“The lingering economic malaise across most of the OECD – along with societal concerns such as climate change, social exclusion and insecurity – has pointed to the need for regulatory systems that are more effective in averting serious crises, promoting growth and protecting citizens. Reforms to improve the quality of regulation provide a real opportunity to stimulate economic activity at domestic level.”

ANGEL GURRÍA
OECD Secretary-General

“Regulation is key and regulating well is critical. It’s critical for the economic conditions of a country, the potential to develop, to grow to be competitive, to be attractive to foreign direct investment.”

ROLF ALTER, Director
OECD Public Governance and Territorial Development

“There is nothing more important to the progress of our economies and societies than good regulation. By “good” regulation, is meant the sort that attains legitimate ends for public policy in cost-effective ways; regulation that serves to enhance the wellbeing of the community at large.”

GARY BANKS, Chair,
Regulatory Policy Committee
Dean, Australia and New Zealand School of Government
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INTRODUCTION: REGULATORY POLICY AND GOVERNANCE

Laws and regulations govern the everyday life of businesses and citizens. They are essential instruments, together with taxes and spending, in attaining policy objectives such as economic growth, social welfare, environmental protection and globalisation. But, when poorly conceived, they can be ineffective in achieving their objectives while imposing unnecessary costs on citizens and businesses.

For countries in Latin America, good regulation is of particular importance to making the region’s institutional framework and business climate more conducive to competition, trade and investment, which helps bridge the large gap in productivity levels in relation to the advanced economies and support inclusive growth.

After a full decade of convergence with advanced economies and important progress in addressing inequality, Latin America’s average growth will fall below the average of OECD countries in 2015 for a second consecutive year (OECD/ECLAC/CAF, 2015). Medium-term prospects are not encouraging either. These developments reflect well-known domestic weaknesses, illustrated by below par productivity and investment growth paired with the external environment’s deterioration and key social challenges, including high poverty rates, inequality, and large levels of labour informality.

To confront the challenges of boosting the prospects of rapid growth in the medium and long term, Latin America needs to pursue policies to promote innovation, business activity, structural reforms and competitiveness. Regulatory policy stands as one of the main levers to achieve these objectives.

How can countries ensure that regulation is necessary, well-done, effective, and that it actually meets the needs of companies and citizens? In 2012, OECD countries adopted a very aspirational instrument on the quality of their rule-making process: the OECD Recommendation on Regulatory Policy and Governance which sought to disseminate the institutional framework and the tools aimed at “regulating well”.

2012 Recommendation on Regulatory Policy and Governance

1. Explicit whole-of-government policy for regulatory quality
2. Principles of open government, including transparency and participation
3. Oversight mechanisms and institutions
4. Regulatory Impact Assessment (RIA)
5. Programme reviews of existing stock of regulation
6. Performance reports on regulatory policy
7. Consistent policy on role and functions of regulatory agencies
8. Effective systems for review of legality and procedural fairness
9. Risk assessment, management and communication
10. Co-ordination mechanisms for multi-level regulatory coherence
11. Subnational regulatory management capacity and performance
12. International Regulatory Co-operation (IRC)
The 2015 Regulatory Policy Outlook provides the first evidence-based, cross-country analysis of the progress made by OECD countries in improving the way they regulate. It is based on the 2015 Indicators of Regulatory Policy and Governance, which are the results of a unique OECD survey to 34 countries and the European Commission.

» OECD countries have generally committed at the highest political level to an explicit whole-of-government policy for regulatory quality and have established a standing body charged with regulatory oversight.

» Implementation of regulatory policy varies greatly in scope and form across countries. While RIA has been widely adopted, few countries systematically assess whether their laws and regulations achieve their objectives in practice. Stakeholder engagement on rule making is widespread in OECD countries, taking place mostly in the final phase of developing regulation.

» The national executive government has made important progress over the last decade to improve the quality of regulations. Parliaments, regulatory agencies and sub-national and international levels of government need to be more engaged to ensure laws and regulations are evidence-based and efficient.

