6 Investment Promotion and Facilation

This chapter analyses investment promotion and facilitation measures and policies in Ukraine, particularly those aiming to foster private sector participation in the energy sector. It examines the overarching institutional framework for investment promotion and facilitation, with a specific focus on the role and activities of UkraineInvest, and highlights key reforms and measures implemented by the government to attract foreign investment in the energy industry. It also identifies remaining challenges and provides recommendations to address them.

Introduction

Investment Promotion Agencies (IPAs) play an essential role in promoting and facilitating investments in specific sectors. IPAs typically support the attraction of foreign investors through their core functions of image building, investment generation, facilitation and aftercare (including dedicated MNE-SME matchmaking programmes), and policy advocacy. Since 2016, the Ukraine Investment Promotion Office "UkraineInvest" has been a key tool of the government's efforts to attract MNEs to the energy sector, providing foreign companies with relevant information on market access and promoting investment bringing advanced technologies in the power, heating and hydrocarbons domestic industries.

Since its inception in 2016, UkraineInvest has implemented a sector-specific work programme to unlock investment opportunities in natural gas, renewable energy and oil & gas. This programme has been aligned with the national objective to strengthen Ukraine's energy security and to improve the investment climate in the country. In this context, the country has launched programmes to facilitate investments and to advance administrative facilitation to retain investors in the country, including recently the 2021 National Strategy to Increase Foreign Direct Investment in Ukraine, which was elaborated with support from the USAID Competitive Economy Program. The renewable energy sector crisis has nevertheless posed challenges to the government and to Ukraine's attractiveness to investors.

Investment Promotion

The institutional set-up: UkraineInvest and the consolidation of an investment promotion agency (IPA)

As discussed earlier in this *Review*, Ukraine's legal framework for investment is conducive to a general openness to foreign investments. In Ukraine, the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) entered in force in 1961, as did the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID) in 2000. Despite some restrictions mainly in the agriculture, transport and real estate sectors, Ukraine guarantees protection from expropriations in its Constitution, and defined as early as 1996 the conditions and procedures associated with it in the Foreign Investment Regimes Act. Over the years, Ukraine has signed 17 free trade agreements with a total of 47 countries, as well as additional international investment agreements with partner countries, to provide substantive protection to foreign investors.

Recently, the 2016 Association Agreement between the EU and Ukraine, including the Deep and Comprehensive Free Trade Area (DCFTA), has provided an anchor for strengthening the institutional framework and modernising activities, including with respect to investment promotion. This impulse has also been supported by the OECD *Declaration on International Investment and Multinational Enterprises*, which, as noted earlier, Ukraine joined in 2017.

Amid the modernisation effort, Ukraine established its Investment Promotion Agency (IPA), UkraineInvest, in 2016. Initially formed as a consultative body reporting to the Prime Minister, UkraineInvest has been transformed into an independent state body led by a supervisory board in 2018 (OECD, 2020[1]). UkraineInvest has a dedicated board to supervise its operations, which includes public sector representatives and independent experts. As part of its mission to help identify investment opportunities, guide investors and provide support to resolve systemic issues investors may face, the agency recognises the particular importance of Ukraine's energy independence and therefore emphasises its support towards the development of oil, gas and renewable energy sources (UkraineInvest, 2020[2]). Energy is designated by UkraineInvest in its 1+4 sector strategy as one of the top priority sectors in terms of investment promotion and facilitation efforts, along with innovation technologies, agribusiness, manufacturing and infrastructure (UkraineInvest, 2020[3]). Investment promotion and facilitation measures are conducted in coordination with UkraineInvest and executive authorities, such as the Ministry of Economy and the Ministry of Energy. Currently, UkraineInvest actively participates in the development of sector-specific programmes to attract, retain and incentivise private investors in the energy sector.

While UkraineInvest offers services to potential investors, e.g. licence and construction approval, assistance with utilities and legal issues, business match-making and cluster programmes, as well as aftercare services, it does not function as an effective one-stop service centre since it does not provide a window into several administrative procedures that are necessary to start and run a business (OECD, 2021[4]). Agencies that serve as one-stop-shop for foreign investors play a key role in facilitating investments. Ukraine may in this regard follow the example of agencies such as the Nigerian Ministry of Power and the Investment Promotion Commission, as these government agencies are in the process of establishing a Green Energy Investment Platform that will function as a one-stop-shop for renewable energy and energy efficiency investment projects. It is worth mentioning that Ukraine already has an easily accessible online investment platform"UAMAP"[1], which is an online interactive map providing up-to-date information on opportunities in Ukraine's energy sector and promoting energy efficiency and renewable investment.

The investment promotion activities implemented by UkraineInvest in the energy sector are aligned with the Energy Strategy of Ukraine until 2035 (ESU), which explicitly stipulates investment attractiveness as a key objective to achieve the objectives of the ESU as part of the overall strategy to build a technically reliable, safe, economically efficient and environmentally friendly energy sector to guarantee the improvement of social well-being[2].

The ESU articulates the objective of improving investment attractiveness as hinging on the fulfilment of six priorities. Namely, it mentions:

- The implementation of EU acquis requirements in the legislation regulating activities;
- The alignment of transparent and strategic decision-making processes with established long-term goals;
- The creation of conditions for the development of innovative solutions and technologies;
- The promotion of a competitive environment and uninterrupted access to markets and existing infrastructure;
- The stability and predictability of the investment attraction policy;
- The targeting of new international investors through a communication policy promoting their entrance to the national market.

As a result, UkraineInvest's investment promotion activities are designed to contribute to enhancing efficiency in the domestic energy sector, as well as to improving its safety and competitiveness. For example, UkraineInvest actively promotes new investment opportunities enabled by recent reforms in the energy sector, that are aimed at increasing the role of renewable sources of energy or at deregulating the hydrocarbon sector, with the launch of open auctions of special permits for oil and gas (UkraineInvest, 2020[3]).

