OECD Reviews of Regulatory Reform

Mexico

TOWARDS A WHOLE-OF-GOVERNMENT PERSPECTIVE TO REGULATORY IMPROVEMENT

Key Findings Report
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Foreword

The OECD Review of Regulatory Reform in Mexico is one of a series of country reports carried out under the Regulatory Reform Programme of the OECD, in response to the 1997 mandate by OECD Ministers.

Under this programme, the OECD has assessed the regulatory management policies of 24 member countries, as well as Brazil, China, Russia and Indonesia. The reviews aim at assisting governments to improve regulatory quality – that is, to reform regulations to foster competition, innovation, economic growth and important social objectives. The review methodology has developed over two decades of peer learning. It draws on and is grounded in a number of OECD instruments including: the 1995 Recommendation of the Council of the OECD on Improving the Quality of Government Regulation; the 2005 Guiding Principles for Regulatory Quality and Performance; and the 2012 Recommendation of the OECD Council on Regulatory Policy and Governance. This review was undertaken under the auspices of the OECD Regulatory Policy Committee, which was formed in 2009.

The country reviews follow a multi-disciplinary approach and focus on the government’s capacity to manage regulatory reform. Taken as a whole, the reviews demonstrate that a well-structured and implemented programme of regulatory reform can make a significant contribution to better economic performance and enhanced social welfare. Economic growth, job creation, innovation, investment and new industries are boosted by effective regulatory reform, which also helps to bring lower prices and more choices for consumers.

Regulations are essential to the proper functioning of the Mexican economy and society. They promote market efficiency, protect the rights and safety of citizens, and ensure the delivery of public goods and services. At the same time, regulations impose costs; businesses complain that red tape holds back competitiveness, while citizens criticise the time it takes to fill out government paperwork.

Reflecting on the importance of getting regulation right, this report encourages the 2012-2018 Mexican administration to “think big” about the relevance of regulatory policy and governance, which includes regulatory reform. It assesses the recent efforts of Mexico to develop and deepen regulatory policy and governance. It evaluates the policy cycle by which Mexican regulations —both at national and subnational level— are designed, enforced, evaluated, and revised. It describes progress in the use of a range of regulatory management tools including consultation, Regulatory Impact Assessment, and risk-based regulation. It also illustrates the potential of efforts to promote regulatory governance including accountability and oversight of regulatory agencies and devising a whole-of-government approach for regulatory design and enforcement. The report provides recommendations on developing a more robust regulatory environment, which will be a key ingredient to generate economic growth and promote social welfare in Mexico.
The OECD was asked by the Ministry of Economy of the Federal Government of Mexico to undertake a Regulatory Reform Review in support of policies to promote economic growth and social inclusion in Mexico. The Review provides analytical guidance, along with tailored policy recommendations, to help the Mexican authorities make reform happen. This report presents a summary of the current state of affairs in regulatory improvement policies of Mexico and assessment and options for reform and progress.

The policy options presented in the reviews pose challenges for each country. However, the reviews are in-depth and every effort is made to consult with and engage a wide range of stakeholders to ensure that the policy options presented are relevant and attainable within the specific context and policy priorities of the country.

This report is based on answers provided by the Ministry of Economy and a range of Mexican agencies to an OECD questionnaire, and on various meetings and interviews during a fact finding mission on 20-24 February, 2012 in Mexico City. A preliminary assessment of this report was discussed with a wide range of officials and stakeholders in a Policy Seminar in Mexico City on 24-25 May, 2012. The full version of the Review will be published in January 2013.
Acknowledgements

The country reviews on regulatory reform are coordinated by the Regulatory Policy Division, headed by Nick Malyshev, in the Directorate for Public Governance and Territorial Development, under the responsibility of Rolf Alter, Director. The horizontal programme on regulatory reform is led by the OECD Regulatory Policy Committee.

The Regulatory Reform Review of Mexico reflects significant contributions from a number of participants. Special thanks are attributed to Jose Antonio Torre Medina, Vice-Minister for Competitiveness and Business Regulation of the Federal Ministry of Economy of Mexico, and to Alfonso Carballo Perez, head of the Federal Commission for Regulatory Improvement. Valuable contributions were also received from officials from the federal government, including the Ministry of Economy, the Ministry of Public Administration, the Energy Regulatory Commission, the National Service of Agro Alimentary Health, Safety, and Quality; and the National Banking and Securities Commission. Contributions were also received from members of the Federal Congress, and from officials from the state governments of Aguascalientes, Colima, Jalisco and Nuevo Leon, as well as from the Mexican Association of Economic Development Secretariats (AMSDE). Representatives from the business community of Mexico and from think tanks also contributed to this review.

As an input to this review, the Vice-Ministry for Competitiveness and Business Regulation and the OECD organised a policy seminar in Mexico City in May 2012, in which the preliminary assessment and recommendations were reviewed by international experts. We thank George Redling, former Assistant Secretary for Regulatory Affairs of Canada; Michael Woods, Deputy Chairman, Australian Productivity Commission; and Nathan Frey, Policy Analyst from the Office of Information and Regulatory Affairs (OIRA) of the U.S. Office of Management and Budget, for their helpful comments and suggestions. We are also grateful to Jadir Diaz Provenca, Technical Director of the Programme for the strengthening of institutional capacity for management and regulation, Government of Brazil, for his remarks.

