

Closing



Wednesday 10.17.2018, 15:30 to 17:00



David Kramer

Head of the Investment Unit of the Energy Charter Secretariat

He (1974) is Head of the Investment Unit of the Energy Charter Secretariat. He has Dutch nationality. He graduated in 2000 from the Utrecht University with an MSc in Science and Policy. During his studies he specialised in economics and knowledge management.

Previously he spent 14 years at the Dutch Ministry of Economic Affairs in The Hague holding various posts. In his position as Senior Policy Advisor in the Energy Market Department he led complex national projects such as unbundling of the Dutch gas and electricity sectors, and the national rollout of smart metering. Since 2011 he worked on international energy security. He was responsible for bilateral energy relations with a number of CIS countries, the US and France, and for multilateral fora such as the Energy Charter Strategy Group. He was project leader of the Ministerial Conference on the adoption of the International Energy Charter in The Hague, which took place in May 2015.

In his capacity as Head of Unit, he represents the Energy Charter Secretariat on investment-related topics, including the development of the Energy Investment Risk Assessment flagship publication.

Throughout his career, he has attended various programs, including Management Development at the Ministry of Economic Affairs, the US International Visitor Leadership Program and a program on International Relations at the Oxford Institute. He speaks Dutch, English, German and French.



Investment in Energy - The Role of the Regulatory Environment

David Kramer

Good afternoon, your Excellency, Ladies and Gentlemen, It's an honor to be here with you and I thank you all for being here. I would like to thank IPEC for inviting me here. Today I am speaking on behalf of the Secretary General of the Energy Charter Secretariat Dr. Urban Rusnák, who unfortunately could not be here today as he is in China. He sends you all his warmest greetings. I apologize for not presenting in Persian, unfortunately my Persian is not rich, so I do it in English.

Let me first say that I understand that today's circumstances for Iran are not the easiest ones for your country. I want to underline that the relationship between Iran and our organization stands as it is. We are also open to further the cooperation with Iran.

Today I would like to talk about the policy options that governments have in this world full of change and also the relationship to the Energy Charter Process. I will focus on the role of governments in this new era for energy investment, describing some of the measures that governments can take to attract investment to the energy sector. I will also give you an overview of the relationship between Iran and the Energy Charter Process and what we can do, what we can offer to governments and investors.

Let me go back in time a bit, to explain where we are coming from. If you go back 40-50 years, the energy sector was mainly state driven. Since then the economy of the world has undergone quite some development; many countries have introduced changes on part of liberalization and privatization of their energy sectors. It's a fact that energy markets are more and more connected, not only for coal and oil anymore, but today also for gas and electricity. Governments are again trying to define their own role. They are still very

strong market players, but today they also set the scene for other players. So, governments need to balance the interests of themselves and interests of the parties who are active in the market. Many individual countries and regions are developing new kinds of regulations. For instance, in the EU, Western Africa and in Asia new models are coming forward based on new principles. The big challenge that we all face is; How to come to a secure and clean energy economy? What does this mean for today's investment?



Energy transition over the ages

- From state driven energy sectors ...
- ... through liberalisation and global competition ...
- ... by shaping new regulation ...
- ... towards a secure and clean energy economy.

There are signs that the global investment in energy is in decline. I think this is not a very hopeful sign, especially if you look at the UN goals that the world wants to attain with regard to access to sustainable and clean energy. However, sometimes we are surprised by technology disruptions. If you look at the drop of the price of solar cells and the impact of new technologies in shale oil and gas, this has had very much impact on the market in a way that we never could have predicted before. This might go on if you see new technologies like 3D printing, the impact of IT on energy streams and connecting the downstream with the upstream of the energy sector, when consumers become prosumers. These are potential technology disruptions which can impact the direction of energy investments.