With the launch in July 2021 of the National Strategy to Increase Foreign Direct Investment in Ukraine elaborated with support from the USAID Competitive Economy Program, Ukraine continues to affirm its commitment towards the international investment community. This Strategy, developed at the request of the government by Ernst and Young (EY) in consultation with the Office of the National Investment Council, the Ministry of Economy of Ukraine, and UkraineInvest, provides recommendations to attract investments into promising sectors of the Ukrainian economy. It is built around both cross-sectoral (such as privatisation, export promotion, education, and digital transformation) and sectoral incentives to increase foreign direct investments through the relocation of production facilities or the start of new activities in Ukraine. Moreover, the Strategy is divided into 3 sections: a macro view of the state of affairs regarding FDI, sectoral analytical documents and the proposed Action Plan and Vision until 2030 (EY, 2021[5]).

UkraineInvest's contribution to enhancing the overall investment climate

Ukraine has substantially improved its investment climate over the past few years, climbing 48 places to 64th out of 190 countries in the World Bank's Ease of Doing Business ranking between 2014 and 2020 (World Bank, 2020[6]). The Association Agreement and the Deep and Comprehensive Free Trade Area with the EU also benefit the overall investment climate through the gradual alignment of national laws and regulations to European legislation.

In 2015, the OECD was already warning about the number of public monopolies in Ukraine that restrict private investment in oil and gas pipeline transport, distribution and transmission of electricity, railways, supply and distribution of water and heating, the burial of domestic waste and the production of ethyl alcohol (OECD, 2015[7]). However, the progress made by the government in addressing the concern of public monopolies has supported more openness regarding FDI. Ukraine still applies some restrictions on foreign investments but its overall OECD FDI Regulatory Restrictiveness Index (a measure of statutory restrictions on foreign direct investment) as of December 2019 was higher than the OECD average, and slightly higher than the average of non-OECD countries (OECD, 2018[8]), although Ukraine scored better than the OECD average in the electricity sector.

The investment climate has particularly benefitted from laws addressing specific issues ranging from technical barriers to trade (Law on authorised economic at customs, Law on the joint transit regime and introduction of the national electronic transit system operator) to obstacles to investment such as in the energy (Law on unbundling of Naftogaz), infrastructure (Concession law) or financial services sectors ("Split" law, Law on protection of the rights of financial services consumers). In addition, Ukraine is set to privatise more than one thousand state-owned entities in the coming years, which creates opportunities for investors. Among the key clauses stipulated in the Privatisation Law, the possibility of dispute settlement by means of international arbitration and the possibility of concluding sales agreement under English law demonstrate the efforts made by Ukraine to improve its business climate and attractiveness to foreign investors (UkraineInvest, 2020[3]).

Ukraine has been promoting its openness to attract foreign investment through a number of recent bilateral actions and reforms. Notably, the Law on State Support of Investment Projects with Significant Investments signed by the President in February 2021 will provide investment project incentives amounting to over EUR 20 million and creating at least 80 jobs, the incentives of which will include state support for up to 30% of the investment made or exemption from taxes and import duties relief. Projects in the energy sector are, however, not specifically targeted by this Law, which primarily targets the manufacturing, mining, recycling of minerals, waste recycling and transport sectors, among others.

Examples of recent promotion actions implemented at the bilateral level include the Memorandum of Understanding signed between UkraineInvest and German institutions in March 2021 to establish the "Ukrainian German Digital Partnership" to facilitate greater investment into Ukraine's tech industry. In January 2021, UkraineInvest's Executive Director and the French MEDEF International's CEO also signed a MoU to strengthen and diversify the existing co-operation between Ukraine's IPA and the French private business association.

Despite reforms and the promotion of a positive image, the existence of corruption and vested interest that has characterised Ukraine over the past few years undermines investment promotion efforts. The government attitude towards foreign investment has been varying between a business-friendly agenda encouraged by international partners and the reluctance of local oligarchs and resistance from some key national institutions. The issue of widespread corruption and perceived corruption represents another key obstacle to investment promotion through its direct deterrence effects for foreign investors, but also through the political instability it creates, as was demonstrated by the constitutional obstacles faced by the President when seeking to consolidate anti-corruption institutions.

Ukraine is also the sole member of the Eastern Partnership without special economic zones (SEZ), following their closure in 2016. Ukraine established a legal regime for SEZs in 1998; but a 2005 law abolished both the customs and tax preferences granted to these zones, and zones were formally closed in 2016 (OECD, 2020[9]). Over 50 industrial parks are operating in Ukraine under the 2012 Law on Industrial Parks, which sets out the legal framework without providing special fiscal treatment to residents.

National image-building

Supported by international lenders and partners, Ukraine has made considerable efforts to break with the bureaucratic and opaque culture that has characterised its national business environment. Despite setbacks often illustrating the resistance of local elites who use their inner circles of influence to weaken the pace of modernisation, Ukraine's actions have followed an overall positive trend, strengthening its image as an attractive destination for investment.

Aware of the perception of high risks among foreign investors who seek to enter the Ukrainian market, UkraineInvest has focused its communication strategy on building a positive national image. regular report updates and guides for investors highlight success stories and name the large companies that have already made the decision to invest in Ukraine as a way to crowd in additional investors of all sizes. The government's aspiration to advance the reform agenda in co-operation with international partners often supports the strategic investment promotion activities undertaken by UkraineInvest, which are reinforced by the guidance of its supervisory board.

However, the reality faced by foreign investors when prospecting or entering the Ukrainian market is often challenging. As highlighted earlier in this *Review*, the legal environment and rule of law remain rather weak in Ukraine, marked by the low capacity of the legal system, lengthy and costly arbitration processes to settle commercial disputes and political interference in courts. This is particularly true in the energy sector, which has historically represented a large source of revenues for the state and where modernisation has been hampered by the prevalence of internal power struggles, non-existent competition and an opaque culture.

Among the main reforms, the implementation of Naftogaz unbundling, the Law on Electricity Market and the privatisation drive launched by the government aim to strengthen the business climate for investors by promoting competition and lowering corruption, which is particularly widespread in state-owned enterprises. UkraineInvest emphasises the importance of these reforms and their positive expected outcomes such as the creation of jobs, the attraction of investment and the generation of additional revenues for the state through direct sale proceeds and future tax revenues from new businesses (UkraineInvest, 2021[10]). As described in Box 6.1, an effective communication strategy is crucial for ensuring the success of the reforms.

