As "market referees", regulators need to be constantly alert, monitoring trends as well as assessing the impact of their decisions. What should be measured? Is it possible to attribute impacts to regulators' decisions? How to make effective use of what is measured? How should the organisational structure and governance be optimised? Addressing these questions effectively can ultimately determine whether trains will run on time, there is clean water in the tap, lights switch on, the telephone and internet work and there is cash in the ATM machines. To help regulators in their quest to better evaluate their performance, the OECD has developed a Performance Assessment Framework for Economic Regulators (PAFER) that looks at the institutions, processes and practices that help regulators improve their organisational impact.

This report applies the PAFER to the external governance of Mexico's energy sector and its three regulatory bodies, the Agency for Safety, Energy and Environment (ASEA), the National Hydrocarbons Commissions (CNH) and the Energy Regulatory Commission (CRE), following a structural reform of the sector and its regulatory institutions. It is complemented by reviews of the internal governance arrangements of the three regulators, constituting a unique and comprehensive body of work on the regulatory governance of Mexico's energy sector. It is part of the Governance of Regulators series, which brings together research and recommendations on what makes "world class regulators", drawing on the experiences of more than 70 regulators from network sectors, including energy, communications, transport, water and payment systems.
Data informing the analysis in the report was collected through desk research, questionnaires completed by the regulators and meetings with the regulators and key stakeholders in Mexico. Senior officials from the National Energy Board (Canada), the Water Commission for Scotland (United Kingdom) and the National Commission for Markets and Competition (Spain) served as peer reviewers. The review was discussed in the OECD Network of Economic Regulators in November 2016. The first phase of the review (published in December 2016) focusing on external governance and co-ordination will be completed by a second phase looking at internal governance of the three agencies (discussed by the NER in April 2017).
Driving performance of Mexico’s energy regulators

This brochure presents the key findings and recommendations of the Performance Assessment Review of Mexico’s energy regulators, focusing on external governance. The review comes at a critical moment in the implementation of the country’s 2013 energy reform and puts forward important recommendations to bolster future work of the regulators. It presents a comprehensive picture of the regulatory governance of Mexico’s energy sector.

The key findings of the review are that sector regulators have successfully navigated the challenges linked to new functions and powers, as well as to interacting with a growing number of public and private sector stakeholders. These ambitious changes call for co-ordination among the various agencies. As the implementation of the reform progresses, there is a clear and urgent need to make the new governance infrastructure more effective.

The review presents a comprehensive set of recommendations on how to do this, looking at the roles and objectives assigned to regulators, the use of inputs and resources, the processes through which these inputs and resources are used and the measurement and reporting on output and outcomes. It will be completed by a second phase looking at the internal governance of the regulatory agencies, constituting a comprehensive body of work on the regulatory governance of Mexico’s energy sector.
2013 structural reforms in Mexico

The government of Mexico, led by President Enrique Peña Nieto, launched a major structural reform in 2013 to modernise several key areas of the country’s economy, including the energy sector. The reform restructured the oil and gas industry and opened access to the country’s hydrocarbon resources to national and foreign, public and private entities, and further opened the electricity sector to private participation.

The reform aimed to increase sector investment and government revenue for the benefit of all Mexicans, as well as to make Mexico a global leader on environmental issues by embedding clean energy targets in legislation. In the power sector, it sought to place downward pressure on prices, facilitate the transition to renewable sources of energy and extend electricity coverage.

Far-reaching modifications were made to the institutional framework with regard to sector regulation, with the strengthening of existing regulators and the creation of new ones (see Figure 1).

Figure 1. Overview of institutional arrangements, pre- and post-reform

Pre reform 2013
DRIVING PERFORMANCE OF MEXICO’S ENERGY REGULATORS

Executive branch

- Bank of Mexico
- Mexican Oil Fund
- SHCP (Ministry of Finance)
- SENER (Ministry of Energy)
- SEMARNAT (Ministry of Environment)
- ASEA (Safety & EP Agency)
- CENACE (Electricity market ISO)
- CENAGAS (Gas market ISO)
- PEMEX
- CFE
- CRE
- CNH

Deconcentrated entities

State-owned productive enterprises

Co-ordinated energy regulators

Post reform 2013-2014
Mexico’s Energy Regulators

NATIONAL HYDROCARBONS COMMISSION
(Comisión Nacional de Hidrocarburos, CNH)

- CNH regulates the “upstream sector” of hydrocarbons, by regulating, monitoring and evaluating the exploration and extraction of hydrocarbons in Mexico.

