of electricity, gas, steam and hot water. The Ministry is audited by the State Control Committee of Belarus.
Encouraging the use of mediation by the Government (EIRA 2017)

More specifically:

The Law of the Republic of Belarus “On Mediation” (as amended in 2016) does not contain any concrete and positive language regarding the involvement of Governmental entities in mediation procedures with foreign investors. Although Article 2 is clear about the nature of disputes that can be brought to mediation, it does not mention the applicability of this provision to Governmental authorities. It should also be noted that according to the current international legal practice, investor-State mediation is to be preferred as an alternative means for resolving investment disputes. In light of this practice, it is recommended that clear and unequivocal language is introduced either in the context of the Law “On Mediation” or some other legal instrument that will not only grant standing to Governmental entities to participate in mediation with foreign investors but will also encourage them to select mediation as an alternative means of dispute resolution.

FINDINGS

The Law no. 58-3 of 12 July 2013 “On Mediation” can be used for settling disputes, including those arising from entrepreneurial or other business (economic) activity, on a voluntary basis during all stages of the mediation. The mediation can take place either before the parties bring the case to court or when the case is already before the court.

To support this Law, the Council of Ministers enacted Ordinance no. 146 of 14 February 2012 “On the Adoption of the Regulation on the Extrajudicial Settlement of Disputes (divergences) Related to Investment Operations”. This Ordinance stipulates how Government and Government-run bodies, and Regional (Minsk municipal) executive committees should interact, and is aimed at covering the extrajudicial settlement of disputes (divergences) arising between investors and the Republic of Belarus as far as investment operations are concerned.

Stakeholders consider the language in the latest Bilateral Investment Treaty between Belarus and India (2018) – which refers to “meaningful consultation, negotiation or other third party procedures” as a positive sign for stimulating the use of mediation in investor-State disputes. However, in general, stakeholders have noted that Government officials are reluctant to turn to amicable dispute settlement, given the responsibilities and obligations it brings.

In 2019, a draft Law amending the legislation on mediation was published (Law no. 277-3 of 18 December 2019). The foreseen amendments aim to enhance the possibilities for physical persons, entrepreneurs and legal entities to opt for legal remedies, and improve the application of mediation, thereby facilitating the recovery of rights and securing legitimate interests.

The draft “Strategy on Attraction of Foreign Direct Investment up to 2025” includes an action plan that also refers to the amendment of pre-trial and dispute settlement provisions in the Decision of the Council of Ministers no. 146 of 14 February 2012.
Establishing an investment ombudsman (EIRA 2017)

Belarus should consider establishing a formal 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 (EIRA 2018).

More specifically

The Government of Belarus should consider establishing an ombudsman to be in charge of investigating and handling complaints from foreign investors. As evidenced by the experience of other countries, the role of an ombudsman could prove crucial in preventing and reconciling investor-State conflicts before they escalate into full-blown disputes. In particular, an ombudsman may play an important role in preventing potential disputes by means of informing investors of their rights and obligations, liaising with relevant State agencies, and recommending policy improvements to the Government. The reconciliation role, on the other hand, may include conducting analysis and identifying grievances; designating staff with exclusive responsibility for settling disputes for different regions, industry sectors, or foreign investment; conducting on-site visits; and hosting one-on-one consultations.

FINDINGS

In the absence of a formal investment ombudsman, the NAIP assists with the amicable resolution of disputes related to the implementation of investment projects. It facilitates interaction of investors with Government bodies and other Government agencies, as well as with local executive and regulatory bodies.

The draft “Strategy on Attraction of Foreign Direct Investment up to 2025” contains an action plan that also includes prior settlement of disputes related to investment. This can be seen as a step in the right direction.
Abolishing the requirement to exhaust local judicial remedies (EIRA 2017)

FINDINGS

The requirement to first seek remedies with the judicial authorities of Belarus remains valid.

A norm regarding exhaustion of local judicial remedies is provided for in the Constitution of the Republic of Belarus (Article 61).

