

# **3**

## **The Policy Framework for Investment**

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This chapter provides an overview of Ukraine's framework for investment relevant to investment in the energy sector. It assesses Ukraine's restrictions on the entry of foreign investors in the energy sector and the extent to which the country provides national treatment once they are established. The chapter notably looks into the rules for property protection and access to land, as these issues are important for investors interested in operating in the energy sector.

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## Introduction

Ukraine has a regulatory framework that guarantees national treatment to foreign economic operators. The Constitution, the Foreign Regime Law and the Economic Code of Ukraine are essential primary legal instruments that allow the participation of foreign investors with local ones. In addition, the country has implemented specialised laws that protect the interests of private investors in the Electricity, Oil & Gas, and Energy Efficiency markets.

Attracting investment and further improving the country's institutional framework are key government priorities, as is evidenced by Ukraine's strategic documents, such as "The Energy Strategy of Ukraine 2035", which was adopted in 2017.<sup>1</sup> The key standards of investor treatment and protection are guaranteed under the Constitution<sup>2</sup> – the highest legal authority – and in dedicated laws. Ukraine's FDI legal regime includes enforceable principles for foreign investors' protection, investment promotion, and transparency requirements.

### Box 3.1. The OECD National Treatment instrument for foreign-controlled enterprises

National treatment is the commitment by an Adherent to the *Declaration on International Investment and Multinational Enterprises* to treat enterprises that operate on its territory, but which are controlled by the nationals of another country, either directly or indirectly, no less favourably than domestic enterprises in like circumstances.

The term "operating in its territory" in the instrument conveys the idea of doing business from a place of business in the host country, as distinct from conducting business in the country from abroad. This recognises that adhering countries' practices differ regarding recognised forms of business but that the main forms of doing business are through locally incorporated subsidiaries and branches. The principle of national treatment applies regardless of the home country's treatment of enterprises from the host country (OECD, 2005<sup>[1]</sup>).

The National Treatment instrument consists of two elements: a declaration of principle, which forms part of the Declaration, and a procedural OECD Council Decision which obliges Adherents to notify their exceptions to national treatment and establishes follow-up procedures to deal with such exceptions. The Decision comprises an Annex that lists exceptions to national treatment, as notified by each Adherent and accepted by the OECD Council. The Investment Committee periodically examines these exceptions.

Only measures concerning legal entities are reported for the purpose of the National Treatment instrument, and thus any measure that may apply to natural persons is not reflected in the list contained in the Annex to the Council's decision.

To ensure transparency, Adherents to the Declaration also undertake to report any measures that, while not representing exceptions to national treatment, have an impact on it. The lists of exceptions to National Treatment and measures reported for transparency by country are published and regularly updated (see [www.oecd.org/daf/inv/investment-policy/nationaltreatmentinstrument.htm](http://www.oecd.org/daf/inv/investment-policy/nationaltreatmentinstrument.htm))

## Ukraine has a legal regime conducive to the attraction of investment in its energy sector

For the past few years, Ukraine has made important efforts to raise the quality, efficiency, and fairness of the legal and regulatory framework for investment in the energy sector by adopting laws to improve the

business climate and the business environment, without distinction between foreign and domestic companies.

In the aftermath of the Euromaidan revolution of 2014, the Ukrainian government has been seeking to improve the country's business environment by implementing a series of structural and institutional reforms. Key reforms have included deregulation and improvements within the justice and the tax areas, promotion of anti-corruption policies, and the establishment of a Business Ombudsman Council. Some of these reforms have been introduced to comply with Ukraine's obligations under the EU-Ukraine Association Agreement and the Deep and Comprehensive Free Trade Area (DCFTA) between the EU and Ukraine.

### ***Protection of foreign investors***

Both the 1996 Constitution of Ukraine<sup>3</sup> and the 1996 Foreign Investment Regime Law<sup>4</sup> guarantee the national treatment of foreign economic operators and this applies to foreign investors operating in the energy sector. The Constitution of Ukraine provides that the State protects the rights of all property rights holders and economic operators which are equal before the law (Article 13, para. 4, the Constitution of Ukraine). Through the Foreign Investment Regime Law, Ukraine guarantees the principle of equal treatment between national and foreign citizens or entities with the exceptions provided for by its national legislation and international agreements (Article 7, the Foreign Investment Regime Law). According to the Foreign Investment Regime Law, investors are entitled to certain privileges and guarantees such as protection against legislative changes, protection against nationalisation, compensation, and reimbursement of losses and repatriation of profits.