- Established in 2008, the functions, powers and status of the CNH were strengthened by the reform. It is a Ministerial-level entity governed by two federal laws, which establishes technical, operational, and managerial autonomy for the regulator.

ENERGY REGULATORY COMMISSION
(Comisión Reguladora de Energía, CRE)

- CRE regulates the “midstream and downstream sectors” of hydrocarbons as well as the entire electric power supply chain. It also has responsibilities linked to the regulation of clean and renewable energies.

- Established in 1993, the functions, powers and status of CRE were strengthened by the reform. It is a Ministerial-level entity governed by two streamlined federal laws, which establishes technical, operational, and managerial autonomy for the regulator.

AGENCY FOR SAFETY, ENERGY AND ENVIRONMENT (Agencia de Seguridad, Energía y Medio Ambiente, ASEA)

- ASEA is a multi-disciplinary regulatory agency with the mission of overseeing industrial safety and environmental protection throughout the hydrocarbons value chain.

- Established in 2015 as part of the reform, ASEA operates in a more complex setting, referring to eleven federal laws and attached to the Ministry of Environment and Natural Resources (SEMARNAT), relying on the Ministry for financial and administrative management.
Review findings and recommendations

ROLES AND OBJECTIVES

The 2013 reforms created a new governance architecture, generating an urgent and permanent need for enhanced co-ordination and role clarity due to the increased number of federal institutions and other stakeholders intervening in the energy sectors. The reform elevated CNH and CRE to Ministerial-level agencies, which are governed by two streamlined federal laws. Conversely, created by the reform, ASEA operates in a more complex setting, referring to eleven federal laws. It is a de-concentrated body of the Ministry of Environment and Natural Resources (SEMARNAT). While the Ministry of Energy (SENER) retains the lead in setting sector policy, the reform has increased SEMARNAT’s functions in the area of hydrocarbons. In the first years of reform implementation, co-operation has taken place mostly on an informal, operational level and will be further structured by the Co-ordinated Council for Energy Sector (Consejo de coordinación del Sector Energético, CCSE), established in September 2016.

KEY RECOMMENDATIONS

- Advocate for the operationalisation of the CCSE as the high-level co-ordination body for reform implementation, with transparent working plans and sub-committees, as well as powers to resolve disputes. The CCSE should include all major energy actors to steer implementation and report on progress.

- Clarify and align goals and priorities of the agencies, aiming to minimise overlaps, and communicate these priorities clearly to all stakeholders via transparent working plans, that include timelines, milestones and performance indicators.

- Create a one-stop shop (ventanilla única), which can help simplify licensing procedures, improve co-ordination and push forward the agenda in a co-ordinated manner.

- Streamline the ASEA legal context. This could involve consolidating the 11 federal laws and 12 reglamentos that currently govern ASEA’s functions into one coherent reglamento and considering the alignment of the status of ASEA with the status of CRE and CNH.

Are they aligned with the regulator’s functions and powers?

Are there clearly identified objectives and targets?

Can they be used to develop performance indicators?
ASEA, CNH and CRE are currently funded by resources from the federal budget as well as their own income and are expected to reach financial autonomy by 2019. However, management of financial resources can be cumbersome and slow down operations for all three agencies. Moreover, acquiring and retaining qualified staff is a challenge for regulators that compete for talent with private sector organisations. The regulators have implemented measures to overcome some of these challenges, such as finding flexibility within the federal salary scale (tabulador de sueldos) or offering non-financial incentives to staff.

**KEY RECOMMENDATIONS**

- **Consider multi-annual budget settlements and fiscal autonomy for all three agencies**, which can provide stability and facilitate long-term planning while preserving the agencies from any undue influence and pressure.

- **Set up contingency funds** that can smooth volatility of industry income and fees perceived. This also requires the regulators to assess the effectiveness and transparency of the process for setting fees.