Article 13 of the Law no. 53-3 of 12 July 2013 “On Investments” reads: “Disputes between the investor and the Republic of Belarus, being unsettled in the extrajudicial procedure, by virtue of holding talks, within 3 months upon the receipt of the written proposal on their settlement, are to be settled in the judicial procedure, in accordance with the legislation of the Republic of Belarus, except for disputes lying beyond the exclusive competence of Belarusian courts”. In this case, should the dispute lie outside the exclusive competence of Belarusian courts, it may be referred to: an arbitration court established to settle a specific dispute in accordance with the arbitration regulation of the UNCITRAL; ICSID provided that the foreign investor is either a national or a legal entity of a member state of the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (ICSID Convention, 18 March 1965; Belarus is party to this Convention).

In practice, this means that an investor cannot directly apply for ICSID arbitration if a dispute falls within the exclusive competence of the courts of the Republic of Belarus.
Determining expropriation conditions and providing a clearly defined mechanism for payment of compensation (EIRA 2017)

Domestic laws should include well-defined grounds for expropriation, clauses regarding the process for determining the compensation to be awarded to the investor as well as a timeframe for effecting the compensation (EIRA 2018)

FINDINGS

Article 12 of the Law no. 53-3 of 12 July 2013 “On Investments” stipulates that nationalisation is possible only on the grounds of public needs and upon timely and full compensation equivalent to the value of the nationalised property and other losses caused by nationalisation. The requisition can be made only in case of emergency (e.g. natural disaster, epidemics, etc.). This Article duplicates the provisions of the Civil Code. However, clear conditions (e.g. on what is considered “public needs”) and a well defined mechanism for payment of compensation have not been provided yet.

Despite the fact that expropriation conditions and mechanisms have not been clearly defined yet, a draft law amending the Law “On Investments” is currently being considered by Parliament. The draft law, provides for, among others, a supplementary Article 12-1, which sets out the general procedure and conditions of compensation in the event of nationalisation or requisition.

The Treaty on the EAEU establishes precise conditions and a mechanism to reimburse investments made by investors of a member state in the territory of another member state in case of expropriation. This, as well as the terms of other international investment agreements of the Republic of Belarus, make it necessary to adjust the national legislation.
The Government of Belarus is encouraged to ratify the Energy Charter Treaty, which currently applies on a provisional basis, in order to enhance investors’ confidence. The ratification of the Energy Charter Treaty would underline and signal Belarus’ openness to foreign investment in its energy sector (EIRA 2017).

FINDINGS


Potential ratification remains under consideration. At the moment, the Government’s position on ratification remains unchanged.
CONCLUSIONS
AND FOLLOW-UP
RECOMMENDATIONS
Of the 19 areas for improvement and recommendations identified in the EIRA 2017 extended country profile and the EIRA 2018 regular country profile, 7 are in the course of being implemented, while for 12, no substantial changes have been observed. None of the proposed improvements has been fully implemented. However, no measures have been taken in the opposite direction either.

To sum up, even if the overall risk level against the assessed areas is regarded as low, in recent years we have witnessed only small progress regarding the implementation of measures to further improve the investment climate. However, there are some solid plans on the table to reform and open up the electricity market, to establish an independent regulator, and to deploy a new investment strategy. Belarus is encouraged to pursue these reforms, in particular in the light of the expected market situation of electricity oversupply, the cooperation with the European Union, and the potential integration in the energy market of the EAEU.

Below, conclusions and recommendations have been outlined per EIRA indicator. They are based on the analysis of the degree of implementation of the identified areas for improvement and recommendations as identified in EIRA 2017 and EIRA 2018. The recommendations sometimes repeat earlier recommendations given, but mainly identify the next steps for reaching the countries’ goals for improvement as outlined in the mentioned EIRA publications. The drafting team’s focus has been on giving recommendations that are tangible, realistic and tailored to Belarus’ needs.
CONCLUSIONS

While progress to strengthen the foresight of policy and regulatory change can be noted, the majority of the identified areas for improvement related to this indicator are at a relative standstill. However, the upcoming five-year planning period of the Belarusian Government offers an opportunity to introduce the necessary reforms.

Implementation is in progress regarding:

- Developing a clear and coherent long-term investment strategy which encompasses the energy sector and includes performance indicators for all (energy) sub-sectors (EIRA 2017 and 2018);

- Strengthening the effective implementation of identified goals (EIRA 2017).

No substantial changes have been observed yet regarding:

- Granting sector-specific incentives for promoting energy investment (EIRA 2017).

- 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 (EIRA 2018).