In addition, the 2003 Economic Code of Ukraine<sup>5</sup> covers definitions of enterprises with foreign investments (Article 116), foreign enterprises (Article 117), and foreign investors (Article 390); types (Article. 391) and forms (Article 392) of foreign investments; the activity of business entities with foreign investment (Article 396); and the guarantees to foreign investors in case of termination of investment activities (Article 399). Since 2016, as seen in the previous chapter of this *Review*, the UkraineInvest agency assists foreign and local investors by providing information, contacts, and project management support at different stages of the investment.

Furthermore, local and foreign investors are protected against unlawful expropriation, in a non-discriminatory manner. According to the Ukrainian Constitution, expropriation of immovable property may be carried out only as an exception for reasons of social necessity, on the grounds of and by the procedure established by law, and on the condition of advance and complete compensation of their value (Article 41, the Constitution of Ukraine). The legal framework for investment protection (both domestic and foreign) is analysed in detail in chapter 4 of this *Review*.

### ***Non-discrimination in domestic regulations applying to investors in the energy sector***

Reforming the energy sector to achieve energy independence and attract FDI is one of Ukraine's main priorities for the country's future economic development. The government has made important efforts to comply with the principles of the EU's Third Energy Package by adopting new laws in the natural gas and electricity markets, simplifying the legal and regulatory requirements for these sectors.

#### *Non-discrimination in the natural gas market*

In April 2015, Ukraine adopted a new Natural Gas Market Law<sup>6</sup> (effective since October 1<sup>st</sup> 2015) as part of the EU's Third Energy Package commitments to create a fully functional natural gas market. In particular, the Natural Gas Market Law transposes the unbundling requirements of Directive 2009/73/EC, allowing for the ownership unbundling as well as the independent system operator model.

According to the Natural Gas Market Law, the authorities and subjects of the natural gas market are required to comply with the principles of proportionality<sup>7</sup>, transparency<sup>8</sup> and non-discrimination<sup>9</sup> when taking decisions (Article 2, Legal basis of the natural gas market).<sup>10</sup> According to the same law, the Regulator in the natural gas market is required to ensure non-discriminatory access to the market for all customers, both domestic and international (Article 4, para.4, Natural Gas Market Law). Besides, the Gas Market Law sets forth the legal basis for a new market model based on good faith and fair competition, free trade and equal treatment of domestic and foreign investors, free choice of supplier for consumers, equal rights for exporting and importing natural gas and non-intrusion of the state into the functioning of the market (Article 3, Natural Gas Market Law).

### *Non-discrimination in the electricity market*

As part of Ukraine's legal commitment to the Third Energy Package on the European electricity markets, the country started reforms to liberalise its electricity sector. In 2017, the Ukrainian Verkhovna Rada adopted the Law on Electricity Market<sup>11</sup>, effective since July 2019.

While establishing the economic and structural electricity market framework, the new Electricity Market Law also promotes energy efficiency, fair competition and equal rights to sell and buy electricity, non-discriminatory and transparent access to the transmission system and distribution systems, non-discriminatory participation in the electricity market, development of alternative and renewable energy, non-discriminatory tariff setting, and free supplier choice (Article 3, Law on the Electricity Market). Also, restrictions in the electricity market shall be managed through non-discriminatory market mechanisms (Article 38, para. 4, Law on the Electricity Market).