» The impact of regulatory policy could be further improved by addressing shortcomings in the implementation and enforcement of regulations and by considering new approaches to regulatory design and delivery such as those based on behavioural economics.

Figure 1. Adoption of an explicit whole-of-government policy for regulatory quality and formal requirements for regulatory policy tools

![Figure 1. Adoption of an explicit whole-of-government policy for regulatory quality and formal requirements for regulatory policy tools](image)

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OECD MISSION

The mission of the OECD is to promote policies that will improve the economic and social well-being of people around the world. The OECD provides a forum in which governments can work together to share experiences and seek solutions to common problems. The OECD works with governments to understand what drives economic, social and environmental change.

REGULATORY POLICY COMMITTEE MANDATE

Consistent with this objective, the mandate of the OECD Regulatory Policy Committee (RPC) is to assist member and non-member economies in building and strengthening their regulatory reform efforts. The RPC reunites government officials overseeing regulatory policy from the presidential or prime ministers offices, as well as from the Ministry of Finance, Economy, and Public Administration from OECD countries. It is a platform to help countries adapt regulatory policies, tools and institutions, learning from each other’s experience.
NETWORK ON GOOD REGULATORY PRACTICES

As part of the programme of work of the RPC, an initiative to establish a permanent dialogue on the progress and challenges to promote regulatory quality across Latin American and Caribbean countries was launched. The main objective is to create a network in order to communicate and exchange experiences and practices among experts in the Latin American and Caribbean region and OECD country members. The network will promote the discussion of regulatory improvement activities in the region in the coming years, which will contribute to the better functioning of markets and the improvement of public services.

A part of this initiative, Latin American countries, along with the OECD and the Inter-American Development Bank (IDB), have met three times to discuss progress and exchange practices in regulatory policy, that is, in the actions aimed at improving the quality of regulation to increase their effectiveness to support inclusive economic growth. The first meeting was held in Paris in April 2015, then in Lima in June 2015, and the most recent one in Santiago de Chile on the 26 and 27 of April 2016. Attending countries, including Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Mexico, and Peru committed to work towards the consolidations of the network, by means of deepening their efforts in administrative simplification and the exchange of experiences.

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WHY DO THEY MATTER?

The development of indicators aspires to provide comparative and reliable data and best practice examples on the implementation of regulatory policy. Based on a concrete normative framework adopted by all OECD countries, the 2012 Recommendation on Regulatory Policy and Governance, the indicators help countries to:

• **benchmark** progress made over time both in a regional perspective and in comparison to (other) OECD countries;

• **improve** their regulatory systems by identifying priorities for potential reform and opportunities for countries to “leapfrog” on the basis of lessons learnt in other countries;

• **communicate** and gain support for reform measures from both political leadership and the general public.

HOW DOES IT WORK?

The OECD developed in 2015 the Indicators of Regulatory Policy and Governance (iREG), which provide the first evidence-based analysis of the progress made by countries in implementing the 2012 Recommendation. The iREG methodology places a strong emphasis on actual practice and covers thus both de jure and de facto situations in countries.

The data collection is based on a survey with government officials on regulatory practices in three key areas of regulatory policy: Regulatory Impact Assessment, stakeholder engagement, ex post evaluation. This helps establish ongoing dialogue with governments and create common understanding of the role and significance of regulatory policy.

iREG FOR LATIN AMERICA 2016

The OECD Secretariat is currently engaged in a joint project with the Inter-American Development Bank (IDB) to apply iREG in seven countries in the LAC region with a special focus on stakeholder engagement. The countries are:

» **Brazil, Colombia, Chile, Costa Rica, Ecuador, Mexico and Peru**

The results of iREG for Latin America 2016 will feed into a chapter on regulatory policy in the forthcoming 2016 Government at a Glance: Latin America and Caribbean, co-edited by the OECD and IDB. In addition, the OECD develops individual country notes, which will be made available on line.
PRELIMINARY FINDINGS

The preliminary results show that participating countries have started investing in good regulatory practices to improve the quality of regulation. Principles of regulatory policy are included in key documents and most countries covered have set up bodies within government responsible for promoting regulatory policy and reporting on regulatory quality.