- 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 (EIRA 2018).
The Government of Belarus is encouraged to expedite the adoption of the “Strategy on Attraction of Foreign Direct Investment up to 2025”, while taking into account the results of the public consultation and ensuring that performance indicators for energy sub-sectors are set. The Government should publish an overview of support programmes to attract investment in the energy sector.

The adoption of the draft Electricity Law would provide clarity to investors on the new market situation, especially given the expected situation of electricity oversupply after the deployment of the new BelNPP nuclear power plant. In particular, it is suggested to open up the wholesale and retail electricity markets to allow more private parties to enter the market, ensure longer-term affordability based on competitive electricity prices, and lay the foundations for cross-border electricity trade.

The upcoming commissioning of the BelNPP nuclear power plant on the one hand and the upcoming new five-year planning period of the Government on the other, offer the opportunity to review the current Government programmes in place. It is strongly suggested to ensure that the new programmes set mid- and longer-term targets across the full range of the Government’s energy policy priorities, including measurable targets, implementation plans, and a timeline for reshaping the energy market, access to energy, affordability, integration into the global fuel and energy complex, improvement of the management system of fuel and energy complex and its organisational structure, and innovation. In particular, the Government should indicate which sub-sectors of the energy sector are prioritised for new investment. Also, it should be clarified which measures will be taken to attain the short, mid- and longer-term targets for energy efficiency as outlined in Belarus’ upcoming National Energy Efficiency Action Plan and how the measures for strengthening electricity consumption fit this picture.

While the Government promotes investment in the renewable energy sub-sector, market access for renewable energy should be enhanced by reducing the administrative burden, ensuring bankable power purchase agreements (PPAs) for renewable energy projects, guaranteeing timely grid connections, and avoiding discretionary measures regarding quota allocation. Given the sharp cost reductions for renewable energy in the recent years, opening the renewable energy market could be considered, along with examining a shift to procurement/auctioning on the basis of non-subsidised lots. Business cases and incentive mechanisms such as in Germany, Denmark and The Netherlands could be taken as an example.

In light of the country’s commitments to reduce carbon intensity, long-term targets should be defined for CO₂ reduction in the energy sector. This is especially crucial since the sector currently accounts for the largest share of emissions. Such a sector-specific target should also be reflected in the country’s second NDC which is to be submitted.

As stipulated in EIRA 2018, 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.
EIRA indicator 2: Management of policy-making processes (EIRA 2017) / Management of decision-making processes (EIRA 2018)

CONCLUSIONS

While some progress to strengthen the management of decision-making processes can be noted, not many substantial changes have been identified regarding the areas for improvement and recommendations related to this indicator. It needs to be noted however, that stakeholders see slightly better de facto cooperation between and with State authorities in the course of the decision-making processes. Also, some promising reforms have been announced.

Implementation is in progress regarding:

- Granting stakeholders the possibility to participate in the decision-making process (EIRA 2017). 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 (EIRA 2018).

No substantial changes have been observed regarding:

- Increasing coordination between various Government agencies and ministries (EIRA 2017).
- Facilitating project approvals (EIRA 2017).
- Enhancing the role of the investment promotion authority (EIRA 2017). The role of the National Agency of Investments and Privatization can be better defined. For instance, its functions as a one-stop-shop should be improved and increased, and the services rendered made widely known to investors (EIRA 2018).

FOLLOW-UP RECOMMENDATIONS

To further improve coordination on investment decisions in the energy sector, it is advised that the Government formalises inter-ministerial cooperation, as was recommended in the EIRA 2017 extended country profile of Belarus.

The Government is encouraged to expedite the adoption of the draft Decree “On the Foreign Investment Council”, organise the Council’s meetings, and to develop an agenda that includes the market model of, and incentives for, the energy sector.

Also, it is suggested that the Government further streamline its (online) consultation process, by ensuring proper timelines, reporting on comments received, providing feedback, and justifying final decisions (taking suggestions and comments received into consideration).

The efforts of the Government to reduce the administrative burden should be further strengthened. In order to facilitate project approvals, existing pre-screening measures should be alleviated or at least the criteria and decision-making process should be made more transparent.