### **Investment promotion**

Ukraine's investment framework contains several investment incentives, applicable to both national and foreign investors in line with the principles outlined in the OECD *Declaration on International Investment*. According to Ukraine's Investment Regime Law, investment incentives may be granted to businesses operating in priority sectors of the economy (Article 7, the Foreign Investment Regime Law).<sup>12</sup> More recently, in December 2020, Ukraine adopted a new law on the State Support of Investment projects (also known as Law on "Investment Nannies"), which is Ukraine's new flagship law to attract investment. The Investment Nanny Law, which entered into force on February 13, 2021, offers support and additional guarantees to both foreign and domestic investment projects satisfying certain criteria<sup>13</sup>, in particular regarding the industry of the project's implementation. The total amount of state support would not exceed 30% of the amount of investments in the project.<sup>14</sup>

According to article 3 of the Law on "Investment Nannies", state support provided for investment projects may be in the form of:

- Exemption from certain taxes.
- Exemption from import duty of new equipment and components to it, which are imported for the implementation of the investment project.
- Land-related privileges such as a land plot of state or communal property for use (lease) for the implementation of an investment and the possibility to be the first to acquire the land once the special investment agreement expires.
- Development of infrastructure to facilitate the creation of investment projects at the expense of local budgets or other sources.

Such state assistance will be provided starting from 1 January 2022.

According to Article 5 of the Law on "Investment Nannies", key criteria (not exclusive) of an investment project to be eligible for state support include:

- Being implemented on the territory of Ukraine in the sectors of processing industry (except for the production and circulation of tobacco products, ethyl alcohol, cognac and fruit, alcoholic beverages), extraction for further processing and/or enrichment of minerals and lignite, crude oil and natural gas), waste management, transport, warehousing, postal and courier activities, logistics, education, scientific and technical activities, health, arts, culture, sports, tourism and resort, and recreational sphere.
- Providing for the construction, modernisation, technical, and/or technological re-equipment of investment objects in the sectors specified above.
- Creating at least 80 new workplaces annually, with the average remuneration of employees with remuneration exceeding the average remuneration of employees working at the same location/area in the region by at least 15%.
- Bringing at least EUR 20 mln of new investments.
- Being implemented within five years.

Also, to attract and retain FDI, Ukraine has established investment promotion agencies and dedicated bodies to help and assist foreign investment projects. In 2014, the National Investment Council, a consultative and advisory body under the President of Ukraine, was established. In 2015, Ukraine established a Business Ombudsman, which provides a platform for domestic or foreign businesses to file complaints about unjust treatment by public authorities, state-owned or controlled companies, or their officials (OECD, 2016<sup>[2]</sup>). In 2016, the Ukrainian government established UkraineInvest, an independent advisory agency aimed at promoting investment in the country. UkraineInvest disposes of a user-friendly and regularly updated online portal that helps investors to access information and to follow recent legal and regulatory changes as well as upcoming investment opportunities in different sectors such as energy. Chapter 6 of this report provides a detailed analysis of Ukraine's framework for investment promotion and facilitation.

Following the adoption of the Energy Strategy of Ukraine 2035 (ESU) in 2017, Ukraine has adopted additional laws, regulations, targets and incentive schemes to encourage investment in renewable power and to improve energy efficiency, security, competitiveness, and integrations with the EU energy market, which are further discussed in chapter 4 of this *Review*.

### **Transparency requirements**

Ukrainian and foreign investors have the right to access public information, in line with the 2011 Law on access to public information.<sup>15</sup> In general, laws, regulations, and administrative procedures in Ukraine are published in one of the State official gazettes such as the Official Bulletin of Ukraine<sup>16</sup> and the Governmental Courier or Bulletin of Verkhovna Rada.<sup>17</sup> Some of Ukraine's institutions also make available laws, guidelines in English on their official webpages, thus facilitating foreign investors' access to public information.