The project was managed by Manuel Gerardo Flores, Senior Policy Analyst in the Regulatory Policy Division under the supervision of Nick Malyshev. Manuel Gerardo Flores and Cynthia Ortiz Toledo, consultant, prepared the sections on policies, institutions, and administrative simplification, with contributions from Nick Malyshev. The sections on regulatory impact assessment and consultation were prepared by Rex Deighton-Smith, consultant, and Jacobo Pastor Garcia Villarreal, OECD Policy Analyst. The chapter on regulators was prepared by Daniel Trnka, OECD Policy Analyst. The chapter on Multi-level Regulatory Governance was prepared by Jacobo Pastor Garcia Villarreal, OECD Policy Analyst, with the support of Delia Rodrigo, consultant. All the team contributed significantly throughout the review.

The OECD Mexico Centre, under the leadership of Jose Antonio Ardavin and the staff in charge of publications, notably José Antonio García, were instrumental in coordinating the editorial process.
**Abbreviations and Acronyms**

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>AMMAC</td>
<td>Municipalities Mexican Association</td>
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<td>AMSDE</td>
<td>Mexican Association of Economic Development Secretariats</td>
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<tr>
<td>APF</td>
<td>Federal Public Administration</td>
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<td>BC</td>
<td>British Columbia</td>
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<tr>
<td>BRE</td>
<td>Better Regulation Executive</td>
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<tr>
<td>CEC</td>
<td>Commission for Evaluation and Control</td>
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<tr>
<td>CNBV</td>
<td>National Banking and Securities Commission</td>
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<td>COAG</td>
<td>Council of Australian Governments</td>
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<td>COFEMER</td>
<td>Federal Commission for Regulatory Improvement</td>
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<td>COFETEL</td>
<td>Federal Telecommunications Commission</td>
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<tr>
<td>CONAGO</td>
<td>National Governors’ Conference</td>
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<tr>
<td>CORE</td>
<td>Centre of Regulatory Expertise</td>
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<tr>
<td>CRC</td>
<td>COAG Reform Council</td>
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<tr>
<td>CRE</td>
<td>Energy Regulatory Commission</td>
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<tr>
<td>DCCA</td>
<td>Danish Commerce and Companies Agency</td>
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<td>EIU</td>
<td>Economic Intelligence Unit</td>
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<td>EU</td>
<td>European Union</td>
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<tr>
<td>FENAMM</td>
<td>National Municipal Federation of Mexico</td>
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<tr>
<td>GIC</td>
<td>Governor in Council</td>
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<tr>
<td>ICT</td>
<td>Information and Communications Technologies</td>
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<tr>
<td>IMSS</td>
<td>Mexican Institute of Social Security</td>
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<tr>
<td>LATIN-REG</td>
<td>Latin American Network of Regulatory Reform and Competitiveness</td>
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<tr>
<td>LFPA</td>
<td>Federal Law of Administrative Procedure</td>
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<td>NRCC</td>
<td>National Regulatory Control Council</td>
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<tr>
<td>NGO</td>
<td>Non-Governmental Organization</td>
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<td>OECD</td>
<td>Organisation for Economic Cooperation and Development</td>
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<td>PC</td>
<td>Productivity Commission</td>
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<td>PCA</td>
<td>Parliamentary Control of the Administration</td>
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<tr>
<td>Abbreviation</td>
<td>Description</td>
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<tr>
<td>PMG</td>
<td>Programme for Management Improvement in the Federal Public Administration 2008-2012</td>
</tr>
<tr>
<td>PND</td>
<td>Mexican National Development Plan 2007-2012</td>
</tr>
<tr>
<td>RABC</td>
<td>Regulation Applied to Businesses and Citizens</td>
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<tr>
<td>RAS</td>
<td>Regulatory Affairs Sector</td>
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<td>RFTS</td>
<td>Federal Registry of Formalities and Services</td>
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<td>RIA</td>
<td>Regulatory Impact Assessment</td>
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<td>RIG</td>
<td>Regulation Inside Government</td>
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<td>RRG</td>
<td>Regulatory Reform Group</td>
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<tr>
<td>SARE</td>
<td>System for Quick Business Start-Up</td>
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<tr>
<td>SCM</td>
<td>Standard Cost Model</td>
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<tr>
<td>SE</td>
<td>Ministry of Economy</td>
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<tr>
<td>SENASICA</td>
<td>National Service of Agro Alimentary Health, Safety, and Quality</td>
</tr>
<tr>
<td>SFP</td>
<td>Ministry of Public Administration</td>
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<tr>
<td>SME</td>
<td>Small and Medium Sized Enterprises</td>
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<tr>
<td>TB</td>
<td>Treasury Board</td>
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<td>TBS</td>
<td>Treasury Board of Secretariat</td>
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<tr>
<td>VCEC</td>
<td>Victorian Competition and Efficiency Commission</td>
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Executive Summary

Regulations are essential to the proper functioning of the Mexican economy and society. They promote market efficiency, protect the rights and safety of citizens, and ensure the delivery of public goods and services. At the same time, regulations impose costs; businesses complain that red tape holds back competitiveness, while citizens criticise the time it takes to fill out government paperwork.

In recent years, Mexico has striven to improve its regulatory policy in order to support business activity and discourage informality. For the country's economic performance and social welfare, it is of strategic importance to have a regulatory policy that ensures that the regulatory machinery of the government works effectively; the regulatory frameworks and regulations are of optimal quality, effectively meet policy objectives and are of public interest. Other OECD countries have promoted economic growth and development through the contribution of the regulatory policy to structural reforms, the liberalisation of product markets, the opening to the international market and a less restrictive business environment that fosters innovation and entrepreneurship. Regulatory policy can also promote the rule of law with initiatives to simplify regulations and increase its accessibility and improvement to the appeal systems. It also promotes quality of life and social cohesion through greater transparency, always considering the opinion of those subject to regulation, and programmes for the reduction of red tape for citizens.