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Whilst all countries have established formal requirements for the use of different regulatory tools, implementation in practice varies greatly. In most countries covered, stakeholders are not systematically engaged in the development of regulations and the use of evidence through Regulatory Impact Assessments remains limited in scope and focussed on regulatory costs. All countries covered have carried out administrative simplification measures, but the potential of ex post evaluation to ensure regulations work in practice remains mostly unexplored.


Key recommendations

» Strengthen institutional oversight, including with a function to review the implementation of regulatory policy and check the quality of impact assessments, in order to ensure an effective rule-making process based on evidence.

» Build on existing initiatives in specific areas or institutions to gradually expand the use of regulatory tools such as RIA and public consultation.

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IMPLEMENTING BETTER REGULATORY PRACTICES AND PEER–LEARNING

One of the most important strands of work of the OECD in regulatory policy in Latin America is to promote the adoption of regulatory tools and practices in the process of policy making, implementation and assessment. Work has been carried out with governments in the region to promote the adoption of tools such as RIA and administrative simplification in the region.

IMPLEMENTATION OF THE REGULATORY IMPACT ASSESSMENT SYSTEM IN PERU

RIA is the most important tool promoted by OECD to enhance the quality of regulation and ensure that regulations are “fit for purpose”. RIA is both a tool and a system. It helps public officials and regulators to think critically as to the objectives of the public intervention, whether regulation is the best alternative, and to assess the benefits and costs of the regulation. The programme to be carried out during 2016-17 will aim to implement RIA in the rule-making process, that is, the process through which the government decides to regulate in the face of a public policy problem. The strengthening of policy making through evidence-based tools such as RIA has the potential to raise the contribution of regulation in the promotion of inclusive growth.

EMBEDDING RIA IN THE RULE MAKING PROCESS IN COLOMBIA

Colombia has made significant efforts in implementing a whole-of-government approach to regulatory policy. The government of Colombia has established an initial three-year reform phase, ending in 2017, presented in the Government white paper CONPES 3816: Mejora Normativa. During 2014-15 the OECD advised the Government of Colombia on how to embed RIA in the rule-making process by: identifying, aligning, and raising awareness among the actors that would participate in the RIA system, including officials from the different levels of government, business groups, the press, think-tanks, legislators, and academia; training public officials who develop RIA to facilitate high quality analyses, and piloting the elaboration of the assessment. The output included the RIA evaluation documents, prepared by public officials coached by the OECD, and the development of a RIA Manual to facilitate the adoption of the tool.
PROMOTION OF REGULATORY TOOLS AND PRACTICES AT SUB-NATIONAL LEVEL IN MEXICO

Pursuing and promoting the implementation of principles and best practices of regulatory governance in sub-national governments is one of the key strategies of the OECD to promote economic wellbeing, social inclusion, and inclusive growth. The Recommendation of the OECD Council on Regulatory Policy and Governance states that countries should “promote regulatory coherence through co-ordination mechanisms between the supranational, the national and sub-national levels of government” and “foster the development of regulatory management capacity and performance at sub-national levels of government”.

Heeding this mandate, the OECD Secretariat has undertaken an innovative and pioneering programme of implementation of best practices of regulatory policy at the sub-national level in Mexico. Since 2009, in a strategic association with the Federal Government of Mexico, the OECD has contributed to the advancement of competitiveness and economic performance of regions and localities, through the implementation of principles, recommendations, and best practices, as well as by raising awareness and developing capacities. Programmes to promote the adoption of administrative simplification strategies at local and regional level of Mexico, including the Standard Cost Model, alongside the promotion of RIA at regional level, have proved to contribute to better governance.

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The Reviews of Regulatory Reform of the OECD are comprehensive multidisciplinary exercises that focus on regulatory policy, including the administrative and institutional arrangements for ensuring that regulations are effective and efficient. The peer-reviews are based on the principles expressed in the Recommendation of the OECD Council on Regulatory Policy and Governance that has served as framework to assess regulatory policy in more than 26 countries. For reference to the scope of the analysis in the reviews please refer to: www.oecd.org/regreform/regulatory-policy/by-country.htm.