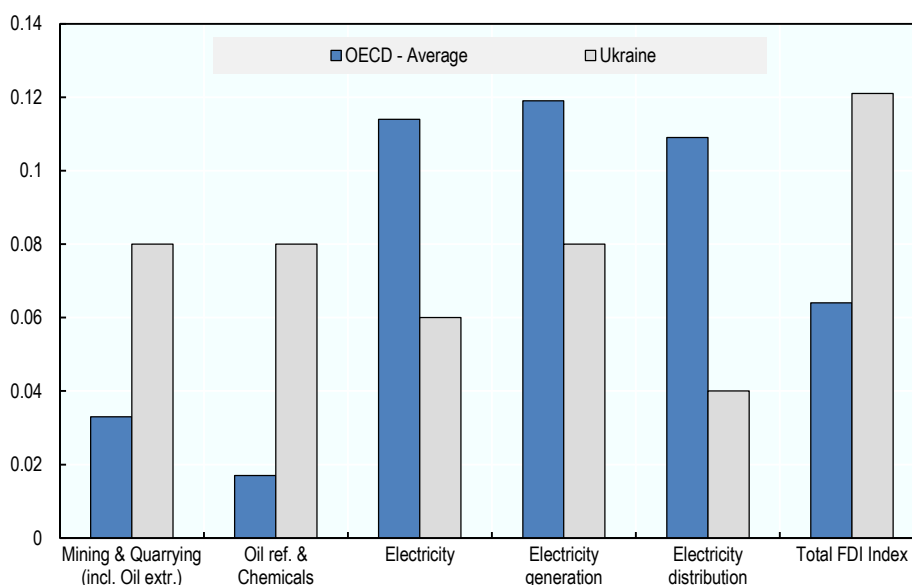
### **Ukraine is open to foreign investors**

As can be seen from above, Ukraine has a relatively open regime for international investment according to the OECD *FDI Regulatory Restrictiveness Index* (FDI index).<sup>18</sup> Exceptions under the OECD *National Treatment instrument* are limited to foreign ownership restrictions in a few sectors that are detailed below. Ukraine maintains a relatively open investment environment in nearly all business activities related to energy. When compared to the OECD average, regulatory restrictions on FDI are lower in the mining and quarrying sector and higher in the other sectors such as oil, electricity, electricity generation, and electricity distribution (Figure 3.1). Nonetheless, the regulatory environment for FDI in the energy sector must not be

seen in isolation from the overall business environment, given that Ukraine's FDI index is considerably higher (1.21) than the OECD average FDI Index (0.064)

When foreign investors incorporate in Ukraine they are generally treated as domestic legal entities, benefiting from the rights and obligations as national investors (OECD, 2016). There are no generalised screening or approval mechanisms for new investments or to establish companies in Ukraine and there are only few horizontal exceptions to national treatment, such as the foreign acquisition of agricultural land. Ukraine does not impose limits on access to local finance and incentives (e.g., tax, public procurement, concessions) or government purchasing markets for foreign-controlled enterprises incorporated on the territory (OECD, 2016<sup>[2]</sup>).

**Figure 3.1. OECD FDI Regulatory Restrictiveness Index, by sectors 2020**



Source: OECD FDI Regulatory Restrictiveness Index, (OECD, n.d.<sup>[3]</sup>)

### ***Measures affecting foreign investment in the energy sector in Ukraine***

Foreign investors in Ukraine have the same basic rights and obligations as Ukrainian investors and, in general, when industry-specific restrictions exist, they apply equally to foreign and Ukrainian operators. There are a few general restrictions on foreign investment in the energy sector, such as the acquisition of land, participation in privatisation processes as well as some restrictions related to national security concerns.

#### *Purchase of state-owned land remains restricted for foreign investors*

According to Ukraine's Land code, the purchase of state and municipal land by foreign legal entities is subject to a specific screening procedure. Foreign legal entities must have a representative office in Ukraine. The purchase requires the approval of the Cabinet of Ministers. In the case of state-owned land, the approval of the Ukrainian Parliament (Verkhovna Rada) is also required (Article 129, the Land Code of Ukraine as amended in April 2021). Moreover, some state-owned lands cannot be transferred to private ownership, including lands of nuclear energy and space system (Article 84, para.4a). These restrictions apply to both foreign and domestic investors.

The law on acquisition of energy lands applies equally to foreign and domestic investors but there are some restrictions. According to Article 116 of the Land Code, legal and natural persons (both foreign and domestic) may acquire property rights of state and municipal land plots on the basis of auctions, as set by the Land Code. Still, there are some restrictions as to the transfer of ownership of lands of the energy system.<sup>19</sup>

### *Restrictions with respect to ownership of agricultural land*

Ukraine, possibly more than other transition economies, has experienced complexities when seeking to establish a formal ownership registration for agricultural land. In 2020, Ukraine adopted the Law on Amendments to Certain Legislative Acts of Ukraine on the Conditions of Circulation of Agricultural Land<sup>20</sup>, abolishing the moratorium on agricultural land that lasted for more than 20 years. As a result of these amendments, since July 2021, individual Ukrainian citizens can acquire up to 100 hectares of agricultural land, while legal entities with 100% local capital will be able to acquire agricultural land starting from January 2024.