Regulatory Policy and Governance in Mexico

In the last years, Mexico has made several efforts to design and implement a regulatory improvement policy. The institutions involved in the better regulation policy have played a key role on enhancing regulatory quality. This includes COFEMER, the Ministry of Economy, and the Ministry of Public Administration. As a result, Mexico is currently at a stage where positive results are being obtained.

Regulatory Policy

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 part of the better regulation policy, as well as the establishment of tools for the regulatory improvement policy, amongst them Regulatory Impact Assessment (RIA), administrative simplification, consultation, and diagnoses of the stock of regulation.
The regulatory improvement policy also falls within the broader policy objective of economic growth and development of the Mexican government. The Ministry of Economy (SE) and COFEMER lead the effort of pursuing regulatory policy for regulations applied to business and citizens. During the administration 2006-2012, the Vice-Ministry of Competitiveness and Business Regulation promotes competitiveness of businesses and economic sectors by contributing to the advance of an integral regulatory reform in its administrative and legislative aspects, enhancing consistency and regulatory neutrality.

**Regulatory institutions**

**COFEMER oversees the better regulation policy in Mexico.** The LFPA defines COFEMER’s powers and mandate: to promote transparency in the development and enforcement of regulations, ensuring that they generate benefits that outweigh its costs. COFEMER performs the functions of (i) coordination and supervision, (ii) challenge and scrutiny, (iii) training, advice and technical support for better regulation.

**COFEMER has the technical expertise to carry out an adequate advocacy function, but its institutional arrangements are not oriented to this end.** Advocating reform is important in helping to identify opportunities and in supporting and arguing for the development and progress of reform initiatives. Technical expertise and an overall understanding of the regulatory process and the best practices to adopt are necessary requirements for an effective advocacy function. COFEMER is endowed with these capabilities. Additionally, to freely and publicly advocate for regulatory improvement policy, political leverage and a degree of autonomy and independence are key features that an advocacy body must have. However, the current institutional arrangements of COFEMER are not aligned to these features.

**Ministries and agencies of the federal public administration have specific obligations for the better regulation policy.** They must submit to COFEMER all their legislative and regulatory drafts, along with their regulatory impact assessments (RIAs). As well, at least every two years, they must submit a programme of regulatory improvement on the regulation and formalities they apply, and periodic progress reports. They must also submit to COFEMER and keep updated the information recorded in the Federal Registry of Formalities and Services (RFTS). To do this, the ministries and agencies of the federal public administration must appoint a senior officer to coordinate the process of regulatory improvement internally.

**There are important synergies between COFEMER and the Ministry of Public Administration in the better regulation policy.** The Ministry of Public Administration and COFEMER have coordinated to include the regulatory improvement programmes that the line ministries and regulators are obliged to submit to COFEMER and implement, as part of the commitments of the PMG. With this feature, the Ministry of Public Administration is legally able to supervise the implementation of the programmes by line ministries and regulators and apply sanctions in the case of noncompliance.

**The institutional framework for regulatory improvement in Mexico is complemented with the Regulatory Improvement Council, which is expected to serve as the political arm and exercises “soft power” in benefit of the policy on regulatory improvement.** The Council is intended to serve as a coordinating mechanism for the government, and as liaison between the public, social and private sectors to obtain their opinions in terms of regulatory improvement. By having some of the most influential ministries, the council is expected to achieve the necessary political consensus to carry out the different actions in the framework.
of the regulatory improvement policy and overcome internal resistance, what is commonly known as “soft power” for reform. In the last five years, the Council has only had a couple of sessions, which indicates that it is not being employed to its full potential.

**Regulatory tools**

**Mexico has now been applying RIA for more than a decade and it recently reformed the impact assessment system to align it with OECD best practice.** COFEMER exercises quality controls of new and existing regulations by issuing opinions on the drafts and RIAs prepared by line ministries and regulators. COFEMER’s opinions are not legally binding. Nevertheless, given that all of COFEMER’s opinions, as well as the draft regulations and RIAs, are public, in the majority of cases, line ministries and regulators do follow its opinions. In addition, COFEMER’s final opinion is a requisite to publish regulation in the Official Journal of the Federation (DOF), which is absolutely necessary to provide the regulation with binding power and legality.

**Mexico has robust practices in transparency and consultation in the rule making process.** COFEMER is obliged to make public all draft regulation and their RIAs from the moment it receives them, as well as all opinions from the general public on the subject. Similarly, it is obliged to make public all its resolutions and opinions derived from the process of evaluation of draft regulations and their RIAs. COFEMER, line ministries, and regulators are obliged to consider all public opinions. However, line ministries and regulators retain the capacity to decide whether to modify the draft regulations and the RIAs. In any case, the transparency of the process is a strong incentive for regulators to provide justification when public opinions are not incorporated into the regulatory proposals.

**International best practice has been adopted in the programme to reduce administrative burdens.** Recently, Mexico has adopted the internationally recognised Standard Cost Model, which has brought a renewed impetus across the federal government to reduce administrative burdens generated by formalities. Following international practices, Mexico has set the objective of reducing 25% of administrative burdens as part of the regulatory improvement programmes for the years 2011-2012 submitted by line ministries and agencies of the federal government.