» The reviews generate detailed recommendations for policy makers to improve the country’s regulatory frameworks.

» Thematic areas include: governance arrangements and administrative capacities that enable regulatory reform; regulatory management tools; review of the stock of existing regulations; regulatory compliance, enforcement and appeal processes; and, multi-level regulatory governance.

» Reviews can cover specific regulatory frameworks in one or more sectors. The specific sectors could include power, water, transportation, telecommunications, and natural resources.

SOME EXAMPLES

Regulatory Policy in Chile – Government capacity to ensure high-quality regulation (2016)

Chile’s Regulatory Review is framed by the Agenda for Productivity, Innovation and Growth, co-ordinated by the Ministry of Economy, Development and Tourism; which constitutes a good opportunity to use regulatory policy as a driver to reform the policymaking framework of Chile. Although Chile has already made substantive progress in making regulations more accessible and communicating administrative requirements, there is room for improvement. The review finds that:

» The lack of a comprehensive regulatory reform programme has reduced the possibility of achieving even better economic outcomes and unleashing resources to boost productivity.

» The regulatory policymaking framework lacks some key features seen in other OECD countries (e.g. stakeholder engagement, RIA, oversight body) that would make sure that regulations are designed in the best way.

Regulatory Policy in Peru – Forthcoming

Progress in Peru has been significant in the last two decades in terms of economic growth, well-being and poverty reduction. Ensuring a framework that enables the design and implementation of high quality regulation and contributes to achieving important social goals still remains a challenge. Peru could:

» Consider issuing a policy statement on regulatory policy with clear objectives, and include this statement as part of a law or another legal document with binding capabilities.

» Establish an oversight body which concentrates most, if not all, regulatory policy activities and tools currently spread across several public entities. The oversight body should have the capacities and resources to enforce those activities, while overseeing regulatory policy as a whole.
Regulatory Policy in Mexico – Towards a whole-of-government perspective to regulatory improvement (2014)

Mexico has a formal policy on better regulation established in the Federal Law of Administrative Procedure (LFPA). The main elements of this policy include the establishment of the Federal Commission for Regulatory Improvement (COFEMER) as the oversight body, the responsibilities of line ministries and regulators, as well as the establishment of regulatory management tools like RIA, administrative simplification, consultation, and reviews of the stock of regulation. The review advises:

» Mexico should embrace a “whole-of-government” culture for regulatory improvement policy, which should be accompanied with a strengthening of the institutional design of COFEMER.

» The governance framework of the Mexican regulatory authorities needs to be strengthened to ensure independence from direct political intervention and particular interests.

» At state and municipal level, institutions and capacities that support regulatory reform should be developed while increasing the degree of political commitment to regulatory quality.

Regulatory Policy in Colombia – Going beyond administrative simplification (2013)

Simplifying formalities affecting business and citizens has been high on Colombia’s agenda. Projects were launched to make the administration more transparent and accountable vis-à-vis citizens. The review’s main findings highlight:

» Colombia’s lacks a whole-of-government policy for regulatory quality and needs to rethink its institutional set-up to implement different regulatory tools in a coherent manner.

» Its requirement for the adoption of a systemic approach to challenge the reasons for/and the logic behind formalities (trámites) and, most importantly, regulations.

» Design and development of a comprehensive regulatory governance approach for sub-national governments and multi-level co-ordination.


The OECD reviewed Brazil’s overall regulatory framework with a special focus on four infrastructure sectors: power, private health insurance, land transport and telecommunications. The review found that Brazil’s capacities for regulatory quality further needed to improve as well as transparency and accountability to reinforce regulatory performance. Recommendations include:

» Improve the institutional capacities to enhance support for regulatory policy across various government areas. Setting up an appropriate architecture for sectoral regulatory agencies and balancing autonomy with accountability will contribute to improved governance.