Recent developments in energy investments

- Signs of decline in global investment in energy
- Technology disruptions
- Modernisation of investment treaties
- Globalisation of energy interconnectivity

Then, to continue to set the scene -I am neither going to give a technical presentation nor an economical one, but really the governmental side- today, some countries are withdrawing from certain treaties but we also see other developments regarding investment treaties in general. Bilateral and multilateral treaties are being scrutinized whether or not they should live up to modern investment protection standards, allowing investments to flow more easy to different countries, but also to balance out better on the one hand the right to regulate that governments have, and, on the other, the investment protection that investors deserve when they are investing in the energy subsectors of the country. Then, what is the role of the government? Let me focus here on investment promotion. I think a lot of activities are being undertaken regarding investment promotion such as tax breaks, tax incentives and also the set-up of promotional agencies. Let's also look at the investment basics, the fundamentals. The fundamentals are to shape the legal conditions by the governments to give companies the license to operate. What does this mean? When you are an investor, you want to be certain that you are treated equally; we are talking about the equal treatment of foreign and domestic investors and the respect for property rights. In case that expropriation takes

place, that at least you are rightfully compensated, and you can be sure that the legal system enables contracts to be enforced. The legal system should be open and fair for you to take part in it as an investor. These are legal conditions that government can shape.

Then, in setting goals investors like predictability, which means that the governments have a role to set clear goals and to act accordingly, because having a plan is not the same as putting it into action. With regard to decision making, it may be expected that governments act in a transparent and fair way to all, and that the decision making hopefully takes place in a well-coordinated, inclusive and swift manner. This is the ideal world for many investors. I cannot say that it is already the case in all countries of the world. Finally, the regulatory environment should be independent, including permissions and tariffs that should be developed in a predictable and fair way.



The role of governments in the new era for cross-border energy investment

Shaping the investment climate by setting the preconditions...

- **Legal conditions**
 - Equal treatment of foreign and domestic investors
 - Respecting property rights
 - Contract enforcement and land rights
 - Accessibility of the legal system
- **Setting goals and acting accordingly**
- **Sound and transparent decision-making**
- **A predictable and fair regulatory environment**

Now, coming to our organization. The International Energy Charter – the name of our organization – started in 1991 after the collapse of the former Soviet Union, when the Cold War was ended as an initiative to unite East and West. In this context I mean that Europe on



the one hand and the States from the former Soviet Union on the other decided to cooperate with regard to energy, backed by countries like the US, Canada, Australia and Japan. There was a logic in it because the former Soviet Union needed to be build up again and the West wanted to play a part in its reconstruction and to be reassured of having energy. So, there was a logical end. It was imperative that trust had to be rebuilt. This resulted in 1991 in the European Energy Charter, a political declaration of intent, which is legally non-binding. The governments participating in this charter decided to develop a treaty, this is called the Energy Charter Treaty that was adapted and signed in 1994 in Lisbon. It contains provisions on investment protection and free flow of energy. It means when energy flows from country A to country B through country C, it can have uninterrupted guaranteed flow. Moreover, it contains provisions on the settlement of disputes. These are three pillars of the Energy Charter Treaty, which is a legally binding treaty. It was shortly followed by a protocol on energy efficiency which gives guidelines to implement in energy efficiency.

In 2015, a new political declaration was adopted which is called the International Energy Charter. It is also a non-binding political declaration. The difference with the 1991 declaration is that it is a global one. It is not only between the former Soviet Union and Europe anymore. Nowadays it is about five continents taking part in the International Energy Charter.

Our decision making body is a Ministerial conference; The Energy Charter Conference. The members of the treaty are also the members of the conference and I have the humble task together with my colleagues at Energy Charter Secretariat in Brussels to facilitate the Energy Charter Conference.

You can see the map of the countries that are taking part in our organization (in page 90). I will not explain it in full detail, but the most important is that in the middle and in the dark green area you see the countries that are included in the Energy Charter Treaty; these are 51 countries and the European Commission for the EU and Euratom. It is my pleasure to announce to you that Jordan will become the most recent member to the Energy Charter

Conference. On the 12th of December they will become contracting party to the Energy Charter Treaty. Some other countries are also in the process of acceding to the treaty. What is important is not only the legal side, but also the cooperation between countries taking part in this. They work on the basis of building mutual trust. It is a platform for international cooperation.