- **Encourage more flexibility and autonomy for agencies’ resource management, from re-allocating between budget categories to developing job profiles and setting compensation rates.**

- **Employ a “total awards approach”** to develop other incentives to attract and retain staff, such as non-financial incentives (health insurance, recognition, flexibility, trainings, enabling environment, promotion, etc.)
Several accountability, transparency or oversight mechanisms are in place to enhance the regulators’ performance, governed either by federal provisions or agency-specific instruments. Regulatory oversight is exercised by the Federal Commission for regulatory Improvement (COFEMER), who manages formal stakeholder consultations and reviews Regulatory Impact Assessments (RIA). The regulators also implement their own early stage stakeholder consultations. Streamlining some of these practices could harmonise the regulatory governance of the sector.

In regards to appointments, agency heads or the governing council are appointed by the President based on a selection proposed by SEMARNAT (ASEA) or the Senate based on a selection proposed by the President (CNH and CRE). To avoid conflict of interest with the regulated industry, by law the regulators are required to establish Codes of Conduct and are governed by federal restrictions on post-employment activities.

### Key Recommendations

- **Align regulatory processes and enhance co-ordination with COFEMER to improve regulatory quality.** The agencies could harmonise mechanisms that enhance accountability, minimise undue influence or engage with stakeholders.

- **Stimulate more structured and formal exchanges with Congress as an integral part of the regulators’ activities, possibly around the release of agencies’ annual reports.**

- **Advocate for the establishment of search committees or advertise senior management positions for a more transparent nomination process, which can broaden the pool of competent candidates.**

- **Assess the effectiveness of the provision for a one-year cooling-off period for all public servants and their families. A more restricted clause may be sufficient to deter conflicts while being enforceable.**

- **Assess the effectiveness and appropriateness of the currently available appeal processes.** Current appeal processes could be used to block decisions and hinder effectiveness.

### Table 1: Overview of ASEA, CNH and CRE accountability and transparency measures

<table>
<thead>
<tr>
<th>Institution</th>
<th>Accountable to</th>
<th>Accountable via</th>
<th>Oversight (Congress)</th>
<th>Oversight (Executive)</th>
<th>Code of conduct</th>
<th>Post-employment restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>CNH</td>
<td>Congress</td>
<td>Annual report (no formal approval mechanism)</td>
<td></td>
<td>Ministry of Public Administration – Agency-specific Internal audit office</td>
<td>Approved in March 2016</td>
<td></td>
</tr>
<tr>
<td>CRE</td>
<td></td>
<td></td>
<td></td>
<td>Approved in December 2014</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Performance indicators help assess the performance of the regulator and help define priorities. The three regulators are in the process of developing systems for results-based monitoring including strategic objectives and measurable indicators. This effort should be supported through appropriate institutional incentives.

**Is the performance of the regulated industry and the regulator itself assessed systematically?**

**If so, how is this information used?**

**Key Recommendations**

- **Conduct ex post evaluations of the agencies’ regulatory activities.** At present, there are few existing mechanisms to appropriately evaluate agency performance, notably in relation to its processes and outputs. Absent of statutory external evaluation, the agencies could carry out regular self-evaluation of their regulatory activities.

- **Align regulatory quality monitoring between ASEA, CNH and CRE to share and harmonise their plans, possibly into a unified results matrix, while defining clear responsibilities for overseeing their implementation within the agencies.**

- **Focus performance measurement efforts on output-outcome based goals without losing sight of the intermediate goals, and link this to the overall steering of the reform.** Given the scale of the energy reforms, it would also be important to include stakeholders in the assessment of performance.

- **Measure inspection outcomes with a view to developing a risk strategy, which could be jointly used by the three agencies to create a risk mapping and contingency planning for the sector, and meet environmental risk strategies targeted by the energy reform.**
Regulators, performance and the delivery of public services

Will my light switch work? Will the train run on time? Can I fill the tank of my car? Is there clean water in the tap?

As “market referees”, regulators contribute to the delivery of essential public utilities. Regulatory agencies are at the forefront of making sure citizens and industry have access to fundamental essential services that create enjoyable, prosperous and safe places to live, work and do business.

To be successful, regulators need to be constantly alert, informed by live data, checking sectoral trends and assessing the impact of their decisions. The performance of regulators is also largely determined by their internal governance (their organisational structures, behaviour, accountability, business processes, reporting and performance management) and external governance (roles, relationships and distribution of powers and responsibilities with other government and non-government stakeholders).