Box 6.1. Communication strategy as a mechanism to deploy major energy reforms

International experience has shown that communication is critical to the success of major energy reforms. If an effective communication programme is not implemented before, during, and after reform measures go into effect, it is difficult to earn the public's trust and foster understanding of the political decisions that underpin the reform. A well-researched communication programme with informational, attitudinal, and behavioural objectives can enhance the effectiveness of reform.

An effective communication campaign involves mapping key stakeholders, using outreach and two-way dialogue with citizens, conducting opinion research, consulting with stakeholders, creating and testing compelling messages that build awareness of reform benefits, assigning credible messengers, identifying good channels of communication, coordinating within government, setting strategic goals, and communicating consistently with evidence-based messages. Public reactions to reform programmes are highly contextual and dynamic. A well-informed public understands the rationale for reform and greatly improves the likelihood of success.

Ukraine rolled out a communication strategy in support of stiff tariff hikes. The rollout included a 30-second public service announcement that aired on 19 TV stations across Ukraine and appeared on 15 government websites. The announcement was rooted in a detailed understanding of public perceptions; the key messages reflected the public's concern. The effort included involving local media in major cities and making them aware of the energy sector status.

Source: (Heather Worley et al., 2018[11])

Box 6.2. Chile's National Green Hydrogen Strategy and Diplomacy to attract foreign investment

In November 2020, the Government of Chile published its National Green Hydrogen Strategy (Strategy). The Strategy aims at positioning Chile as a global leader in hydrogen production and export. To attain this goal, the Strategy delineates three phases: (i) 2020-2025 for a domestic ramp up and export preparation; (ii) 2025-2030 to consolidate domestic market and develop the export markets; and (iii) 2030 and beyond to export to global markets. The Strategy builds upon the country's commitment to become a carbon-neutral country, the high-quality and abundant renewable resources available in the country, and its demonstrated capability of enabling private investment to deploy large-scale clean energy projects on a competitive basis.

The comparative advantages of Chile for the development of a green hydrogen economy are evident throughout the hydrogen value chain, and offer multiple opportunities for lessons learned and replicability in Latin America. Chile has substantial renewable energy sources and a vast potential to continue expanding them, which strongly complements the development of green hydrogen. Chile has a vast potential for green hydrogen production, of over 160 million tons per year, which correlates with over 1.75 TW of untapped renewable electricity generation potential mapped in the country. The country also has strong potential to develop green hydrogen for complex industrial sectors, including mining, transport, maritime and fishery, transport and heating sectors, which can additionally support a reduction in pollution levels. Developing green hydrogen in Chile can become a leading reference for other countries, as well as becoming an entry point for private investment in the Latin American region.

The government considers the development of the green hydrogen industry a critical enabler to reach its goal of carbon neutrality by 2050 and deliver a socially just energy transition. In 2020, Chile updated its Nationally Determined Contribution and set a firm commitment to achieve Carbon Neutrality by 2050. The government is strongly committed to developing the green hydrogen industry as a critical enabler to reach its goal of carbon neutrality, because green hydrogen could help reduce up to 21% of the country's GHG emissions. The Chilean High-Level Advisory Committee for Green Hydrogen has noted that green hydrogen has the potential to provide for 18% of energy demand, represent a market of USD 2.5 trillion and create about 30 million jobs by 2050. As an example, Chile considers green hydrogen to be a strategic industry that can foster a just transition in the context of the planned closure of coal-fired thermal plants.

Chile's nascent green hydrogen industry could also contribute to a more resilient and sustainable post-COVID-19 economic recovery. Developing green hydrogen infrastructure and projects in Chile could help to stimulate the economy in the post-COVID-19 recovery period, as it would enable new green local employment opportunities and building back better.

In a bid to tap the potential that green hydrogen development represents for Chile, the Ministry of Foreign Affairs and the Ministry of Energy have launched the "green hydrogen diplomacy" strategy, an initiative that, through openness to foreign investment, seeks to transform Chile into a global centre for green hydrogen research, development, production and export. According to the authorities, the initiative aims to boost Chile's promising position with respect to the so-called "fuel of the future", taking advantage of the country's natural potential in terms of renewable energy – particularly solar and wind energy – and the institutional potential that has earned the country international recognition for its political stability, legal certainty and equal treatment of local and foreign investment.

The "green hydrogen diplomacy" strategy will mobilise the Foreign Ministry's human and material resources to publicise the initiative and will work with the Energy Ministry and the government's Economic Development Agency on various key aspects: the definition of appropriate regulatory frameworks, facilities for investments such as the setting aside of public land for projects, the articulation of collaboration in scientific research, the exchange of information about cutting-edge technologies and innovation, the design of financing proposals, and the harmonisation of certification processes and regulation for the production and export of green hydrogen.

Not surprisingly, the implementation of Chile's Green Hydrogen Strategy and Diplomacy has successfully positioned Chile as a major player in the green hydrogen industry and consolidated a pipeline of 40 projects in the country.

Source: (InvestChile, 2020[12]) and (InvestChile, 2020[13])

Investment generation in the energy industry

Between 2015 and 2020, Ukraine has attracted USD 6.9 billion worth of FDI. After the manufacturing sector, which received USD 2.5 billion worth of FDI, the energy sector is the second biggest recipient of FDI with USD 1.9 billion. Within the energy sector, wind and solar energy have particularly benefited from FDI with USD 960 million and USD 900 million respectively invested in Ukraine by foreign investors. FDI in the energy sector has created 500 jobs and 30 new production facilities since 2015 (UkraineInvest, 2021[14]).

In Ukraine, eleven countries have invested more than EUR 2 billion of FDI. Among key investors in the energy industry, Norway accounted for 19% of FDI in Ukraine's renewable energy in 2020, and companies such as Scatec Solar, Norsk and NBT have invested in solar and wind energy generation (Kyiv Post, 2021[15]). There are companies, such as TIU Canada, which declared that Ukraine's energy reforms, as well as the free-trade agreement signed between Canada and Ukraine, were drivers of its decision to invest, which demonstrates that investment promotion efforts yield positive results (UkraineInvest, 2021[14]).