In 2003, Iran was invited as observer to the Energy Charter Conference. In 2014, Iran has actively contributed during the negotiations on a new political declaration, the International Energy Charter, which lifted the Energy Charter Process to global scale. Iran signed this International Energy Charter Declaration in November 2016 in Tokyo. Since then, Iran has been very much involved in different activities and we have been involved in activities alike on the Iranian side. Our Secretary General has visited Iran a few times. The most recent example of this is the 12th International Energy Conference here in Tehran, where the Secretariat has played an active role. We have done a training program and we are working on a report together. Also, we have a memorandum of understanding with Tehran University. And it was my pleasure these days to cooperate with the World Petroleum Council and the Niroo Research Institute.



The International Energy Charter

- 1991 European Energy Charter - political declaration
- 1994 Energy Charter Treaty (ECT) - international law
- 1994 Protocol on Energy Efficiency & Related Environmental Aspects (PEEREA) – principles, framework, guidance, cooperation
- 2015 International Energy Charter - political declaration
- Decision-making body: the Energy Charter Conference
- Facilitated by: the Energy Charter Secretariat, Brussels

ENERGY CHARTER PROCESS CHART

as of 1 April 2018



MEMBERS (54)

Sig	Ret	EEC	IEC	Country
2007	2013	2006	2015	Afghanistan
1994	1997	1991	2015	Albania
1994	1997	1991	2015	Algeria
1994	1997	1991	2015	Armenia
1994	1997	1991	2015	Australia
1994	1997	1991	2015	Azerbaijan
1994	1997	1991	2015	Belarus
1994	1997	1991	2015	Belgium and Luxembourg
1994	1997	1991	2015	Bulgaria
1994	1997	1991	2015	Canada
1994	1997	1991	2015	Croatia
1994	1997	1991	2015	Cyprus
1994	1997	1991	2015	Czech Republic
1994	1997	1991	2015	Denmark
1994	1997	1991	2015	Egypt
1994	1997	1991	2015	Estonia
1994	1997	1991	2015	European Union
1994	1997	1991	2015	EUROATOM
1994	1997	1991	2015	Finland
1994	1997	1991	2015	France
1994	1997	1991	2015	Germany
1994	1997	1991	2015	Greece
1994	1997	1991	2015	Hungary
1994	1997	1991	2015	Iceland
1994	1997	1991	2015	Ireland
1994	1997	1991	2015	Japan
1994	1997	1991	2015	Kazakhstan
1994	1997	1991	2015	Kyrgyzstan
1994	1997	1991	2015	Latvia
1994	1997	1991	2015	Lithuania
1994	1997	1991	2015	Malaysia
1994	1997	1991	2015	Moldova
1994	1997	1991	2015	Mongolia
1994	1997	1991	2015	Montenegro
1994	1997	1991	2015	Netherlands
1994	1997	1991	2015	Norway
1994	2000	1991	2015	Poland
1994	1997	1991	2015	Portugal
1994	1997	1991	2015	Romania
1994	1997	1991	2015	Russian Federation
1994	1997	1991	2015	Slovakia
1994	1997	1991	2015	Slovenia
1994	1997	1991	2015	Spain
1994	1997	1991	2015	Sweden
1994	1997	1991	2015	Switzerland
1994	1997	1991	2015	Tajikistan
1994	1997	1991	2015	The FTR Macedonia
1994	2001	1991	2015	Turkey
1994	1997	1991	2015	Ukraine
1994	1997	1991	2015	United Kingdom
1994	1996	1991	2015	United States
1994	1995	1991	2015	Uzbekistan

OBSERVERS (41)

Country	EEC	IEC
Bangladesh	2015	
Bahrain	2015	
Belize	2015	
Bhutan	2015	
Bolivia	2015	
Bosnia and Herzegovina	2015	
Brazil	2015	
Canada	1991	
China	2015	
Colombia	2015	
Croatia	2015	
Cuba	2015	
Czechia	2015	
EAC	2015	
ECOS	2015	
EDRMS	2015	
ES	2015	
ES Sahel	2015	
Gambia	2015	
Guatemala	2015	
Haiti	2009	
India	2015	
Iran	2015	
Iraq	2015	
Italy	1991	
Jordan	2007	
Kazakhstan	2015	
Kyrgyzstan	2015	
Madagascar	2015	
Mali	2015	
Mauritania	2014	
Mexico	2012	
Moldova	2015	
Morocco	2015	
Niger	2015	
Nigeria	2015	
Pakistan	2005	
Pakistan	2014	
Panama	2015	
Paraguay	2015	
Peru	2015	
Senegal	2015	
Serbia	2001	
South Korea	2015	
South Sudan	2015	
Spain	2010	
Tanzania	2015	
Togo	2015	
Tunisia	2015	
Ukraine	1991	
USA	1991	
Yemen	2014	