» Challenges include consolidating the autonomy and status of Brazilian regulatory authorities, reinforcing the strategic organisation for planning and decision making, increasing social accountability mechanisms, and improving co-ordination with competition authorities.
ECONOMIC REGULATORS IN THE LAC REGION

Will the train run on time? Is there clean water in the tap? Will the lights switch on? Can I connect to the internet? A positive answer to these questions hinges on appropriate regulation and, crucially, effective regulators overseeing the sectors and industries that are delivering these key public utility services.

What makes a “world-class regulator”? Through its Network of Economic Regulators (NER) that brings together approximately 80 regulators from OECD members and non-members, including regulators from Brazil, Colombia, Mexico and Peru, responsible for network sectors such as communications, electricity, gas, payment services, transport and water, the OECD is identifying the governance arrangements that contribute to the performance of regulators. Performance Assessment Reviews identify the institutions, processes and practices that help regulators assess their performance, through:

» Diagnostics of regulator’s strategic objectives and mandate, input, process, output and outcome measurement and indicators, use of performance evaluation;

» In-country policy discussions with a team of peer regulators;

» Peer review of key findings and recommendations at one of the biannual meetings of the NER.

Driving Performance at Colombia’s Communications Regulator (2015)

The review finds a close link between the independence of the regulator and performance. It also stresses the importance of focusing on regulatory tools and processes and measuring their quality to help improve performance. It highlights the need to define clear goals to develop output and outcome indicators that can be actionable and useful for the regulator. The review provides a roadmap for strengthening performance assessment by Colombia’s communications regulator and help advance the better regulation agenda of other Colombian regulators and economic regulators of OECD members.

Review of the governance of Mexico’s National Agency for Industrial Safety and Environmental Protection of the Hydrocarbon Sector (ASEA) – Forthcoming

Similar to the review of Colombia’s communications regulator, the review draws on the OECD Best Practice Principles on the Governance of Regulators and the work conducted by the OECD on the performance of regulators, in order to review the organisational performance of ASEA and benchmark ASEA’s external and internal governance arrangements against the Best Practice Principles and practices of other similar regulators.

ASEA is a specialised Federal Government’s entity with technical and administrative independence, which reports to the Ministry of Environment (SEMARNAT). ASEA is responsible for regulating the whole value chain of hydrocarbons industrial activities (exploration, drilling, extraction, refining, transportation/pipeline network, and commercialization involving as far as gas stations and Gas distribution) in terms of industrial safety and environmental protection.

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APPLICATION INSIGHTS IN THE LAC REGION

In the past few years, behavioural economics has been rapidly propelled from the margins of economic policy analysis towards the policy mainstream. Its increased application is helping countries across the world to regulate better based on actual, and not assumed, behaviour.

The OECD has been working at the forefront to understand how behavioural insights can help governments and regulators design policies in such a way that citizens make better decisions and actions for themselves. This work has included developing hands-on diagnostic support for applying behavioural insights. This approach has included:

- Analysis of problems and solutions to be addressed through behavioural insights;
- Multidisciplinary expert advice on regulatory policy, behavioural sciences and data management;
- Specific recommendations and suggestions for testing and experiments.

Protecting Consumers through Behavioural Insights – Regulating the communication market in Colombia

This innovative review focuses on the types of incentives that should be provided to change both provider and user behaviour, and considers where appropriate regulatory interventions may be needed to ensure that these incentives are realised. This work supports the Communications Regulator of Colombia in redesigning its consumer protection regime. This effort has refocused the regulatory framework from “protecting rights” towards making the market function best; this involves encouraging the providers to improve the quality of their services and rates offered in the market and to foster a better understanding of what is being offered and how. The review also makes specific recommendations on possible follow-up experiments to test some of the possible solutions to help communications services consumers better understand the information provided by service operators.

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www.oecd.org/gov/regulatory-policy/behavioural-insights.htm
The OECD is a unique forum where governments work together to address the economic, social and environmental challenges of globalisation. The OECD is also at the forefront of efforts to understand and to help governments respond to new developments and concerns, such as corporate governance, the information economy and the challenges of an ageing population. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies.

The OECD member countries are: Australia, Austria, Belgium, Canada, Chile, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The European Commission takes part in the work of the OECD.