More specifically, energy projects represent an important part of the overall value of announced greenfield FDI projects. Between 2003 and 2017, it was estimated that a total of 15% announced greenfield FDI projects were in the energy sector, with 7% in the coal, oil and natural gas industries, and another 8% pertaining to renewable energy (OECD, 2020[9]).

The aforementioned data shows that FDI has been essential to unlocking private capital for the renewable energy industry. However, if Ukraine wishes to promote investments in disruptive energy technologies, as green hydrogen, it is necessary to retain and attract RES investors because this specific type of hydrogen can only be produced with renewable energy sources. Moreover, in 2020, the EU named Ukraine among its priority partners in the implementation of the European Hydrogen Strategy. Ukraine's gas transmission system is the second largest in Europe and one of the largest in the world, while the pipelines could be used to transport green hydrogen to the EU. Considering Ukraine's ambition to develop renewable energy resources, as well as its potential in solar and wind generation, its potential in the field of green hydrogen is significant (East European Association for the Development of the Hydrogen Economy, 2020[16]).

As a result, Ukraine is currently being supported by international partners such as the EU and the United Nations Economic Commission for Europe in a study of the feasibility of developing a green hydrogen industry in Ukraine. Current barriers to the development of this sector include the outdated and non-harmonised regulatory and technical safety regulations, as well as the lack of awareness of businesses and officials in this area, but the development of the hydrogen industry could generate substantial investments in Ukraine while reducing Ukraine's carbon footprint (UNECE, 2021[17]).

Investment facilitation and administrative simplification efforts

Success with investment climate reforms but challenges remain

Ukraine has implemented a wide range of reforms aimed at facilitating investment and simplifying its administrative framework, which is often seen as overly bureaucratic by foreign investors. The progress of Ukraine in terms of rankings illustrates the rapid pace of reforms that should benefit companies and investors. The improvement of the business climate has been supported by the policy advocacy activities that UkraineInvest undertakes, although companies' operations and investors' sentiment remain affected by a challenging institutional environment slowly adjusting to new realities.

Policy advocacy consists of actions to monitor the investment climate (through international rankings, surveys, or meetings with business) and formal or informal feedback to the government on how to improve the investment climate (such as meetings with high ranking officials, participation in taskforces and councils, reports or public awareness campaigns). Through their interactions with foreign investors, IPAs are best placed to understand their challenges and expectations, and can accordingly provide invaluable insights and feedback that enriches the policy-making process and contributes to enhancing the overall investment climate. UkraineInvest is particularly active in this domain, as demonstrated by its EaP-beating range of policy advocacy activities, from meetings with heads of state to public awareness campaigns and the production of reports (Table 6.1).

Table 6.1. Policy advocacy activities of IPAs

Activity	% of OECD IPAs	Azerbaijan	Belarus	Georgia	Ukraine
Meetings with the private sector or business associations	97%	✓	✓	✓	✓
Informal feedback to the government on investment climate	97%	✓	✓	✓	✓
Tracking of rankings (e.g., WEF, WB)	94%	✓	✓	✓	✓
Meetings with the prime minister / president / other agencies	90%		✓		✓
Participation in a taskforce on investment climate reforms	90%	✓	✓	✓	✓
Production of reports or position papers	87%	✓			✓
Consultation with foreign offices, embassies, consulates	84%	✓	✓	✓	✓
Public awareness campaigns or events	74%	✓	✓		✓
Surveys of foreign investors	65%	✓			
Inputs on Regulatory Impact Assessment	42%	✓			✓
Surveys of domestic firms investing at home/abroad	35%	✓			
Surveys of expats	19%	✓			

Source: (OECD, 2020[18])

As measured by the OECD *FDI Regulatory Restrictiveness Index* that was calculated in December 2019, Ukraine energy sector often scores better than the average of OECD countries. Focusing on the energy sector, the electricity sector measured by openness in both electricity generation and distribution is particularly open to FDI compared to OECD average. Oil refinery and chemicals industries, as well as mining and quarrying industries (excluding oil extraction) are, however, more restrictive to FDI than the average of OECD countries.

The improvement of Ukraine's rank as part of the World Bank *Doing Business* assessment should also be mentioned. Ukraine ranked 64th out of 190 countries in the overall ranking in 2020, up 48th places since 2014, but important disparities between indicators must be noted. Ukraine ranks well in terms of dealing with construction permits (20th) or getting credit (37th), whereas getting electricity and resolving insolvency seem to be particularly complex in Ukraine with a respective rank of 128th and 146th. This reflects the difficult situation in the energy sector and a constrained legal system suffering from capacity limitations and delays. Despite recent reforms targeting the energy industry, and the electricity market specifically, as well as the judiciary, the *Doing Business* ranking shows that additional issues need to be addressed to create greater practical impacts for companies (World Bank, 2020[6]).

These issues hamper the enhancement of Ukraine's competitiveness. As measured by the World Economic Forum's *Global Competitiveness* report, Ukraine ranked 85th out of 141 countries in 2019, sliding two places compared to 2018. The WEF report identifies the financial system, macroeconomic stability and the institutional environment as being among the key impediments to Ukraine's competitiveness (World Economic Forum, 2019[19]).

Indeed, investors face challenging realities on the ground, experiencing obstacles that range from poor enforcement of legal obligations in a constrained legal system to the complexity of tax system and corruption interfering in judicial processes. Transparency and predictability of government actions represent another challenge for investors that weigh on their decisions to invest or reinvest in the country. The modification of the green feed-in tariffs, the obstacles faced by the executive power to establish independent anti-corruption bodies and the resistance of local elites are examples of increasing uncertainty and the perception of risk among investors, which creates a challenging environment to attract and maintain investment.