INTERNATIONAL ORGANISATIONS WITH OBSERVER STATUS

(by decision of the Energy Charter Conference)



IPEC 2018





Cooperation with Iran



- Iran signed the International Energy Charter on 25 November 2016, thus acquiring Observer status



Vice-President Ebtekar & SG
Urban Rusnák (May 31, 2016)



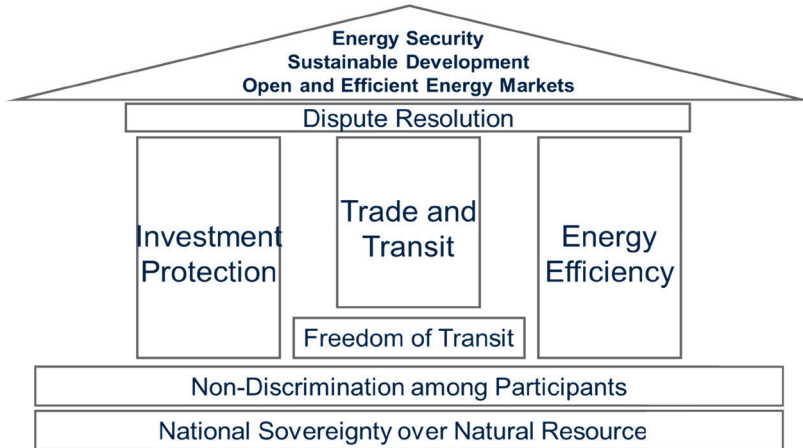
Iran signs International Energy
Charter (November 2016)



Minister Zangeneh & SG
Rusnák, (June 2018)

- As Observer Iran attends the Ministerial Energy Charter Conference, the Strategy Group and the Implementation Group

Coming back to the principles of the Energy Charter Treaty. There are three main pillars; investment protection, trade and transit, and energy efficiency. Investment protection is to make sure there is a balanced interest of investors and governments providing investment protection. Trade and transit rules guarantee the free flow of energy and energy goods. On energy efficiency we have guidelines which governments can implement. All this is based on principles of energy security, sustainable development and open and efficient energy markets. Let me highlight that regarding energy security, quite often the security of supply is the only aspect of energy security that is being mentioned, but we look at the balanced interest of security of supply, security of demand, and security of transit. This is also what you see reflected in members of our organization. There is a balanced interest between different members on the producing and on the consuming side.

INTERNATIONAL
ENERGY CHARTER*The principles of the ECT*

What instruments do we offer? If conflict arises, and it actually happens sometimes in the world of energy, we have the option that member countries can try to solve their conflict through mediation, through our conflict resolution center. We are strongly promoting amicable settlement of disputes. Though, in the end the Energy Charter Treaty provides the option of dispute settlement through arbitration, domestic courts or any other pre-agreed mechanism. The Secretariat doesn't have any active role in investment disputes under the Energy Charter Treaty, unless the parties request to make use of the good offices of the Secretariat to facilitate an amicable solution of the dispute.

We have a number of model agreements for cross border energy projects and other model agreements that governments may use. We have training programs and relevant publications. Moreover, we have an Industry Advisory Panel which brings together 60 of the world's largest

energy companies. The Industry Advisory Panel advises the Energy Charter Conference, which is an overseas opportunity to give advice and to consult to the countries directly. There are two tools that I would like to highlight which we have recently developed and which each government may use. One is the investment facilitation toolbox that is not a toolbox that you can carry around to take your tools with you, but it is a set of policy options which governments can implement in the pre-investment phase. It's a set of none binding options to overcome existing barriers for investment.