The Government could increase its efforts to enhance the role of the National Agency of Investment and Privatization by expediting the planned revision of Ordinance no. 273, under which the Agency was established in 2010. Ideally, it should function as a one-stop-shop for investors.
EIRA indicator 3: Oversight of market functioning, private sector and regulated companies (EIRA 2017) / Regulatory environment and investment conditions (EIRA 2018)

CONCLUSIONS

While progress to strengthen the regulatory environment and investment conditions can be noted, the majority of the identified areas for improvement related to this indicator are at a relative standstill. Nevertheless, during recent years, the Government gained experience in assisting foreign investors, which might provide a pathway for further liberalisation of the investment regime.

Implementation is in progress regarding:

- Publishing decisions related to energy regulation (EIRA 2017).
- Assisting foreign investors to overcome bureaucratic obstacles regarding visa and work permits (EIRA 2017).

No substantial changes have been observed yet regarding:

- Eliminating screening of foreign investment (EIRA 2017). 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 (EIRA 2018).
- Extending property ownership rights to foreign investors (EIRA 2017).
- 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 (EIRA 2017, EIRA 2018).

FOLLOW-UP RECOMMENDATIONS

- To avoid the perception of discretionary choices, existing pre-screening measures should be alleviated or at least the criteria and decision-making process should be made more transparent.
- The Government is encouraged to pursue its efforts in guaranteeing free and complete access to enacted and draft legislation. Though paid databases might offer extra services, all regulation – without exceptions – should be made available at no cost. Also, regulatory decisions should be made available. The Government of Belarus could also consider making its (draft) laws and amendments available in other languages (e.g. one or more of the UN languages).
- Though it is legally allowed for foreign companies to own a majority stake in energy projects, further liberalisation of foreign ownership should be pursued. In this respect, foreign participation in national grids and land ownership for power production could be considered.
- As indicated above, the Government could increase its efforts to enhance the role of the NAIP by expediting the planned revision of Ordinance no. 273, under which the Agency was established in 2010. Ideally, it should function as a one-stop-shop for investors, including for visa-support and obtaining work permits. In this regard, experience gained by the “one station” approach on the “Great Stone” China-Belarus Industrial Park may be taken into account.
- The Government is also encouraged to move to further visa liberalisation for employees of foreign investors and to ensure a smooth eVisa process.
- Belarus should resume its efforts to establish an independent energy regulator responsible for establishing tariffs, protecting consumers’ rights, regulating natural monopolies, and creating conditions for competition in the energy market. Autonomy of the regulator will ensure distance from any potential undue influence and will promote public confidence in the regulatory framework.
EIRA indicator 4: Rule of law (compliance with national and international obligations) (EIRA 2017, EIRA 2018)

CONCLUSIONS

While there is some progress to strengthen rule of law (compliance with national and international obligations), no substantial changes have been noted for the majority of the identified areas for improvement related to this indicator.

Implementation is in progress regarding:

- Encouraging the use of mediation by the Government (EIRA 2017).
- Determining expropriation conditions and providing a clearly defined mechanism for payment of compensation (EIRA 2017, EIRA 2018).

No substantial changes have been observed yet regarding:

- Abolishing exhaustion of local judicial remedies requirement (EIRA 2017).
- The Government of Belarus is encouraged to ratify the Energy Charter Treaty, which currently applies on a provisional basis, in order to enhance investors’ confidence (EIRA 2017).

FOLLOW-UP RECOMMENDATIONS

The Government should pursue its efforts on stimulating amicable dispute settlement. It is recommended that the momentum of the adoption of the draft “Strategy on Attraction of Foreign Direct Investment up to 2025” is used to introduce clear and unequivocal language in the Law “On Mediation” or another legal instrument that will not only grant standing to Governmental entities to participate in mediation with foreign investors but will also encourage them to select mediation as an alternative means of dispute resolution.

As mentioned in EIRA 2017 and EIRA 2018, Belarus should consider establishing an investment ombudsman as a formal and independent body to 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.

The Government is still to consider abolishing the requirement to exhaust local judicial remedies requirement, or to restrict its application.

Belarus should ensure that by adopting the draft law amending the existing one on investment (currently under considerations), the Government will foresee well-defined grounds for expropriation, clauses regarding the process for determining the compensation to be awarded to the investor, as well as a timeframe for effecting the compensation.

The Government of Belarus may still consider ratification of the Energy Charter Treaty, which it currently applies on a provisional basis. The ratification of the Energy Charter Treaty would underline and signal Belarus’s openness to foreign investment in its energy sector.
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