Promotion tools designed for foreign investors

UkraineInvest makes available to investors analytical materials with the latest regulatory policy, institutional and strategic developments and statistics, which serve as useful tools to showcase its investment promotion activities. In the latest version of the "Ukraine Invest Guide: Explore your opportunities" published on March 2021, UkraineInvest provides data on key indicators that are relevant to investors, including GDP growth, FDI flow, average exchange rate, consumer price index and macroeconomic trends. The Guide also contains a regulatory overview of the country and sectoral investment opportunities, from energy and infrastructure to mining and manufacturing. It also explains the government to business services offered to foreign companies and outlooks of the investment climate. To demonstrate the government's policy coherence efforts, the Guide has introductory notes by the President of Ukraine, the Prime Minister and key Ministers illustrate the mobilisation of the Government to improve Ukraine's investment attractiveness. The description of the UkraineInvest Supervisory Board and CEO gives a practical and strategic dimension to this objective (UkraineInvest, 2021[10]).

In this Guide, UkraineInvest provides a broad overview of the recent and expected policy developments aimed at improving the business climate, while advertising its competitiveness as an investment destination, such as comparatively low labour costs associated with available and skilled workforce. It also expands on Ukraine's endowment of natural energy resources and the number of years of reserves of traditional energy resources, such as gas, oil, uranium, and coal. Here, UkraineInvest could consider readjusting the focus of its promotion and attraction efforts from coal-generated power to renewable energy.

The Guide dedicates one section to describing the investment promotion achievements and initiatives specifically targeting the energy sector. Such achievements include the 2019 Law on Electricity Market improving competition in the sector, the unbundling of Naftogaz operations and the development in 2020 of a wholesale short-term market allowing gas transmission system operator to exchange products on a trading platform. UkraineInvest also advertises the plans to increase energy efficiency through an origin warranties system, improve wood market regulation through tender processes, and stimulate waste management investments through transparent regulation and coherent waste disposal system. In addition, the Guide categorises investment energy projects by forms of investment allocation – privatisation, concession, equity investment, debt financing – while listing investment energy projects' status, key financial indicators, estimated amount of investments, and type of investment opportunity.

It is important to note that the energy sector is not expected to directly benefit from investment advantages and incentives under the 2021 Law of Ukraine on State Support for Investment Projects with Significant Investments in Ukraine. Advantages include notably fiscal incentives that can amount to up to 30% of the investment value and the so-called "investment nanny" programme to provide custom advice to investors committing at least EUR 20 million and creating over 80 jobs (Verkhovna Rada of Ukraine, 2020[20]). The energy industry can, however, expect indirect benefits, considering that this incentive programme covers projects in the transport, waste management or enrichment of minerals sectors, among others.

Separately, UkraineInvest has been specifically involved in promoting and facilitating investment in Ukraine's oil and gas sector, with the publication in July 2021 of the Ukraine Oil & Gas Industry Guide 2021 in collaboration with the Association of Gas Producers of Ukraine, the Ministry of Energy of Ukraine, the Naftogaz Group, the Ukrainian Geological Survey and the law firm CMS. This Industry Guide provides analytical information to international investors about the oil and gas sector, including a presentation of reforms implemented over the past five years, a description of the sector's legal, tax and fiscal framework, as well as investment opportunities for foreign investors (Association of Gas Producers of Ukraine, 2021[21]).

Investor servicing

Besides efficient communication relative to legal changes and to the improvement of the overall business climate, investors are often attentive to the services they could receive as part of their investment. An important concern for investors is being able to submit their queries to the right interlocutors, which is significantly facilitated by one-stop shops to access all government services available to investors in a given country. These services generally include information, assistance and clearances necessary for establishing and operating a company. A one-stop shop allows investors to navigate more easily through administrative procedures and requirements by centralising the processes and hosting officials from different government agencies and ministries under the same roof.

In Ukraine, UkraineInvest assumes this role, but the range of services offered in terms of facilitating administrative procedures are not as comprehensive as those of other IPAs with dedicated one-stop services centres. While Ukraine's IPA offers licences and construction approvals, as well as assistances with utilities, legal issues and other business matters, it does not provide tax registration and work permits (OECD, 2020[9]).

UkraineInvest also advertises the convenience and transparency of the online platform *Diia* that is expected to include all government to business services by 2024, such as the registration of LLCs within 24 hours and free or charge, the obtention of permits and licences for transport, water use and other, the submission of waste declarations, the access to government data on land use, companies register and the provision of custom support on administrative procedures (UkraineInvest, 2021[10]).

So-called aftercare or retention measures are also influential in companies' decisions to stay in the country and reinvest. UkraineInvest provides existing investors with such services aimed at triggering reinvestments or at least maintaining existing investments. UkraineInvest undertakes a wide range of aftercare activities compared with other EU Eastern partner countries such as Azerbaijan, Belarus or Georgia, but could further improve its offer to align with OECD practices (Table 6.2) (OECD, 2020[9]).

Table 6.2. Aftercare services of IPAs

Activity	% of OECD IPAs	Azerbaijan	Belarus	Georgia	Ukraine
Structured trouble-shooting with individual Investors	81%	✓		✓	✓
Database of local suppliers	65%	✓	✓	✓	
Matchmaking service between investors and local firms	65%	✓			✓
Linkage programmes	58%	✓			✓
Cluster programmes	48%				✓
Mitigation of conflicts (e.g. between investors & authorities/ communities)	45%	✓			✓
Capacity-building support for local firms	39%	✓			
Assistance in recruiting local staff	39%				
Ombudsman Intervention	26%				✓
Personnel recruitment programmes	23%				
Training or educational programmes for local staff	19%				

Source: (OECD, 2020[18])

Investment incentives and tax systems for energy companies

Inventory of incentive regimes

In order to modernise the energy infrastructure, it is essential to focus on sustainable alternatives and attract low-carbon FDI in accordance with EU approaches. Hence, the Ministry of Energy of Ukraine was, as of July 2021, developing the Integrated National Plan for Energy and Climate 2021-2030, which would combine agreed goals, policies and measures for energy efficiency, environmental protection and renewable energy. As part of this plan, the Ministry of Energy would determine the volume of annual support quotas and auctions schedules for 2021 and indicative forecasts of annual support quotas for 2022-2025. Pursuant to Article 9-3 of the Law of Ukraine “On Alternative Energy Sources”, proposals on annual support quotas are prepared taking into account Ukraine’s international commitments on renewable energy development, Ukraine’s Energy Strategy, and the Generation Capacity Assessment Report and Transmission System Development Plan (see Chapter 2).