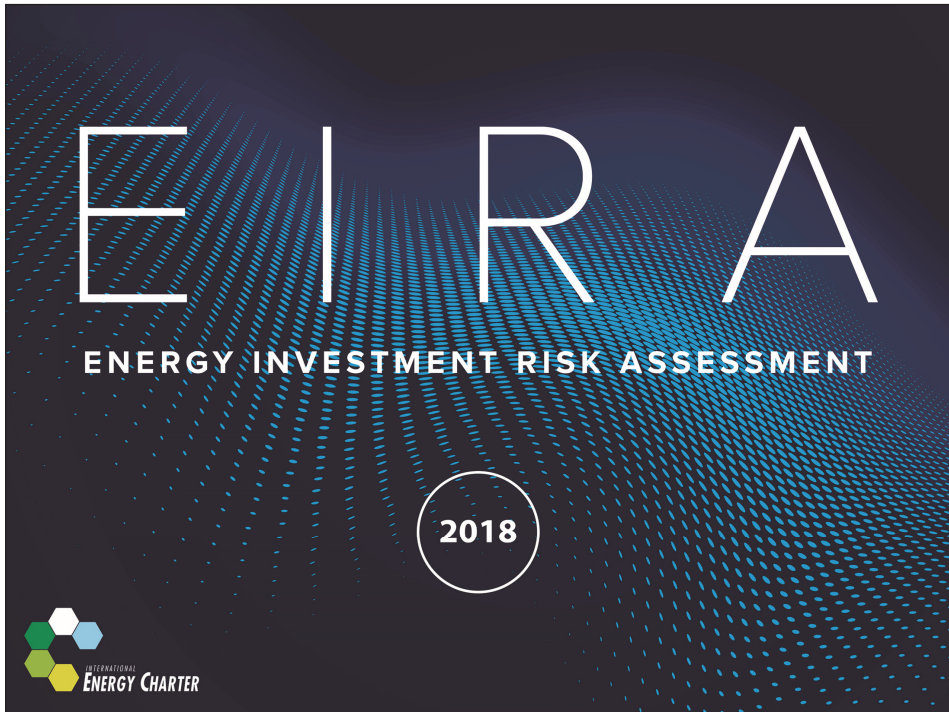
Instruments of the Energy Charter Secretariat

- Conflict Resolution Centre
- Model agreements for cross border energy projects
- Assisting Observers with accession to the Energy Charter Treaty
- Trainings and publications
- Industry Advisory Panel
- Investment Facilitation Toolbox
- New flagship publication:
 - Energy Investment Risk Assessment (EIRA)

Now, let's present you our new report, the Energy Investment Risk Assessment (EIRA). It is a publication which aim is helping countries to develop an effective strategy to ensure investment confidence. To make sure that investment confidence is retained over time, it



contains individual country profiles which highlight specific policy, legal and regulatory risks related to energy investment and how you can mitigate this risks through government actions.



The primary target group is the government. It is not an economic analysis. It does not assess political, geopolitical, technology issues or natural hazards and you can also not assess risk in a country by looking at this publication only. If you are planning to invest in a country, you also need to look at economic and political side. We help the governments to identify strengths and areas for improvement, so government can use it as a tool to improve their investment climate.



Energy Investment Risk Assessment

What is EIRA ?

- Assesses specific policy, legal and regulatory risks to energy investment
- Targeted at policy-makers and investors
- Participation by 30 member and observer countries in 2018

What does EIRA not include?

- Economic, geopolitical & technological risks
- Does not rank countries



EIRA Launch 3 October 2018

Vice-President for Energy Union Maroš Šefčovič in his opening words:

“EIRA is not yet another Report. It is a tool which will help governments and investors assess risks in the policy, legal and regulatory environment related to investment in energy.”



EIRA has been launched on the third of October in Brussels and we had a very big launch event. EIRA was warmly embraced by vice-president for Energy Union of the European Commission Maroš Šefčovič who indicated that it is not yet any report and the governments can make and should make use of it. Thirty countries are participating in the publication in 2018, 20 of them are members of the Energy Charter Treaty and 10 are observer countries.