Measuring regulatory performance allows for the identification of bottle-necks and opportunities, better targeting of scarce resources and overall, for improving the performance of regulatory policies and regulatory agencies. To help regulators in this quest, the OECD has developed an innovative framework that looks at the internal and external institutions, processes and practices that can enhance regulators’ performance and bolster their performance measurement efforts.

PERFORMANCE ASSESSMENT FRAMEWORK FOR ECONOMIC REGULATORS (PAFER) REVIEW PROCESS

The analytical framework that informs this review draws on OECD work on measuring regulatory performance and the governance of economic regulators. Measuring regulatory performance can prove challenging, starting with knowing what to measure, a number of confounding factors that can also affect outcomes, or a lack of data and information.
To overcome some of these difficulties, the framework breaks down the regulatory process into a sequence of discrete steps in an input-process-output-outcome logic that can be tailored to economic regulators.

The OECD Best Practice Principles on the Governance of Regulators recognise the importance of assessing how a regulator is directed, controlled, resourced and held to account, to improve the overall effectiveness of regulators and promote growth and investment, including by supporting competition. Using the seven principles (Figure 2), the PAFER review identifies the drivers of performance and studies the environment and context where regulators operate (external governance) and how regulators work internally (internal governance).

Figure 2. OECD Best Practice Principles on the Governance of Regulators

1. Role clarity
2. Preventing undue influence and maintaining trust
3. Decision making and governing body structure
4. Accountability and transparency
5. Engagement
6. Funding
7. Performance evaluation

PERFORMANCE INDICATORS

For regulators, performance indicators need to fit the purpose of performance assessment, which is a systematic, analytical evaluation of the regulator’s activities in order to evaluate the reliability and usability of the regulator’s activities. Accordingly, indicators need to assess the efficient and effective use of a regulator’s input, the quality of the regulatory processes and identify outputs and some direct outcomes that can be attributed to the regulator’s interventions. Wider outcomes should serve as a “watchtower”, which provides the information the regulator can use to identify problem areas, orient decisions and identify priorities (Figure 3).

Figure 3. Input-process-output-outcome framework for performance indicators

- **Efficiency and effectiveness of input**
  Organisational and financial performance (e.g. planned activities completed on time and on budget).

- **Quality of processes for regulatory activity**
  Existence and effective use of regulatory tools and processes (e.g. measurement of accuracy, timeliness, accessibility, participation, risk analysis, use of evidence).

- **Output from regulatory activity**
  Effective regulatory decision, actions and interventions (e.g. decisions taken which were upheld).

- **Direct outcome/impact of outputs**
  (e.g. compliance with regulator’s decisions).

- **Wider outcomes**
  To note that these indicators are meant to be a “watchtower” to loop back and help identify problem areas, orient decisions and identify priorities; they should be used as learning (rather than accountability) indicators:

  - **Market structure**
    (e.g. level of concentration);

  - **Service and infrastructure quality**
    (e.g. frequency and reliability of services to consumers, reliability and deployment of infrastructure);

  - **Consumer welfare**
    (e.g. ability of consumer to choose the service that best fits their preferences);

  - **Industry performance**
    (e.g. revenues, profitability, investment).

NETWORK OF ECONOMIC REGULATORS (NER)

What makes a “world-class regulator”? The OECD Network of Economic Regulators (NER) has been addressing this question through objective data, rigorous analysis and dialogue. A subsidiary body of the OECD Regulatory Policy Committee, the NER is an open and unique forum that promotes dialogue across regulators operating in different sectors and countries from across the world. It brings together regulators with responsibilities for communications, energy, transport and water, in addition to other economic, competition, consumer, environment and safety issues. Members share their experiences, discuss challenges, identify innovative solutions, and balance the competing priorities that frame the features of a “world class regulator”.

OECD work on regulatory policy
www.oecd.org/gov/regulatory-policy

OECD Network of Economic Regulators (NER)
www.oecd.org/gov/regulatory-policy/ner.htm

Agency for Safety, Energy and Environment (ASEA)
www.gob.mx/asea

National Commission for Hydrocarbons (CNH)
www.gob.mx/cnh

Energy Regulatory Commission (CRE)
www.gob.mx/cre

For further information, please contact:

Faisal Naru
Faisal.Naru@oecd.org

Anna Pietikainen
Anna.Pietikainen@oecd.org