At the time of publication, however, foreign nationals and companies with foreign participation are still prohibited from purchasing agricultural land, something that could change with a national referendum as foreseen in Article 130, para. d of the Law on Amendments to Certain Legislative Acts of Ukraine on the Conditions of Circulation of Agricultural Land. In addition, agricultural lands inherited by foreign legal entities are subject to alienation within one year (Article 82, para.4, the Land Code of Ukraine). The law also introduced some limitations and prohibitions for foreign legal entities with Russian participants, terrorism-related organisations, foreign states, unknown beneficiaries, and entities under sanctions. Ukraine should consider further opening its agricultural land for foreign investors to attract more investors and develop not only agricultural but also energy-related industries.

### *Privatisation*

In March 2018, Ukraine adopted the Law On Privatisation of State-Owned and Municipal Property. The privatisation programme is open to domestic and foreign investors, except the following cases:

- Investors that are registered in offshore zones as well as investors coming from countries defined as aggressor of the state.
- Legal entities, beneficial owners of more than 10% of shares of a company residing in a country recognised by the Verkhovna Rada as aggressor of the state.
- Natural persons - citizens and / or residents of the state recognised by the Verkhovna Rada of Ukraine as the aggressor of the state.
- Legal entities registered in a state included in the FATF list of states that do not cooperate in combating money laundering (Article 8, the Law On Privatisation of State-Owned and Municipal Property).<sup>21</sup>

### *Natural monopolies restricting foreign investment in the energy sector*

In Ukraine, as in many other countries and including other Adherents to the OECD *Declaration on International Investment*, certain types of business activities may be pursued only by natural monopolies which are regulated by the Law on Natural Monopolies. The Ukrainian legislation defines a natural monopoly as an activity for which the absence of competition is beneficial to the market due to specific features of production, and products cannot be replaced by equivalent substitutes.

Article 5 of the Law on Natural Monopolies lists a number of energy related activities and markets as natural monopolies, notably:

- Transport of oil and oil products by oil pipelines;

- Transport of natural and oil gas by pipelines;
- Distribution of natural gas by pipelines;
- Storage of natural gas beyond certain volumes defined by the Ukrainian legislation;
- Transport of other products by pipelines;
- Transmission and distribution of electricity;
- Centralised heating supply.

### *Concessions*

Concessions play a central role in the provision of public services in Ukraine.<sup>22</sup> In October 2019, a new Law on concession, developed in accordance with the EU laws, came into force (Law of Ukraine on Concession, 2019).<sup>23</sup> The Law introduces a number of important changes to the Law of Ukraine On Private Public Partnership dated 1 July 2019 (the “PPP Law”) as well as several positive novelties aimed at simplifying the involvement of private capital of both domestic and foreign investors in public-private partnerships. Concessions can be used for project implementation in all fields of economic activities, except for the objects falling under the restrictions for concession according to the Ukrainian legislation, which means, for instance, that concessions in the extraction industry shall be governed by the Law of Ukraine On Production Sharing Agreements. While any legal entity (both domestic and non-resident) can take part in the selection procedure under concession, only a Ukrainian legal entity can become a concessionaire. This means that if the concession tender is won by a non-resident legal entity, such a legal entity shall register a legal entity under Ukrainian law in order to enter the concession agreement.

### *Public-Private Partnerships*

Public-Private Partnerships (PPPs) are viable tools to attract investment in the energy sector. As is further discussed in the chapter of this *Review* on addressing investment in infrastructure, Ukraine PPP legislation is extensive, although it includes some burdens for investors: as determined in article 7 of the Law of Ukraine “on Public-Private Partnerships” (Article 7, para 5. PPP Law)<sup>24</sup>, PPPs are not possible if a public partner is subject to a privatisation procedure. This limitation has affected in practice the potential opportunities for private companies to direct their investments in energy infrastructure, as it has been the case with the six SOE oblennergos that have been in the process of privatisation for the last ten years.