EIRA countries 2018

ECT member countries		ECT observer countries	
Afghanistan ²	Kyrgyzstan	Bangladesh	Nigeria ^{2,3}
Albania	Latvia	Chad	Rwanda
Armenia ²	Liechtenstein	The Gambia	Senegal
Belarus ^{1,2}	Moldova	Jordan	Swaziland
Bosnia and Herzegovina	Mongolia ²	Kenya	Uganda
Croatia	Montenegro		
Georgia	Norway		
Greece	Romania ²		
Hungary	Slovakia		
Kazakhstan ²	Ukraine ²		

¹⁾ Also took part in 1st stage of the EIRA pilot in 2016

²⁾ Also took part in 2nd stage of the EIRA pilot in 2017

³⁾ Including extended country profile, enabled by a Voluntary Contribution

Let me highlight what the risk areas are that we assess in this report. These areas are unpredictable policy and regulatory change, discrimination between foreign and domestic investors and thirdly the risk of breach of state obligations. To assess these risks, we have identified four indicators which are a measure for these risks. These indicators are fact-based, not opinion-based, and we collect the information from governments and external parties from the different countries, check and counter check it.



The first indicator: policy and regulatory change. We don't assess whether a goal that a country has set is right or wrong, but we do assess whether a country has predictable goals, especially whether or not the goals set for the energy sector are really being implemented. In practice, we have seen countries have goals in place for the relatively short term, up to 2020. The question is whether this is enough for investor confidence? If we look at the global challenges of today, are the signals of the investors set by the goals from governments strong enough? We believe that if the governments properly communicate intended changes well in advance and in a clear way, then it contributes to investor confidence.

Secondly, on the management of decision-making processes we are of the opinion that complex institutional governance may lead to adaption of suboptimal choices and potentially conflicting laws or policies. We evaluated how governments coordinate policy making: if draft energy plans and draft laws are being developed, are the stakeholders -like you all here in the room- being officially consulted or not, is transparent governmental decision making being promoted? These are factors that we look into.

Thirdly, if you look at the regulatory environment and investment conditions, we assess the independence and effectiveness of the energy regulator. Some countries have one energy regulator and some have five, so that can all be effective but is it also in practice? How independent can the regulator act, also depending on the way they are funded?

Finally, on the rule of law indicator I can highlight that with rule of law we really look at whether or not countries comply to national and international obligations. So, we don't look into other aspects of the rule of law like human rights or corruption. There are many other publications that are looking into these aspects, we look at the fact whether or not governments comply to their national and international obligations, how they settle investor state disputes, and if they have options for amicable dispute settlement.



EIRA Risks and Indicators

RISK AREAS	INDICATORS			
	Foresight of policy and regulatory change	Management of decision-making processes	Regulatory environment and investment conditions	Rule of law
Unpredictable policy and regulatory change	✓	✓		✓
Discrimination between domestic and foreign investors		✓	✓	✓
Breach of State obligations				✓

The foundation for EIRA 2018 was laid in 2016 and 2017. We had a first pilot report 2017 with nine countries participating on a voluntary basis and this resulted in a non-public version of EIRA. The work was welcomed by our industry advisory panel, by the international community, and by the countries that participated in the project.

Also, we drew some lessons from it. These are reflected in the public 2018 edition of the report.

I think there are a few key reflections that we can derive from our research. First, energy transition is an inevitable reality. EIRA aims to help governments to accept this reality and encourage them to deal with uncertainties in relation to such a transition.

We also have woven energy transition aspects in our research, for instance whether or not the government's nationally determined contribution (NDC) in UN also contains goals on CO₂ reduction for the energy sector. Secondly, it is important to acknowledge that investment takes place in resource rich countries even when they do not have an adequate legal or regulatory framework. For this reason, we sometimes see that resource rich countries are less motivated to improve their regulatory environment.

Finally, I would like to highlight the positive role of the principles of the Energy Charter Treaty which are also reflected in the regulation of the participating countries in shaping energy sector policies.



To conclude; for next year we hope that Iran will also take part in this very interesting publication. It is one of the instruments that we have. I think that governments have many options themselves to enhance the investment climate being either through investment promotion or by applying high international standards. We can offer a platform for this and



look forward to our continued cooperation.

Thank you for your attention.



Conclusion

"Governments have many options to enhance the investment climate, by investment promotion and by applying high international standards in policy, laws and regulations.

The International Energy Charter provides common rules for energy security, assists with relevant instruments and offers a platform for multilateral cooperation."