**Complementary administrative simplification strategies have been priorities for the Mexican government.** Over the past few years Mexico has implemented several high-profile administrative simplification strategies: the online one-stop shop Tuempresa.gob.mx has as main objective to streamline the federal formalities required to legally incorporate a business; the one-stop service for foreign trade allows businesses carrying out import-export activities to request the necessary licenses and permits and submit the corresponding information obligations in a single place and deal just with one authority; the programme to review the stock of zero-based regulation, aimed at reducing the stock of both types of regulation: regulation inside government (RIG) and regulation applied to businesses and citizens (RABC).

**Assessment and recommendations**

1. **Mexico should embrace a “whole-of-government” culture for regulatory improvement policy.** Further work should be fostered to step up to a new phase of regulatory quality which embeds an effective and profound regulatory improvement culture across the Federal Government. The following suggestions should be considered:
Creating a small committee or council of ministers to review and approve high-impact regulations would offer the benefits of providing a “collective” ministerial review and approval function, therefore improving compliance and accountability of ministers and officials proposing regulations, and driving a “whole-of-government” culture for regulatory improvement policy. Proposing ministers would have to demonstrate compliance with clear and public criteria (i.e. regulatory policy principles, specific government objectives), and such compliance must be a condition for approval.

Establishing a network of units placed inside ministries that provide expert support in regulatory policy and governance matters: this should include support in the preparation of RIA, administrative simplification, administrative burden measurement, consultation, and communication. This approach is directed to embed regulatory quality practices from the early stages of the process to design and develop regulation, and make line ministries and regulators directly responsible and accountable for their regulatory performance to businesses, citizens, and the society at large.

Enhancing the role of the Ministry of Public Administration: Two main activities concerning regulatory improvement must be clearly set for this ministry: its responsibility in promoting and effecting better regulation for regulation inside government; and, regarding regulations applied to businesses and citizens, its capacity to enforce the commitments and responsibilities of line ministries and regulators in coordination with COFEMER and the Ministry of Economy, and issue sanctions in the case of noncompliance.

2. In order to achieve the “whole-of-government” culture for regulatory improvement policy, the institutional design of COFEMER must be revised. The Commission needs an institutional design that grants it sufficient legal and financial autonomy to discharge its mandate as a central oversight body for regulatory quality. Such autonomy would reinforce its technical independence, protect its professionalism, and distance it from cyclical influences within the Mexican public administration. The measures to achieve this can include an autonomous budget, and more independence on its capacity to exercise its power. The actions to strengthen COFEMER should be accompanied by the setting of transparency and accountability rules that ensure fairness and credibility.

A potential more robust institutional setting would locate COFEMER close to core executive functions, either at the centre of government itself, or as part of a central ministry with significant coactive power. This would allow the agency to have access to the highest political levels to preserve influence within government.

3. The advocacy function is a key element to achieve a “whole-of-government” culture for regulatory improvement policy. Mexico should consider the creation of an agency that would unilaterally advocate for regulatory reform. Such advocacy function could be important in Mexico to identify reform opportunities and support the development of reform initiatives. It would also ensure that regulatory reforms are broadly understood and accepted by business, and civil society. The creation of an external advocacy agency, completely independent from government decisions, has the merit of ensuring that a truly external view of business and citizen needs is captured and countering the bureaucratic view and “status quo bias” that prevails inside government. This external agency would have an important role in advising the government on the impacts of existing regulations by providing ex post analysis of the effectiveness of regulatory policies and programmes with suggestions for possible reforms.
4. **The legislative power is an essential element of regulatory governance and, as such, it should take measures to adopt a culture of regulatory quality.** The legislative process exercised by the Mexican Congress does not contain, to date, any type of better regulation analysis. This contrasts sharply with the regulatory improvement policy applied within the federal public administration. Congress should consider adopting specific tools of regulatory policy as part of its legislative activities. This could include adopting techniques for *ex ante* and *ex post* evaluation of the impact of legislation. Transparency in the process of law making should be enhanced, and the inclusion of formal and institutionalised public consultation should be a permanent aspect of legislative activities.

5. **Formally include the management of tax procedures and the Mexican Social Security Institute as part of the regulatory improvement programme.** Mexico should consider eliminating tax formalities from the exceptions of the LFPA, in order to include them in the RIA process, in the programmes for administrative simplification and burden reduction, and in the other tools of the regulatory improvement programme of Mexico. It must be clearly stated, that the objective is to make the management of tax formalities and procedures part of the better regulation programme. This does not include the capacity of the State to levy taxes by raising current tax rates or by creating new taxes. The programme of better regulation should also be extended to those formalities dealing with health care provided by the Mexican Institute of Social Security (IMSS).

6. **Consultation should be enhanced and be made systematic from the early stages of regulatory development, in order to advance in the whole-of-government approach to regulatory improvement.** The Mexican government should consider enhancing the current consultation requirements by mandating that regulators and ministries conduct consultation with stakeholders at early stages in regulatory development. This consultation should be completed before a draft RIA document is prepared and submitted to COFEMER and should provide input to that document. The scope, depth, and nature of pre-RIA consultation could be commensurate with the impact of the proposed regulation, so that high-impact regulations would merit extensive early consultation. The development of a culture of pre-RIA consultation should go hand in hand with the adoption of mechanisms, safeguards and rules of engagement to prevent interest groups from trying to delay the process, and to avoid the risk of regulatory capture.

7. **The quality and accountability of RIA analysis could be improved further.** As a means to enhance RIA quality and accountability, the Mexican government should consider the merits of having the Minister responsible signing off the RIA in order to certify its quality. This would constitute an important quality assurance factor, since it creates direct incentives within the regulatory agency or ministry for high quality RIA to be developed.