Broadly speaking, the main investment incentives provided in the energy sector pertain to renewable energy. The establishment of an auction system is seen as central to supporting the development of renewable electricity, as defined in Law of Ukraine № 2712-VIII “On Amendments to Certain Laws of Ukraine on Ensuring Competitive Conditions of Electricity Production from Alternative Energy Sources”. Key provisions include: (i) mandatory participation in the auction from 2020 for solar power stations with a capacity of at least 1 MW and wind farms with a capacity of at least 5 MW; (ii) receipt by the winners of the auction of state support for the sale of "green" energy for 20 years under PPA agreement; (iii) provision of the opportunity to participate in auctions for all types of renewable generation; (iv) possibility to receive a surcharge of up to 10% of the auction price for the use of Ukrainian equipment.

Heat production from renewable energy sources is incentivised through the 2017 Law of Ukraine №1959-VIII "On Amendments to the Law of Ukraine "On Heat Supply" to stimulate heat production from alternative energy sources”. This law provides for the establishment of tariffs for thermal energy from alternative sources set at 90% of the current tariff level for thermal energy generated from gas.

Over the course of 2018-2019, a number of laws and regulations of NEURC were adopted to create incentives for investment in renewable energy and to facilitate the construction of new generation capacities. Most notably, Law №2517--VIII “On amending some laws regarding investment attractiveness of construction of renewable energy objects” eased regulatory requirements for the construction of wind farms and other renewable energy generation objects; and Law №2628--VIII further eased regulatory requirements for the construction of renewable energy generation objects and allow the construction on different types of land plots without legal change of purpose (OECD, 2020[22]).

In terms of tax incentives, investments made in renewable energy can benefit from 100% corporate income tax exemption over a defined period (tax holiday) and a permanent exemption on trade taxes, such as import duties, VAT on imports, or exports taxes. The acquisition of renewable power sources or energy saving equipment for own-use of electricity production is also exempt from customs duties (OECD, 2020[9]), and companies can benefit from 75% land tax discount for land that is used for the generation of energy from renewable energy sources (OECD, 2020[22]).

Energy companies are also expected to benefit from programmes aiming at increasing energy efficiency of households and industrial facilities through attractive loan conditions (“Warm loans”). However, the feed-in tariffs introduced in 2009 and anticipated to last until 2030 were among the most attractive in Europe and were expected to be one the main instruments to attract investors into the renewable energy sector, but they were abandoned by the government.

A legal regime for special economic zones (SEZ) was established in Ukraine in 1998, but a 2005 law abolished both the customs and tax preferences granted to these zones, and zones were formally closed in 2016 (OECD, 2016[23]). Similarly, the 2012 Law on Industrial Parks set out the legal framework for industrial parks of which over 50 are currently in operation in Ukraine, excluding special fiscal treatment for residents (OECD, 2020[9]).

Ongoing tax reform

In order to align its legislation with OECD recommendations and ensure the attraction of quality investment, Ukraine passed a major tax reform in 2020. The new law[3] clarifies or simplifies a number of elements, and contains important provisions affecting cross-border transactions based on the OECD base erosion and profit shifting (BEPS) project. As such, the tax reform influences non-residents activities in Ukraine quite significantly by amending the definition of permanent establishment, establishing a general anti-avoidance rule and defining a mutual agreement procedure (Deloitte, 2019[24]). Other positive developments for foreign investors include the lifting of restrictions relative to interest rates for borrowing in foreign currency.

Concerns by investors about the overly complicated tax system in place in Ukraine are also being addressed, albeit less energetically, considering the need to consolidate fiscal revenues and the current high level of tax avoidance. For instance, a law passed in 2020[4] introduced simplification or redefinition of procedures for individual entrepreneurs, such as procedures relative to penalties as part of the non-compliance with submission deadlines or in case of technical failure or mistakes (Deloitte, 2020[25]).

Ukraine's regulatory policy to improve the investment climate in the country

Administrative simplification efforts

As mentioned earlier, an important element of administrative simplification and investment facilitation that greatly benefit investors is the establishment of a one-stop shop to access all government services. UkraineInvest performs this function as part of its mandate but this excludes the provision of tax registration and work permits. Nevertheless, it offers licences and construction approvals, as well as assistance with utilities and legal issues, which can significantly reduce transaction costs for businesses. The use of a Customer Relationship Management system by UkraineInvest covering all organisational units also enables the tracking of investors at each stage of the investment process, which ensures better and targeted support (OECD, 2020[1]).

Besides UkraineInvest, other entities also support investment facilitation by providing businesses established in Ukraine with advantages, which could indirectly attract foreign investors willing to use their business in Ukraine as a strategic location to export their products. For example, the creation of Ukraine's Export Credit Agency in 2019 intends to boost Ukraine's export competitiveness and is particularly important in terms of providing Ukrainian exporters with affordable financing instruments and insurance together with the country's State Export-Import Bank (Ukreximbank). Ukraine Investment & Trade Facilitation Centre (ITFC) also advertises its role in supporting deregulation efforts, fiscal reforms, currency control liberalisation and financial sector development, which can all benefit foreign investors. ITFC lists electric power and the oil and gas industries as its priority sector of intervention (Ukraine Investment & Trade Facilitation Center, 2016[26])

The adoption of the Law of Ukraine No. 2314-VIII on "Deregulation of the Oil and Gas Industry" in 2018 has simplified regulatory procedures relating to oil and gas exploration and production activities, and reduced the number of permits and approvals. Notably, the Law eased land use and the construction of wells outsides cities. The Law also stipulates that approval of state authorities is no longer required for the exploration and commercial development of oil and gas fields, and that there is no mandatory registration and approval of transfer of geological information.