### *National security concerns*

The OECD Investment Instruments recognise that policies for safeguarding national security are an important part of investment policies in many countries. In Ukraine, foreign investor’s activity may be restricted in some sectors or territories for national security reasons (Article 116, para. 5, Economic Code of Ukraine). Circumstances under which a national security exception can be invoked are set out in the Law on Fundamentals of National Security of Ukraine.<sup>25</sup> The latter law gives the list of “potential and real economic threats to the national security of Ukraine”. For instance, some strategic energy sectors (such as fuel and energy resources) are restricted to investment in case of “*ineffective use, insufficient diversification for their supply and the absence of an effective energy-saving strategy*” (Article 7, Law on Fundamentals of National Security of Ukraine). Such prohibitions apply equally to domestic and foreign investors.



## Efforts to reduce administrative burden are producing results and should be pursued

Despite Ukraine's openness to foreign investment, the country suffers from various shortcomings that investors experience when establishing a business which are further described in this *Review*. The Ukrainian energy sector remains vulnerable wide-ranging risks such as controlled pricing, corruption, and favouritism (Bayramov and Marusyk, 2019<sup>[4]</sup>). As is further discussed in chapters 5, 7 and 8 of this *Review*, corruption and favouritism in energy infrastructure projects continue to be of high concern for investors.

For the past five years, Ukraine has improved its performance in the World Bank's *Doing Business* indicators. For instance, in 2020 Ukraine ranked 64<sup>th</sup> out of 190 countries in the World Bank's 2020 edition, ranking 19 positions higher than in 2016 (World Bank, 2020<sup>[5]</sup>). Ukraine has notably improved its performance in issuing construction permits. Despite this progress, when compared with non-OECD countries that are, like Ukraine, Adherents to the *OECD Declaration*, Ukraine is behind countries such as Croatia at 51 and Morocco at 53 (Table 3.1).

**Table 3.1. Ukraine's international rankings**

Indicator	Rank	Past Ranking
Doing Business 2020 edition (World Bank)	<b>64/190</b>	<b>In Doing Business 2019 edition 71/190</b>
Starting a business	61/190	56/190
Dealing with construction permits	20/190	30/190
Getting electricity	128/190	135/190
Registering property	61/190	63/190
Getting credit	37/190	32/190
Protecting minority investors	45/190	72/190
Paying taxes	65/190	54/190
Trading across borders	74/190	78/190
Enforcing contracts	63/190	57/190
Resolving insolvency	146/190	145/190
Global Competitiveness Index Report 2019 (WEF)	<b>85/141</b>	<b>83/140 in 2018</b>
First pillar: institutions	104/141	110/140
Second pillar: infrastructure	57/141	57/140
Third pillar: ICT adoption	78/141	77/140
Fourth pillar: macroeconomic stability	133/141	232/240
2019 Corruption Perceptions Index (Transparency International)	<b>117/180</b>	<b>126/180 in 2019</b>
Rule of Law Index of the World Justice Project	<b>72/128</b>	<b>77/126</b>

Source: Doing Business 2020 (World Bank, 2020<sup>[5]</sup>), Global Competitiveness Index Report 2019 (WEF, 2019<sup>[6]</sup>), Corruption Perception Index 2020 (Transparency International, 2020<sup>[7]</sup>), (World Justice Project, 2020<sup>[8]</sup>).

The 2019 *Global Competitiveness Index of the World Economic Forum* ranked Ukraine 85 out of 141 countries, placing it below countries such as the Russian Federation at 43, Kazakhstan at 55, and Azerbaijan at 58. The *Index* provides additional perspectives on Ukraine's policies and practices when doing business. Despite its good ranking in areas such as digital skills and innovation, the main obstacles for doing business in Ukraine, as perceived by entrepreneurs, remained those signalled above such as inefficient government bureaucracy and corruption. This situation can be observed in other international rankings such as the *Transparency International Corruption Index*. Perceived corruption in Ukraine remains relatively high, not only by regional standards (Ukraine was ranked 117<sup>th</sup> among 180 countries in the *Transparency International's Corruption Perception Index* in 2020). When compared with other non-OECD countries that are Adherents to the *OECD Declaration on International Investment*, Ukraine is ranked alongside countries such as Egypt (117<sup>th</sup>) and below Kazakhstan (94<sup>th</sup>). As it will be discussed later

in this *Review*, the establishment of Ukraine's High Anti-Corruption Court and the restart of the National Agency for the Prevention of Corruption (NAPC) resulted in a 3-point increase of Ukraine's score compared to 2019. Nevertheless, in 2020, the Rule of Law Index of the World Justice Project ranked Ukraine 72nd out of 128 countries, scoring the lowest in the component measuring absence of corruption.

## Outlook and policy recommendations

Ukraine has made important efforts to create an open and transparent environment for foreign investment in the energy sector by adopting new laws reinforcing and simplifying the protection of businesses operating in the energy sector. Under Ukraine's investment regime, foreign and domestic investors are in most cases treated equally.

The country applies rules on ownership that prohibit foreigners from owning a company or operating in specific sectors; it also has rules on acquisitions, which regulate the extent to which a foreigner can acquire stakes in a company operating in given sectors. The number of such sectors is nevertheless limited and is expected to decrease even further, except for those sectors that are seen by the Ukrainian authorities as national security-sensitive due to on-going tensions with the Russian Federation. Public monopolies still apply in some significant sectors such as energy transport, the transmission of electricity, supply and distribution of water, centralised heating supply, and railways (OECD, 2016<sup>[2]</sup>), all relevant to investment in the energy sector.

Despite important progress in the natural gas and electricity market, Ukraine still needs to ensure the coherence and the implementation of its energy sector reform agenda. Laws are not always properly implemented, in particular due to corruption and the presence of oligarchs in the energy sector. Ukraine's high number of natural monopolies in the energy sector, along with the regulatory barriers of some state-owned enterprises in this sector, are also constraints for both domestic and foreign private investment. As of August 2020, Ukraine had 87 natural monopolies conducting economic activity in the energy sector.<sup>26</sup>

- **Consider further liberalisation in sectors that remain relatively closed to foreign investment** as already highlighted in the 2016 *Investment Policy Review of Ukraine*.
- **Finalise the pending reform on land and evaluate the restriction on foreign companies to acquire agricultural land**, especially if Ukraine would like to activate the biofuel industry.
- Given that the energy sector is still characterised by the prevalence of monopolies, **keep strengthening the competition law regime**, notably in the areas highlighted in the 2016 OECD *Review of Competition Law and Policy in Ukraine* such as improving the impartial and transparent functioning of the Anti-Monopoly Committee of Ukraine, and **ensuring that privatisation encourages more competition** in previously monopolistic sectors instead of merely replacing public with private monopolies.

## Note

<sup>1</sup> See <https://zakon.rada.gov.ua/laws/show/605-2017-%D1%80#Text>.

<sup>2</sup> Available in English at: <https://rm.coe.int/constitution-of-ukraine/168071f58b>.

<sup>3</sup> English version of Ukraine's Constitution (1996), <http://extwprlegs1.fao.org/docs/pdf/ukr127467E.pdf>.

<sup>4</sup> English version available at: <https://investmentpolicy.unctad.org/investment-laws/laws/253/ukraine-law-on-the-regime-of-foreign-investments>.

<sup>5</sup> Economic code of Ukraine, (Vidomosti Verkhovnoi Rady Ukrainy (VVR), 2003, № 18, № 19-20, № 21-22, p.144), <https://zakon.rada.gov.ua/laws/show/436-15#Text>.

<sup>6</sup> Law of Ukraine on Gas Market (Vedomosti Verkhovnoi Rady (VVR), 2015, № 27, p.234), <https://zakon.rada.gov.ua/laws/show/329-19#Text>.

<sup>7</sup> According to the proportionality principle, decisions (measures) of authorities shall be necessary and minimally sufficient for the achievement of an objective of general public interest (the Natural Gas Market Law).

<sup>8</sup> According to the transparency principle, decisions (measures) of authorities shall be duly substantiated and notified to the subjects to which they shall apply within a reasonable time before their entry force or effect (the Natural Gas Market Law).