Mexico should also consider the benefits of adopting additional measures to support regulators to obtain access to adequate technical capacities to undertake high quality regulatory development and RIA. Potential strategies could include reshaping the Economic Intelligence Unit (EUI) to interact and collaborate with the units of regulatory improvement suggested previously. Through these units, the EUI would develop a dedicated capacity to provide technical assistance on benefit/cost assessment of regulatory proposals to line ministries and regulators at early stages of policy development, up to the point where preliminary RIA documents are lodged.
8. **Consolidate and advance the policy of reducing the cost of regulation.** Mexico should establish the programme of reduction of administrative burdens using the adapted SCM methodology as a permanent feature. Mexico should consider strengthening these measurements via more interviews, or expert opinions through panels. Mexico might consider these approaches only to a core of the most burdensome formalities or key economic processes. Finally, Mexico should consider measuring other costs of the regulation, such as substantive compliance costs. Qualitative techniques could be employed to identify other sources of irritation for businesses and citizens, which might not be correlated with the amount of administrative burdens.

9. **Ensure the effectiveness of administrative simplification strategies.** One way to complement and contribute to safeguard the effectiveness of administrative simplification strategies such as Tuempresa.gob.mx is to incorporate an evaluation strategy before the project is launched. The aim would be to systematically assess the progress of the project throughout its life-cycle: its development phase, once the initial outputs are obtained, and in a periodic way afterwards to evaluate whether the expected outcomes are reached.

**INDEPENDENCE, PERFORMANCE, AND ACCOUNTABILITY OF REGULATORS**

Regulators are “agencies” vested with significant regulatory powers that are granted a certain level of independence, to ensure that decisions affecting key infrastructure and economic sectors are shielded from short-term political considerations and from specific private interests. The rationale for establishing independent regulatory agencies is to ensure that decisions affecting key infrastructure and economic sectors are shielded from short-term political considerations and from specific private interests.

Mexico’s regulatory agencies are “administrative deconcentrated bodies”, subordinated to a ministry in terms of their property, accountability and budget. Most of the regulatory agencies in Mexico have the status of the so-called “administrative deconcentrated bodies”. They have generally been created either through laws or decrees without a whole-of-government perspective. The relative situation of the various regulatory agencies reflects a fairly heterogeneous institutional design. The hierarchical subordination implies technical autonomy, but the degree of organic autonomy, administrative or financial autonomy substantially differs.

In some cases, there is no clear division of attributions between Mexican regulators and their parent ministries or other regulatory entities. In Mexico, a wide range of powers of regulators is exercised together with the supervising ministry, or are advisory powers to the ministry. These shared powers raise a number of difficulties and may generate a problem of “double-window” (i.e., in the telecommunications sector) as regulated subjects may not always know who will be the contact institution during the administrative process.

Clear procedures for appointment and dismissal of managers for Mexican regulators ensuring their independence are lacking. Heads of some of the regulatory authorities are appointed by the President while in some cases it is the management board of the agency that appoints the chair. In other cases, it is the minister who appoints the chairperson of the regulatory agency. The length of the term of office is not unified, usually between 2 to 5 years, in some cases it is not even fixed at all.
A low degree of independence in decision making and budgetary autonomy, and lack of performance assessment mechanisms characterize Mexico's regulators. The independence of decision making of social and financial regulators is generally weaker than the one of the economic counterparts. Budgets of regulators are determined by the “parent” ministries. The budget control also lays, with some exceptions, with the ministries, not regulatory authorities. Mechanisms for performance assessment are mostly non-existent with the exception of specialised audits by the Superior Audit Office of the Federation (ASF).

**Mexican regulator's degree of independence and institutional strength is below the OECD average.** In general, when analysing the Mexican regulators, it can be said that there are substantive differences among them in many aspects of their independence and accountability. Nevertheless, the degree of independence and institutional strength is below the OECD average.

**Assessment and recommendations**

10. **The institutional regulatory framework should be modernised through a review of powers, attributions, and governance arrangements of regulatory authorities.** The Mexican government appears to lack an underlying philosophy, let alone an official document, articulating which regulatory frameworks should be administered by independent regulatory authorities, what should in general be their main attributions and how these authorities should be governed. It is therefore advisable to develop a whole-of-government model for the governance of regulators. This model should set the basic cornerstones of good governance of regulatory authorities in Mexico, and should be used in revising existing governance arrangements of regulatory authorities as well as for guiding the development of new regulators. Through this universal model, the independence as well as the accountability of regulatory authorities in Mexico should be strengthened where necessary.

11. **The governance framework of the Mexican regulatory authorities needs to be strengthened to ensure independence from direct political intervention and particular interests.** Establishing a regulatory agency with a degree of independence (both from those it regulates and from the government) can provide greater confidence that regulatory decisions are made with the aim to maximise public value. Moreover, the nature of some regulatory decisions can at times involve higher risks to the integrity of the regulatory process, for example, due to pressures from the affected interests or the contentious and sometimes politically sensitive nature of the decisions. In terms of the regulators explicitly covered in the review, the division of powers between regulators and their “parent” ministries was not always clear. Careful consideration should therefore be given to suppress joint powers shared between agencies and ministries.

12. **Sufficient mechanisms to ensure accountability of regulators, including sound performance assessment procedures should be introduced.** Performance assessment mechanisms of the regulators in Mexico are largely non-existent. If the independence of regulatory authorities is to be strengthened, this must be counterbalanced with stronger accountability mechanisms. In general, three aspects need to be considered for balancing the independence of a regulator with its accountability: building appropriate governance structures; designing a proper system of appeals that also defines which authority will hear appeals; and instituting a dialogue between regulators, on the one hand, and Congress and citizens, on the other, in order to build institutional trust in regulators.
MULTI-LEVEL REGULATORY GOVERNANCE

The federal states and municipalities of Mexico have been paying increasing attention to regulatory improvement policies in the last few years. Twenty out of the 31 federal states and the Federal District have a law on better regulation, mandating state authorities and, sometimes, municipalities, to pursue regulatory improvement policies. In addition, eight states have laws on economic development containing a section on regulatory improvement. Ten out of these 32 subnational units have a commission in charge of advocating and implementing better regulation, 20 have a unit within a ministry; and two have some other body fulfilling this role. Likewise, 21 states make use of a citizen council to promote the active participation of citizens in their regulatory improvement policies.

The pursuit of competitiveness and good government agendas has driven the creation of institutions for regulatory improvement policies, which have been complemented with training and capacity building. Different factors have been behind the emergence of institutions for regulatory improvement. For example, business associations explicitly demanded a regulatory improvement policy to Jalisco’s state government, in Nuevo Leon a legal mandate determined the creation of institutions for regulatory improvement, in Colima it was basically the Governor’s leadership the key to establish regulatory reform as a priority, and in Aguascalientes one of the main incentives was to keep a good ranking in the subnational edition of the Doing Business report.

Multi-level coordination across states and municipalities has been fostered mainly via covenants and state laws on regulatory improvement. The state laws on better regulation establish coordination mechanisms, such as via the signature of covenants or the implementation of specific programmes and tools (i.e., SARE and centralised registries). The covenants between COFEMER and states and/or municipalities basically establish that COFEMER will provide training, advice, and implementation assistance concerning regulatory policies and tools.

Administrative simplification has been a good starting point to raise regulatory improvement issues on the political agenda of states and municipalities. The focus on simplification can be explained by several reasons. First, officials in states and municipalities do not always understand the difference between better regulation and administrative simplification and the latter is easier to carry out than the former. Second, states have been immersed in a competition dynamic aimed at getting a good ranking in the subnational edition of the Doing Business report and other competitiveness indexes. Finally, until a few years ago, COFEMER devoted much of its attention in states and municipalities to the promotion and implementation of SARE, which is a simplification programme for start-up procedures.

A handful of states and municipalities in Mexico are implementing RIA. Only a few states and municipalities have made use of more sophisticated tools that may get them closer to a regulatory governance cycle approach. In the case of RIA, five states are actually implementing this tool, with wide variation in terms of the stage of adoption and sophistication: Colima, Guanajuato, Jalisco, Morelos, and Sonora.

E-government tools are widely employed by states and municipalities to enhance regulatory transparency and simplify formalities. Despite different degrees of sophistication, e-government tools have been useful to advance regulatory transparency. On-line centralised registries of formalities can be found in several Mexican states and even in some municipalities. In addition, states such as Colima and Jalisco are making use of transactional portals and electronic signature.
There is an incipient application of reviews of the stock of regulation by states and municipalities in Mexico. Nuevo Leon and Zacatecas are applying the technique known as "regulatory guillotine", which is based on an instruction from the top level of government, aimed at regulatory agencies, to review the complete stock of regulations against criteria such as need and efficiency.

The cooperation between the OECD and the Ministry of Economy has supported states and municipalities to advance the better regulation agenda. The OECD-Mexico initiative Strengthening of economic competition and regulatory improvement for competitiveness has contributed to boost the better regulation efforts carried out by Mexican states and municipalities. This initiative included projects which identified the most burdensome formalities for the business sector in the nine participating states and provided recommendations to simplify them and analysis of best international practices from three subnational governments recognised as top performers in different OECD countries and including three Mexican states as well.

Assessment and recommendations

13. Institutions and capacities that support regulatory reform in states and municipalities should be developed and strengthened while increasing the degree of political commitment to regulatory quality. Despite progress, there is still wide room to develop and strengthen the institutions and capacities that support regulatory reform in states and municipalities. In order for regulatory reform to take root and achieve continuity in the states and municipalities of Mexico, solid institutions need to be created. Monitoring the actual implementation of institutions and tools is important to ensure that they are not only confined in the letter of the law. Three basic building blocks can be suggested: laws for regulatory reform, units in charge of operating regulatory reform, and citizen councils to follow up regulatory policies.

While it must be recognised that COFEMER has increased training and implementation assistance for states and municipalities, going "beyond SARE", it is clear that its resources are limited, so the key to advance capacity building even further is to gain the commitment of state governments to add up to the work of COFEMER, as well as to engage municipalities.

14. Mexico should aspire to reach convergence of regulatory policies at subnational levels and upgrade multi-level coordination. The lack of a structure facilitating political commitment to address regulatory concerns might have slowed down progress towards convergence of regulatory institutions and practices, particularly in those states that are lagging behind or do not know where to start. Convergence of the regulatory policies of states and municipalities should be an objective to pursue in the medium term. Mexico could replicate some of the features of “cooperative federalism” of Australia to improve multi-level coordination, such as a solid political agreement to pursue regulatory reform at national and local levels; funding schemes based on performance, and institutionalised monitoring of progress.

15. Regulatory policies at subnational level should address all the stages of the regulatory governance cycle and be participative and permanent, while incorporating an approach consisting on policies, institutions, and tools. It is time to move beyond purely simplification initiatives to a regulatory governance cycle approach, so that
regulatory policies in states and municipalities are comprehensive (address the different stages of the regulatory governance cycle), participative (motivate citizen participation in the management of regulatory policy), and permanent (stay beyond political transitions). The three levels of government, as well as other stakeholders of regulatory reform, have a role to play to accomplish this objective. A regulatory governance cycle approach that includes policies, institutions, and tools would imply the implementation of techniques such as RIA, risk-based regulatory management, and regulatory reviews.

16. At the same time that more comprehensive regulatory reform agendas are developed and adopted, administrative simplification should be strengthened as a basic tool for states that are already advanced and as a starting point for those that are only beginning to develop a better regulation agenda. States and municipalities that have not started or are just starting a regulatory reform programme can rely on administrative simplification initiatives to raise the issue on the political agenda. Highlighting “quick wins” and communicating the benefits of such initiatives to the public should be a central element of the strategy.
Chapter 1

The Importance of Regulatory Policy and Governance

1.1. WHAT IS REGULATORY POLICY?

The emergence and development of regulatory policy to support ongoing and systematic regulatory reform has been a key element of public sector reform in OECD countries over the past 20 years. The objective of regulatory policy is to ensure that regulations are in the public interest. It addresses the permanent need to ensure that regulations and regulatory frameworks are justified, of good quality, and “fit for purpose”. As an integral part of effective public governance, regulatory policy helps shaping the relationship between the State, citizens and businesses. An effective regulatory policy supports economic development, the achievement of broader societal objectives such as social welfare and environmental sustainability, and it strengthens the rule of law. It also helps policy makers to reach informed, evidence-based decisions about what to regulate, whom to regulate, and how to regulate.

The emergence of regulatory policy has taken different pathways across the OECD, reflecting the diverse range of legal, political, and cultural settings on which countries have built their public governance. Perhaps the most important lesson is that the development of an effective regulatory policy is an evolutionary process that requires sustained political support and commitment to achieve changes across public administrations.

OECD country experience shows that to achieve results in regulatory quality, governments should adopt a comprehensive approach, that considers regulatory policy, institutions, and tools in a regulatory governance perspective, at all levels of government and across sectors, including the role of the legislature in ensuring the quality of laws.

1.2. WHAT ARE THE BENEFITS OF ACTIVELY IMPLEMENTING REGULATORY POLICY?

Regulatory policy has already made a significant contribution to economic development and societal well-being. Economic growth and development have been promoted through the contribution of regulatory policy to structural reforms, liberalization of product markets, market openness, and a less restricted business environment. A new area of focus has been
exploring the relationship between regulatory performance and economic growth. This research demonstrates that the quality of regulation is strongly linked to economic growth and productivity. The links between regulatory policy and a range of structural policies have been documented:

- Effective regulatory policy and market openness support each other, opening up pathways for innovation, enhanced consumer benefits, and entrepreneurship.

- A strong link exists with competition policy which highlights a close and positive relationship between the objective of promoting competition policy principles and that of fostering high-quality regulation and regulatory reform.

- Product market competition play an important role in lowering structural unemployment rates, mainly through competitive pressures that eliminate rents and expand potential output.

- Regulatory policy is actively implemented to restructure infrastructure sectors like power, water, telecommunications, and transport. There is considerable evidence that where markets are contestable, the reform of infrastructure—through liberalization, privatization and the introduction of incentive regulation—produces positive effects in terms of price reductions, more innovation and consumer choice, and higher-quality services.

Beyond improving economic performance, regulatory policy has also started to support broader goals for society such as, quality of life, social cohesion, and the rule of law. Although the emphasis on this aspect of regulatory policy varies across countries, and it can take different forms, it is fast becoming a strong feature of regulatory policies across the OECD.

Regulatory policy has supported a growing transparency in the implementation of regulatory powers, and the direct engagement of the public through its emphasis on the importance of public consultation and dialogue. An effective enforcement of the rule of law entails to pay attention to a range of issues including those directly connected to regulatory policy such as legal transparency, clarity, and accessibility, and a well functioning appeals system for administrative decisions. An especially powerful reason for some countries to strengthen their regulatory policy is to minimise the opportunities for corruption, and reduce its negative economic and social impacts.

1.3. THE EVOLVING NEED FOR GREATER REGULATORY GOVERNANCE

The OECD model of regulatory policy is based on the view that ensuring the quality of the regulatory structure is a dynamic and permanent role of government. In advanced countries this concept is evolving into regulatory governance, where governments engage a wider domain of players including the legislature, the judiciary, subnational and supranational levels of government, and standard setting activities of the private sector. Regulatory governance gives practical effect to regulatory policy. Effective regulatory governance maximises the influence of regulatory policy to deliver regulations that will have a positive impact on the economy and society, and which will meet underlying public policy objectives.

In early 2012, the Recommendation of the OECD Council on Regulatory Policy and Governance was approved. The Recommendation presents Regulatory Policy and Governance as a whole-of-government activity incorporated into the policy cycle of regulatory design, enforcement, review and evaluation, supported by appropriate institutions. It emphasises the importance of coordination, consultation, communication, and cooperation throughout the policy cycle.
It focuses, to a greater extent, on the need for risk assessment and regulatory coordination across levels of government, and on the organisation of regulatory agencies that have previous OECD instruments. Together, the principles stated in the Recommendation provide countries with the basis for a comprehensive assessment of the performance of the policies, tools, and institutions that underpin the use of efficient and effective regulation to achieve social, environmental, and economic goals (see Box 1).