In early 2019, Ukraine launched a series of licensing rounds in the oil and gas sector with the opening of a public tender for 12 blocks under a PSA covering a total area of 15 600 square km, and 38 onshore blocks under royalty/tax terms. The terms of the PSAs have been improved with a simplification of the permitting system, and adjusted rules for access to gas aimed at increasing the attractiveness of Ukraine as a destination for foreign investments. Foreign investors could also participate in the block offering under royalty/tax terms via a local subsidiary company. However, results from the different rounds highlighted a lack of foreign involvement.

In the energy sector, NEURC is particularly attentive to administrative simplification, as is shown by the reduction in documents required to obtain a licence, which now ranges from 1 to 6 documents required to constitute the whole package necessary for submission. The digital platforms, from which businesses can get information on licensing and submit documents to obtain licences, also facilitate their operations, as in the case of the Unified State Portal of Administrative Services and the websites of NEURC and the State Service of Geology and Subsoil of Ukraine (OECD, 2020[22]).

In addition, Ukraine is taking steps to ease the regulation for small energy producers that do not pose risks to the balance of the energy system. For example, the Law of Ukraine "On the Electricity Market" stipulates the right for household consumers to install solar or wind generating installations in their private households with a capacity not exceeding 50 kW without a licence. Other types of consumers, such as energy co-operatives, are now also allowed to generate electricity from solar, wind, biomass, biogas, hydro, or geothermal energy with a capacity of up to 150 kW without licence (OECD, 2020[22]).

Regulatory policy-making and quality

To ensure quality policy-making that takes into account investors' concerns, the authorities have developed several initiatives aimed at enabling investors to communicate their complaints through different channels. UkraineInvest acts as the first interlocutor by providing investors with one-stop support where they can find reliable, current information as well as advice on doing business in Ukraine. As part of this mandate, UkraineInvest also guides investors through government agencies at all levels and helps to resolve systemic issues that investors may face (UkraineInvest, 2020[2]). Through its central position interacting with executive, advisory and legislative bodies, UkraineInvest is able to identify the main issues and inform policy-making.

The Temporary Special Commission on Protecting Investors' Rights, which was created in 2020 by the Parliament, is another regulatory channel aiming to reform and develop Ukrainian investment legislation, and deal with business complaints. Created in the context of the Covid-19 crisis, it acknowledges the competition existing between countries to attract investors and the interference of individual government officials in business operations in Ukraine. As a result, this special commission envisions the creation of simple and clear investment legislation that could be a source of competitive advantage, and the use of parliamentary control to support businesses in a timely manner (Interfax, 2020[27]).

As part of the Law "On State Support for Investment Projects with Significant Investments in Ukraine", the government has created an "Investment Nanny" programme for investments worth over EUR 20 million creating at least 80 jobs. This programme provides investors with custom assistance by a dedicated investment manager, enabling large investors to navigate the complex administrative environment more easily and communicate the issues they are facing. The communication of issues at the micro level could then inform decision-making regarding the most common issues faced by large investors, with a view to offering solutions by filling legislative gaps or change regulations.

Moreover, international partners and lenders assist Ukraine in developing high-quality policies and reforms. Alignment of national legislation with EU acquis and norms boosting liberalisation and modernising the legal framework, as well as compliance with conditionality and technical assistance associated with IMF lending, improve the overall regulatory and institutional environment in Ukraine. Meanwhile, the application in Ukraine of OECD best practices and recommendations contained in the *OECD Declaration on International Investment and Multinational Enterprises* and the *OECD/G20 Inclusive Framework on base* *erosion and profit shifting* (BEPS) provides Ukraine with useful tools to solve regulatory and policy challenges.

Outlook and policy recommendations

Ukraine has been able to attract investors through a series of policies that allow investors to participate in the energy market. UkraineInvest has promoted opportunities to invest in the renewable energy sector, the electricity market and the oil and gas industry.

Ukraine has stimulated investments in the energy sector by introducing tax, customs and land use incentives, which have led to the creation of investment opportunities. Nevertheless, the country is still promoting investment opportunities and the privatisation of power generation with coal. This is a major challenge as it could create stranded assets that will limit the green energy potential of the country.

- **Further align the promotion and attraction of investment efforts with Ukraine's international commitments on decarbonisation and reduction of greenhouse gas emissions**. Ukraine has the opportunity to foster the attraction of green and renewable energy sources, as well as energy efficiency companies, to consolidate its pathway as a green economy and to attract investors that generate positive environmental impacts to the country.
- **National image-building should strike a balance between promoting Ukraine's attractiveness and addressing foreign investors' needs and expectations through realistic targets and a pragmatic agenda of reforms**.
- **Implement a CRM system allowing customer feedback and regular evaluation**. These services should be offered to foreign investors as part of aftercare activities, as they would enable UkraineInvest to gather information on the success and shortcomings of its investment promotion and facilitation actions. Such information would then help improve foreign investors' satisfaction with regards to the services that UkraineInvest provides.
- **Ensure predictability and certainty of government actions by maintaining the conditions offered to investors over time**. A history of honouring long-term government commitments, such as feed-in tariffs, special economic zones, without alteration of initial conditions would lower investors' perception of risks and enable the increase of FDI flows to the country.
- **Evaluate the incorporation of a one-stop-shop investment platform for renewable energy and energy efficiency projects that encompasses all the information and procedures to de-risk projects and scale up investments in the sector**.

Notes

[1] See https://uamap.org.ua.

[2] Energy Strategy of Ukraine until 2035, 2017, https://razumkov.org.ua/uploads/article/2018_Energy_Strategy_2035.pdf.

[3] Draft Law "On Amendments to the Tax Code of Ukraine on Improving Tax Administration, Removing Technical and Logical Mismatches in the Tax Legislation".

[4] Law of Ukraine No. 786-IX "On amending the Tax Code of Ukraine as regards taxpayers' accounts functioning and simplification of procedures for individual entrepreneurs".

References

Association of Gas Producers of Ukraine (2021), *Ukraine Oil & Gas Industry Guide 2021: Embracing investment opportunities*, https://agpu.org.ua/images/pdf/guide21-web.pdf. [21]

Deloitte (2020), *Tax Reform 2020: Changes in Law No.466-IX*, https://www2.deloitte.com/ua/en/pages/press-room/tax-and-legal-alerts/2020/2020-08-11-tax-reform-2020.html. [25]

Deloitte (2019), *Ukraine tax reform 2020: BEPS legislation is adopted in the first reading*, https://www.taxathand.com/article/13673/Ukraine/2020/President-signs-BEPS-tax-reform-into-law. [24]

East European Association for the Development of the Hydrogen Economy (2020), *Ukraine Hydrogen Valley Pilot Project: Development of a Hybrid Park of Wind & Solar Power Plants*, https://ec.europa.eu/regional_policy/rest/cms/upload/26092020_035002_green_hydrogen_ukraine.pdf. [16]

EY (2021), *National Strategy to Increase Foreign Direct Investment in Ukraine, Section 1: The View from Above*, https://ukraineinvest.gov.ua/wp-content/uploads/2021/08/FDI-Strategy-Section-1-The-View-from-Above-ENG.pdf. [5]

Heather Worley, E. et al. (2018), “Designing Communication Campaigns for Energy Subsidy Reform”, https://documents1.worldbank.org/curated/en/939551530880505644/pdf/ESRAF-note-10-Designing-Communication-Campaigns-for-Energy-Subsidy-Reform.pdf. [11]

Interfax (2020), *The Verkhovna Rada of Ukraine has Created a Special Commission for Investors Protection. What will it work on?*, https://en.interfax.com.ua/news/blog/668157.html. [27]

InvestChile (2020), *Government presents “green hydrogen diplomacy” to attract foreign investment*, https://blog.investchile.gob.cl/government-presents-green-hydrogen-diplomacy-to-attract-foreign-investment (accessed on 25 October 2021). [12]

InvestChile (2020), *Green hydrogen will create 100 000 jobs and generate US$200,000 million in investment over the next 20 years*, https://blog.investchile.gob.cl/green-hydrogen-will-create-100000-jobs-and-generate-us200000-million-in-investment-over-the-next-20-years. [13]

Kyiv Post (2021), *Ukraine-Norway business overview: corruption no-go for Norwegian investors - KyivPost - Ukraine’s Global Voice*, https://www.kyivpost.com/business/ukraine-norway-business-overview-corruption-no-go-for-norwegian-investors.html. [15]

OECD (2021), *Sustainable Infrastructure for Low-carbon Development in the EU Eastern Partnership: Hotspot Analysis and Needs Assessment*, Green Finance and Investment, OECD Publishing, Paris, https://dx.doi.org/10.1787/c1b2b68d-en. [4]

OECD (2020), *Investment Perspectives in Eastern Partner Countries*, https://www.oecd.org/investment/Investment-perspectives-in-Eastern-Partner-countries.pdf. [9]

OECD (2020), *Investment Promotion in Eurasia: A Mapping of Investment Promotion Agencies*, https://www.oecd.org/eurasia/competitiveness-programme/Investment-Promotion-in-Eurasia-A-Mapping-of-Investment-Promotion-Agencies-ENG.pdf. [1]

OECD (2020), *Investment Promotion in Eurasia: A Mapping of Investment Promotion Agencies*, https://www.oecd.org/eurasia/competitiveness-programme/investmentpromotionineurasia.htm. [18]

OECD (2020), *Policy Framework for Investment questionnaire. OECD Investment Policy Review Ukraine´s Energy Sector*. [22]

OECD (2018), *FDI Regulatory Restrictiveness Index*, https://www.oecd.org/investment/fdiindex.htm. [8]

OECD (2016), *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas: Third Edition*, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264252479-en. [23]

OECD (2015), *Assessment of Ukraine's Investment Policy Framework: An Overview*, https://www.oecd.org/eurasia/competitiveness-programme/eastern-partners/Overview_2IPR_Ukraine_ENG.pdf. [7]

Ukraine Investment & Trade Facilitation Center (2016), *What We Do*, http://tradecenter.org.ua/eng/about. [26]

UkraineInvest (2021), *FDI in Ukraine in 2015-2020*, https://uae.mfa.gov.ua/storage/app/sites/80/2-foreign-investors-success-stories-presentation.pdf. [14]

UkraineInvest (2021), *UkraineInvest Guide: Explore Your Opportunities. March - May 2021*, https://ukraineinvest.gov.ua/guide/. [10]

UkraineInvest (2020), *About UkraineInvest*, https://ukraineinvest.gov.ua/services-team/about-ukraineinvest/. [2]

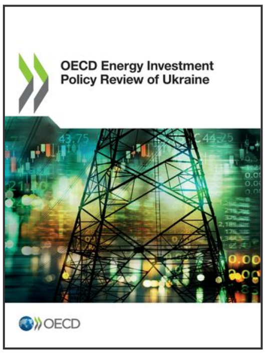
UkraineInvest (2020), *Invest in Ukraine NOW*, https://ukraineinvest.gov.ua/wp-content/uploads/2020/04/UkraineNOW_b.pdf. [3]

UNECE (2021), *Draft Roadmap for Production and Use of Hydrogen in Ukraine*, https://unece.org/sites/default/files/2021-03/Draft%20Roadmap%20for%20production%20and%20use%20of%20hydrogen%20in%20Ukraine_Final%20.pdf. [17]

Verkhovna Rada of Ukraine (2020), *Adopted the Law of Ukraine "On State Support for Investment Projects with Significant Investments" - Verkhovna Rada of Ukraine*, https://www.rada.gov.ua/en/news/News/201157.html (accessed on 25 October 2021). [20]

World Bank (2020), *Doing Business 2020*, https://www.doingbusiness.org/en/doingbusiness. [6]

World Economic Forum (2019), *The Global Competitiveness Report*, http://www3.weforum.org/docs/WEF_TheGlobalCompetitivenessReport2019.pdf. [19]



From:

OECD Energy Investment Policy Review of Ukraine

Access the complete publication at:

https://doi.org/10.1787/6e6e58c6-en

Please cite this chapter as:

OECD (2021), “Investment Promotion and Facilation”, in *OECD Energy Investment Policy Review of Ukraine*, OECD Publishing, Paris.

DOI: https://doi.org/10.1787/76923b91-en