<sup>9</sup> According to the non-discrimination principle, decisions, actions, inactions of authorities shall not lead to: legal or actual scope of rights and obligations of a person which is different than the scope of rights and obligations of other persons in similar circumstances unless such difference is necessary and minimally sufficient for the achievement of an objective of general public interest; Legal or actual scope of rights and obligations of a person which is the same as the scope of rights and obligations of other persons in different circumstances unless such similarity is necessary and minimally sufficient for the achievement of an objective of general public interest (The Natural Gas Market Law).

<sup>10</sup> Available in English at

[www.naftogaz.com/files/Information/Ukraine%20Natural%20Gas%20Market%20Law\\_engl.pdf](http://www.naftogaz.com/files/Information/Ukraine%20Natural%20Gas%20Market%20Law_engl.pdf).

<sup>11</sup> Law of Ukraine on the Electricity market (Vedomosti Verkhovnoi Rady (VVR), 2017, № 27-28, p.312) <https://zakon.rada.gov.ua/laws/show/2019-19#Text>.

<sup>12</sup> The Law of Ukraine On the Regime of Foreign Investments (the Foreign Investment Regime Law), Article 9, available in English at <https://investmentpolicy.unctad.org/investment-laws/laws/253/ukraine-law-on-the-regime-of-foreign-investments>.

<sup>13</sup> Law of Ukraine on state support of investment projects with significant investments in Ukraine, Article 5: Requirements for an investment project with significant investments for the implementation of which state support may be provided, <https://ips.ligazakon.net/document/T201116?an=37>. The law does not apply to investment projects with significant investments in the fields of processing industry such as crude oil and natural gas.

<sup>14</sup> Law of Ukraine on state support of investment projects with significant investments in Ukraine, Article 3. Forms of providing state support for investment projects with significant investments, <https://ips.ligazakon.net/document/T201116?an=37>.

<sup>15</sup> Law of Ukraine on access to public information, (Vidomosti Verkhovnoi Rady Ukrainy (VVR), 2011, № 32, p. 314), <https://zakon.rada.gov.ua/laws/show/2939-17#Text>.

<sup>16</sup> Verkhovna rada of Ukraine, Official Gazette of Ukraine, <https://zakon.rada.gov.ua/laws/main/b19>.

<sup>17</sup> Available at: <https://ukurier.gov.ua/uk/>.

<sup>18</sup> The OECD FDI Regulatory Restrictiveness Index covers 22 sectors, almost all sectors of the economy except health and education. The economy-wide index is obtained by averaging the scores for all 22 sectors. Scores range from 0 (open) to 1 (closed), <https://www.oecd.org/investment/fdiindex.htm>.

<sup>19</sup> Lands of the energy system are lands provided for electric generating objects (nuclear, thermal, hydroelectric power plants, power plants using wind and solar energy and other sources), for objects of electricity transportation to the user, except for cases of placement of such objects. Projects on lands of other purpose (Article 76, Land Code of Ukraine).

<sup>20</sup> See <https://zakon.rada.gov.ua/laws/show/552-20#Text>.

<sup>21</sup> Law On Privatisation of State-Owned and Municipal Property (Vedomosti Verkhovnoi Rady (VVR), 2018, № 12, p.68, <https://zakon.rada.gov.ua/laws/show/2269-19#Text>.

<sup>22</sup> According to the Ukrainian authorities, as of April 2020, 166 concession agreements had been concluded 34 agreements were being implemented in the areas of water supply, electricity, and transport.

<sup>23</sup> Available at: <https://zakon.rada.gov.ua/laws/show/155-20#Text>.

<sup>24</sup> Law (in Ukrainian), <https://zakon.rada.gov.ua/laws/show/2404-17#Text>.

<sup>25</sup> Law No. 964-IV “On Fundamentals of National Security of Ukraine” (19 June 2003), <https://zakon.rada.gov.ua/laws/show/964-15#Text>.

<sup>26</sup> Ukraine’s Anti-monopoly authority keeps a public register. A list of natural monopolies in the country is available at [www.nerc.gov.ua/data/filearch/liitsenziini\\_reestry/reestr\\_monopol\\_energo.pdf](http://www.nerc.gov.ua/data/filearch/liitsenziini_reestry/reestr_monopol_energo.pdf).

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