Box 1. The 2012 Recommendation of the OECD Council on Regulatory Policy and Governance

1. Commit at the highest political level to an explicit whole-of-government policy for regulatory quality. The policy should have clear objectives and frameworks for implementation to ensure that, if regulation is used, the economic, social and environmental benefits justify the costs, the distributional effects are considered, and the net benefits are maximised.

2. Adhere to principles of open government, including transparency and participation in the regulatory process to ensure that regulation serves the public interest and is informed by the legitimate needs of those interested in and affected by regulation. This includes providing meaningful opportunities (including online) for the public to contribute to the process of preparing draft regulatory proposals and to the quality of the supporting analysis. Governments should ensure that regulations are comprehensible and clear and that parties can easily understand their rights and obligations.

3. Establish mechanisms and institutions to actively provide oversight of regulatory policy procedures and goals, support and implement regulatory policy, and thereby foster regulatory quality.

4. Integrate Regulatory Impact Assessment (RIA) into the early stages of the policy process for the formulation of new regulatory proposals. Clearly identify policy goals, and evaluate if regulation is necessary and how it can be most effective and efficient in achieving those goals. Consider means other than regulation and identify the tradeoffs of the different approaches analysed to identify the best approach.

5. Conduct systematic programme reviews of the stock of significant regulation against clearly defined policy goals, including consideration of costs and benefits, to ensure that regulations remain up to date, cost justified, cost effective and consistent, and deliver the intended policy objectives.

6. Regularly publish reports on the performance of regulatory policy and reform programmes and the public authorities applying the regulations. Such reports should also include information on how regulatory tools such as Regulatory Impact Assessment (RIA), public consultation practices and reviews of existing regulations are functioning in practice.

7. Develop a consistent policy covering the role and functions of regulatory agencies in order to provide greater confidence that regulatory decisions are made on an objective, impartial and consistent basis, without conflict of interest, bias or improper influence.

8. Ensure the effectiveness of systems for the review of the legality and procedural fairness of regulations and of decisions made by bodies empowered to issue regulatory sanctions. Ensure that citizens and businesses have access to these systems of review at reasonable cost and receive decisions in a timely manner.
9. As appropriate apply risk assessment, risk management, and risk communication strategies to the design and implementation of regulations to ensure that regulation is targeted and effective. Regulators should assess how regulations will be given effect and should design responsive implementation and enforcement strategies.

10. Where appropriate promote regulatory coherence through coordination mechanisms between the supranational, the national and subnational levels of government. Identify cross-cutting regulatory issues at all levels of government, to promote coherence between regulatory approaches and avoid duplication or conflict of regulations.

11. Foster the development of regulatory management capacity and performance at subnational levels of government.

12. In developing regulatory measures, give consideration to all relevant international standards and frameworks for cooperation in the same field and, where appropriate, their likely effects on parties outside the jurisdiction.


Therefore, regulatory policies, regulatory institutions, and regulatory tools make up the elements of the analytical framework that OECD advocates for a successful approach to regulatory governance.

**Regulatory policy in a whole-of-government perspective**

Country experiences indicate that the single most important element for a successful programme to increase the quality of regulations is to commit at the highest political level to an explicit whole-of-government perspective for regulatory policy. Regulatory policy defines the process by which government, when identifying a policy objective, decides whether to use regulation as a policy instrument, and proceeds to draft and adopt a regulation through evidence-based decision-making.

OECD countries are increasingly interested in implementing a whole-of-government approach to policy development and implementation. Whole-of-government approaches are associated with the purpose of ensuring horizontal and vertical coordination of government activity in order to improve policy coherence, better use of resources, and to promote and capitalise on synergies and innovation that arise from a multi-stakeholder perspective. The backbone of a whole-of-government approach is the establishment of cooperative structures in order to more effectively meet government objectives. The promotion of regulatory quality culture can and should benefit from such an approach.

Equally important to institute a whole-of-government approach, is the use of cultural change within the public administration applied to processes and behaviour. This includes to put into practice a strong and unified set of values, values-based management, trust, collaboration, team building, involvement of outside stakeholders, and improved capability (i.e., training and self development) of public servants.

Ultimately, the objective of a whole-of-government approach to regulatory policy is to strengthen the focus on the goal of integrating regulatory policy into governance practices. This will allow the tools and institutions for regulatory management to be deployed more
effectively. Critically, it will help to ensure that regulatory management becomes an integral part of good policy making.

**Regulatory institutions**

Research carried out by the OECD into the conditions for effective reform, highlights that other key aspects of effective regulatory governance that are critical to advance policy reforms are leadership, whether by an individual or an institution charged with carrying out the reform; and appropriate institutions capable of supporting reform from decision to implementation. Promoting regulatory policy often requires the allocation of specific responsibilities and powers to monitor, oversee and promote progress across the whole of government, and to maintain consistency between the approaches of the various actors involved in the regulatory process. Hence, the existence of regulatory institutions is paramount to reach the goals of regulatory policy.

OECD research identifies four core functions that should be assigned to one or more institutions charged with improving regulatory quality: (i) coordination and supervision, (ii) challenge and scrutiny, (iii) training, advice and technical support, and (iv) advocacy (OECD, 2010f).

Coordination and supervision entail the implementation and monitoring of regulatory policy or initiative. The institution in charge is entrusted with the task of setting up the procedures and machinery to ensure the quality of new or existing regulations. The challenge and scrutiny function consists in appraising, on technical grounds, the quality of existing or new regulation and providing a veto or an opinion/comment on the draft prepared by the responsible regulator. A third function for regulatory institutions is to assist regulators in improving the quality of their regulations. