



## CALL FOR PARTICIPANTS

### **Investor-State Conflict Prevention in the Renewable Power Generation Sector**

The Energy Charter Secretariat invites interested countries as well as international organisations and financial institutions on behalf of their member countries to volunteer for pilot studies under the Secretariat's project "Investor-State Conflict Prevention in the Renewable Power Generation Sector".

#### **Details of the project:**

<b>Duration of the project</b>	Ten months
<b>Beneficiaries</b>	<b>Participating country:</b> lead state agency responsible for the administration of renewable power generation projects, other government agencies and regulatory bodies, public officials <b>Industry:</b> foreign investors, renewable power generation sector
<b>Goal</b>	Developing robust and coherent legal frameworks enabling FDI in the renewable power generation sector of the participating country through technical assistance in establishing a dedicated mechanism for investor-state conflict prevention
<b>Activities and methods</b>	Data collection, questionnaires, legal research and analysis, interviews and stakeholder meetings, production of reports, fact-finding missions, public presentations
<b>Financing basis</b>	Co-financing/voluntary contributions

**Any interested party is kindly invited to send their expression of interest, questions or queries at [secgen@encharter.org](mailto:secgen@encharter.org)**

**Full project proposal is attached.**

Project Proposal

# Investor-State Conflict Prevention in the Renewable Energy Sector



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## ENERGY CHARTER SECRETARIAT 2023

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# 1. Compendium Page

<b>Name of the project</b>	Investor-State Conflict Prevention in the Renewable Power Generation Sector
<b>Implementing Organisation</b>	Energy Charter Secretariat
<b>Place of execution</b>	Participating country
<b>Duration of the project</b>	Ten months
<b>Beneficiaries</b>	<b>Participating country:</b> lead state agency responsible for the administration of renewable power generation projects, other government agencies and regulatory bodies, public officials <b>Industry:</b> foreign investors, renewable power generation sector
<b>Goal</b>	Developing robust and coherent legal frameworks enabling FDI in the renewable power generation sector of the participating country through technical assistance in establishing a dedicated mechanism for investor-state conflict prevention
<b>Activities and methods</b>	Data collection, questionnaires, legal research and analysis, interviews and stakeholder meetings, production of reports, fact-finding missions, public presentations
<b>Resources</b>	<b>Financial resources:</b> EUR 50,000 <b>Human resources:</b> 1 official (100% post)



## 2. Introduction

The project “Investor-State Conflict Prevention in the Renewable Power Generation Sector” is the initiative of the Energy Charter Secretariat (Secretariat), based on a joint report with the World Bank. **The goal of the project is to develop robust and coherent legal frameworks enabling and retaining foreign direct investment (FDI) in the renewable power generation sectors of the participating countries.** The project seeks to achieve this goal by providing technical assistance to participating countries in establishing dedicated investor-state conflict prevention mechanisms in the renewable power generation sector.

**The Secretariat is the permanent support body of the Energy Charter Conference (Conference)**, an inter-governmental organisation in the field of investment, trade, transit and dispute resolution in the energy sector, as well as energy efficiency, established by the Energy Charter Treaty (ECT). The Conference and the Secretariat are informally referred to as International Energy Charter.

The organisation’s current membership includes 52 Contracting Parties to the ECT, including the European Union (EU) and the European Atomic Energy Community (Euratom).<sup>1</sup> While the International Energy Charter’s membership comprises European and Asian states, the observers to the organisation include over 50 states and international organisations across the globe, including a number of developing countries and transition economies with significant renewable energy potential.

Since 2013, the Secretariat has been actively promoting the prevention and amicable resolution of investor-state conflicts and disputes.<sup>2</sup> In 2016, the Secretariat, with the support of the United Nations Commission on International Trade Law (UNCITRAL), the International Center for Settlement of Investment Disputes (ICSID) and several prominent arbitration and mediation institutions, developed the Guide on Investment Mediation to assist governments and companies in seeking the amicable resolution of investor-state conflicts and disputes.<sup>3</sup> In 2017, the Conference endorsed some of the best practices in regulatory reforms to minimise potential conflicts with foreign investors.<sup>4</sup> In 2018, the Secretariat developed the Model Instrument on Management of Investment Disputes – a complex and efficient conflict

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<sup>1</sup> International Energy Charter, 'Members and Observers to the Energy Charter Conference' <<https://www.energycharter.org/who-we-are/members-observers/>>.

<sup>2</sup> For the purpose of this project proposal, “investor-state conflict” is defined as a disagreement on the point of law or fact prior to its submission for formal adjudication, such as a proceeding before a national court or international arbitration; “investor-state dispute” is defined as an investor-state conflict following initiation of an adjudicatory proceeding.

<sup>3</sup> Decision of the Energy Charter Conference (CCDEC 2016 12) 19 July 2016, 'Guide on Investment Mediation' <<https://www.energycharter.org/fileadmin/DocumentsMedia/CCDECS/2016/CCDEC201612.pdf>>.

<sup>4</sup> Energy Charter Conference Decision (CCDEC 2017 4) 11 October 11 2017, 'Best Practices in Regulatory Reform: Minimising Potential Conflicts with Foreign Investors' <<https://www.energycharter.org/fileadmin/DocumentsMedia/CCDECS/2017/CCDEC201704.pdf>>.

management system to deal with investment conflicts and disputes.<sup>5</sup>

In addition, since 2018, the Secretariat has assisted governments in identifying legal and regulatory risks to energy investments and providing them with recommendations to mitigate these risks in its flagship Energy Investment Risk Assessment (EIRA) publication.<sup>6</sup> Among other things, the EIRA identifies risks that may lead to investor-state conflicts and disputes and offers guidance in adopting best practices to enable FDI in energy and effectively prevent and manage disputes.

Building upon this expertise, the Secretariat, together with the World Bank Group, developed a report entitled “Enabling Foreign Direct Investment in the Renewable Energy Sector. Reducing Regulatory Risks and Preventing Investor-State Conflicts”. This report explores political risks, including regulatory ones, associated with adverse measures affecting foreign investors in the sector of renewable power generation, the prevalence of investor-state disputes caused by such risks, and available mechanisms for managing investor-state conflicts and disputes. The report further suggests specific policy options and mechanisms for governments to prevent, mitigate and manage investor-state conflicts and disputes in the renewables sector.

The report was extensively peer-reviewed by senior experts of the World Bank Group, the Multilateral Investment Guarantee Agency (MIGA), the International Finance Corporation (IFC), the International Energy Charter Industry Advisory Panel, the Deputy Business Ombudsman of Ukraine and the Energy Commission of Nigeria. It has also received financial support from the Government of the United Kingdom, the European Commission and the Organisation of African, Caribbean and Pacific Group of States.

Having identified regulatory risks, particularities of investor-state conflicts and disputes, and policy options for conflict and dispute prevention in the renewables sector, the Secretariat will implement the findings in participating countries in the framework of the proposed project. **It is expected that the implementation of the project in participating countries will strengthen the legal framework needed to mobilise and retain FDI in the sector and minimise the risks of investor-state disputes.**

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<sup>5</sup> International Energy Charter, 'Model Instrument for Management of Investment Disputes' <<https://www.energychartertreaty.org/model-instrument/>>.

<sup>6</sup> International Energy Charter, 'Energy Investment Risk Assessment' <<https://eira.energycharter.org/>>.

## 3. Planning

### 3.1 Identification of the Problem

According to the International Energy Agency (IEA), **by the end of 2022, 774 million people around the world, mainly in developing countries of Africa and Asia, still lived without access to electricity.**<sup>7</sup> With the increase in global energy prices and concerns over energy security, the issue of energy access, namely affordability of energy, has become more pronounced in developed countries. The need to ensure the environmental sustainability of the energy sector and achieve net-zero GHG emissions globally by mid-century in line with the Paris Agreement presents further challenges for energy access.

**Achieving environmental, climate and other development goals, meeting growing energy demand and achieving greater energy access requires building considerable energy capacity to be met by renewable power generation.** Estimates from the IEA indicate that achieving net-zero GHG emissions by 2050 may require 90% of energy demand to be met by renewable power generation.<sup>8</sup> Building the capacity needed for achieving net zero by 2050 would require an increase in average annual investments in renewables from USD 390 billion a year (between 2016 and 2022) to USD 1,300 billion a year by 2030.<sup>9</sup>

According to International Renewable Energy Agency (IRENA) and Climate Policy Initiative (CPI), the private sector financed 86% of total investment in renewable energy projects between 2013 and 2018.<sup>10</sup> The United Nations Conference on Trade and Development (UNCTAD) suggests that in 2019, foreign companies sponsored 40% of all renewable power generation projects.<sup>11</sup> Furthermore, **the World Bank–Secretariat report shows that the share of FDI in renewable energy projects in developing economies and economies in transition exceeds 70%.**<sup>12</sup> With the acceleration of the energy transition, FDI may play an even greater role in project finance.

Nevertheless, the high upfront costs of renewable energy projects, the long project cycle, and

<sup>7</sup> International Energy Agency, 'SDG7: Data and Projections' <<https://www.iea.org/reports/sdg7-data-and-projections>>.

<sup>8</sup> International Energy Agency, 'Net Zero by 2050: A Roadmap for the Global Energy Sector' <<https://www.iea.org/reports/net-zero-by-2050>>.

<sup>9</sup> International Energy Agency, 'World Energy Outlook 2022' <<https://www.iea.org/reports/worldenergy-outlook-2022>>.

<sup>10</sup> International Renewable Energy Agency and Climate Policy Initiative, 'Global Landscape of Renewable Energy Finance' <[https://www.irena.org/-/media/Files/IRENA/Agency/Publication/2020/Nov/IRENA\\_CPI\\_Global\\_finance\\_2020.pdf](https://www.irena.org/-/media/Files/IRENA/Agency/Publication/2020/Nov/IRENA_CPI_Global_finance_2020.pdf)>.

<sup>11</sup> UNCTAD, 'World Investment Report 2020: International Production beyond the Pandemic' <[https://unctad.org/system/files/official-document/wir2020\\_en.pdf](https://unctad.org/system/files/official-document/wir2020_en.pdf)>.

<sup>12</sup> World Bank and Energy Charter Secretariat, 'Enabling Foreign Direct Investment in the Renewable Energy Sector: Reducing Regulatory Risks and Preventing Investor-State Conflicts' <[https://www.energycharter.org/fileadmin/DocumentsMedia/Occasional/Renewable\\_Energy\\_FDI\\_Final\\_\\_032923.pdf](https://www.energycharter.org/fileadmin/DocumentsMedia/Occasional/Renewable_Energy_FDI_Final__032923.pdf)>.

the financial structure of the projects expose investors in renewables to regulatory risks to a greater extent. In particular, the role of incentive programmes for renewable power generation in the financial structure of such projects may make the profit model of the projects vulnerable to any adverse changes in incentives. **Therefore, conflicts and disputes may arise between investors and host countries in the course of planning and implementation of renewable energy projects, and the parties may take recourse under contracts and international investment agreements. The disputes may lead to significant monetary losses for both parties as well as to delay, cancellation or withdrawal of investment projects.**

The World Bank–Secretariat report identifies a total of 119 arbitral proceedings in investor-state disputes concerning renewable power generation.<sup>13</sup> The most common adverse measure challenged by investors in these arbitral proceedings is regulatory changes. Notably, **the report estimates a significant fiscal impact of the adverse arbitral awards in investor-state disputes and a sizeable amount of litigation costs.** The industry survey conducted in the preparation of the report suggests that the cancellation of planned investment is the main negative consequence of a conflict with the host state in the renewables sector.<sup>14</sup> Delaying planned investment, withdrawing an existing investment, and considering delaying or cancelling investment were also selected among the effects of conflicts faced by investors. This data aligns with the Global Investment Competitiveness Survey 2019–2020, according to which two-thirds of surveyed investors would consider withdrawing or cancelling planned investment in the face of political risk.<sup>15</sup>

The increase in the deployment of renewable energy financed through FDI will likely result in an even greater proliferation of investor-state conflicts and disputes. However, the World Bank–Secretariat **report identifies no specific mechanisms and tools for investor-state conflict prevention in the renewable power generation sector** and concludes that more general instruments on international, national and contractual levels may not always be sufficient enough to meet the needs of the sector. **Investments in renewable energy possess certain particularities that make it crucial to have specific conflict prevention mechanisms and tools in place:**

- Regulatory risks: Political sensitivity of the energy sector overall and the ever-evolving energy policies of host countries and the technological environment expose investments in renewable power generation to additional risks compared to other types of investments. Addressing these risks may require cross-departmental collaboration.
- Policy and market design: Support (incentive) mechanisms may be needed to induce

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<sup>13</sup> supra note 13.

<sup>14</sup> ibid.

<sup>15</sup> World Bank, 'Global Investment Competitiveness Report 2019/2020: Rebuilding Investor Confidence in Times of Uncertainty' <<https://openknowledge.worldbank.org/server/api/core/bitstreams/736358db-40d6-5ad3-8571-45c89ee8a697/content>>.



investments in renewable power generation. Changes in policies, market conditions, and energy pricing may affect the whole sector/sub-sector and lead to conflicts and disputes with multiple investors. Avoiding and solving these conflicts and disputes may require sector-wide dialogue and consultations.

- Environmental and social impact: Investments in renewable power generation may carry environmental and social dimensions. The host country, local communities and investors may have specific concerns regarding the environmental sustainability and social impact of the projects. Establishing a “one-stop-shop” for investors in renewables will allow for addressing these issues.
- Project development: Developing renewable power generation projects involves navigating complex stages such as land acquisition, environmental impact assessment, licensing and permitting, and connection to the grid. A specific institutional mechanism for investor-state conflict prevention will provide a channel for investors to address project development challenges such as delays in approval processes.
- Technology-intensive nature of the projects: Renewable power generation projects often deploy new technologies, giving rise to new types of conflicts. Addressing investor grievances during both project development and operation stages of the investment requires industry-specific knowledge and expertise. A dedicated institutional conflict prevention mechanism with experts in the field can provide necessary support in resolving the operational issues of investors.

### 3.2 Goal and Objectives

**Goal:** Develop robust and coherent legal frameworks enabling FDI in the sector of renewable power generation of the participating country through technical assistance in establishing a dedicated investor-state conflict prevention mechanism.

The project aims to achieve the goal through the following **objectives**:

- I. **Developing the participating country-specific assessment framework to identify**
  - a. existing systemic policy measures aimed at investor-state conflict and dispute avoidance and mitigation in the renewable power generation sector; and
  - b. existing sector-neutral institutional mechanism for investor-state conflict prevention.
- II. **Assessing**
  - a. existing systemic policy measures aimed at investor-state conflict and dispute avoidance and mitigation in the renewable power generation sector; and

- b. existing sector-neutral institutional mechanism for investor-state conflict prevention.

### III. Providing recommendations on designing and implementing

- a. country-specific systemic policy measures aimed at investor-state conflict and dispute avoidance and mitigation in the sector of renewable power generation with a view to enable and retain FDI;
- b. a dedicated institutional mechanism for investor-state conflict prevention in the renewable power generation sector.

### IV. Building capacity among key stakeholders in the renewable power generation sector of the participating country on the importance of avoiding and mitigating investor-state conflicts and disputes and the instruments and tools available with a view of enabling and retaining FDI.

## 3.3 Expected Outputs

The project is expected to

- I. **Enhance the investment climate** and attractiveness of the participating country for foreign investors in the renewable power generation sector.
- II. **Enable the successful implementation and retention of FDI** in the renewable power generation sector.
- III. **Promote investor-state conflict avoidance and mitigation** and a stable and predictable regulatory framework for renewable power generation.

In particular, the following deliverables will be achieved:

- **Comprehensive assessment of the existing systemic policy measures aimed at investor-state conflict and dispute avoidance and mitigation** in the renewable power generation sector (or identification of their lack), highlighting areas that may pose litigation risks.
- **Comprehensive assessment of the existing sector-neutral institutional mechanisms for investor-state conflict prevention** and highlighting areas for improvement.
- **Producing tailor-made recommendations on designing and implementing systemic policy measures aimed at investor-state conflict and dispute avoidance and mitigation** in the renewable power generation sector to enable and retain FDI.
- **Producing recommendations on designing and implementing a dedicated institutional mechanism for investor-state conflict prevention** in the renewable power generation sector tailored to the needs of the participating country.

- **Enhanced capacity of relevant stakeholders** involved in the renewable power generation sector (including the lead state agency responsible for the administration of renewable power generation projects, other government agencies and regulatory bodies) to implement the mechanisms and tools for investor-state conflict and dispute avoidance with a view to enable and retain FDI.

## 4. Specific Proposal

### 4.1 Activities

<b>Timeframe</b>	Ten months
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- I. **Developing the participating country-specific assessment framework (1st–2nd months):**
  - Through consultations with the focal point designated by the participating country and the lead state agency responsible for administering renewable power generation projects in the participating country, developing the participating country-specific assessment framework.
  - In particular, identifying:
    - a. existing systemic policy measures aimed at investor-state conflict and dispute avoidance and mitigation in the renewable power generation sector; and;
    - b. existing sector-neutral institutional mechanism for investor-state conflict prevention.
  - Developing a questionnaire.

**Deliverable:** country-specific assessment framework is developed.  
**Resources to be provided by the participating country:** focal point, personnel of the lead state agency.  
**Methods:** data collection, legal research and analysis, interviews and stakeholder meetings.
- II. **Participating country assessment (3rd– 5th months):**
  - Through consultations with the relevant stakeholders in the participating countries, including public officials and experts in the field, assessing:
    - a. existing systemic policy measures aimed at investor-state conflict and dispute avoidance and mitigation in the renewable power generation sector; and

- b. existing sector-neutral institutional mechanism for investor-state conflict prevention.

The questionnaire will be used as part of the assessment.

- Fact-finding mission to the participating country, including meetings with the focal point, the lead state agency responsible for administering renewable power generation projects, and other relevant stakeholders.

**Deliverable:** participating country's assessment is finalised.

**Resources to be provided by the participating country:** (i) human resources: focal point, personnel of the lead state agency, state and other experts in the field of renewable power generation and investor-state disputes; (ii) other resources: venue and logistics for the mission (in-kind).

**Methods:** data collection, questionnaires, legal research and analysis, interviews and stakeholder meetings, and fact-finding mission.

### III. **Developing the participating country-specific recommendations (6th – 8th months):**

- Based on the data collected and analysis conducted during stages I and II of the project, developing country-specific recommendations on designing and implementing
  - a. country-specific systemic policy measures aimed at investor-state conflict and dispute avoidance and mitigation in the renewable power generation sector with a view of enabling and retaining FDI;
  - b. a dedicated institutional mechanism for investor-state conflict prevention in the renewable power generation sector.
- Production of a draft report containing:
  - a. the results of the assessment;
  - b. country-specific recommendations.
- Approval of the draft.

**Deliverable:** participating country-specific recommendations are produced.

**Resources to be provided by the participating country:** focal point, personnel of the lead state agency.

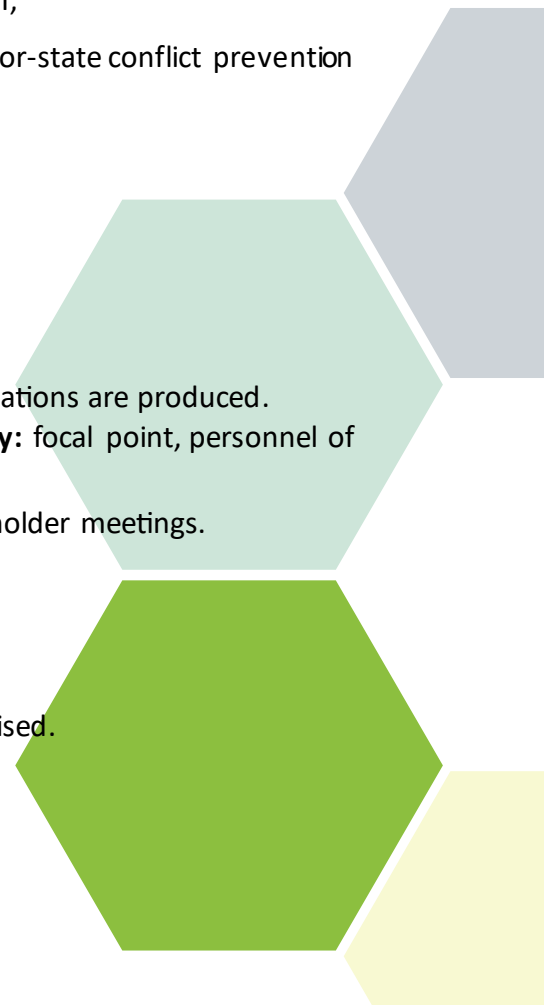
**Methods:** production of reports, interviews and stakeholder meetings.

### IV. **Production of the final report (9th month):**

- Designing, proofreading, and printing the final report.

**Deliverable:** participating country's assessment is finalised.

**Methods:** final report is produced.



V. **Public presentation of the final report (10th month):**

- Public presentation of the final report at a launch event in the participating country.

**Deliverable:** public presentation delivered.

**Resources to be provided by the participating country:** (i) human resources: focal point, personnel of the lead state agency, state experts in the field of renewable power generation and investor-state disputes; (ii) other resources: venue and logistics for the mission/launch event (in-kind).

**Methods:** public presentations.

Month	1	2	3	4	5	6	7	8	9	10
<b>Activity</b>										
I.										
II.										
III.										
IV.										
V.										

>> *Activities are subject to change due to the participating country's request or stakeholders' proposals.*

>> *The project proposal is limited to phase I of the project – technical assistance in the form of policy analysis and advice. The Secretariat envisages phase II of the project aimed at oversight and assistance in the implementation of the recommendations in the interested participating countries.*

## 4.2 Budget

The total budget for the project per one participating country is estimated at EUR 50,000, which will be financed by the Secretariat and voluntary contributions from the participating country or other sources. The budget will cover the costs of human resources, production of a report, travel, and other project-related expenses.

Budget		
Expenditure	Description	Amount
Human resources	1 official (100% post) – policy analysis and technical assistance	provided by the Secretariat (in-kind)

<b>Production of a report</b>	Designing, proofreading, and printing	EUR 15,000
<b>Missions</b>	1 official (Secretariat) – fact-finding mission to the participating country; 2 officials (Secretariat) – public presentation in the participating country	EUR 10,000

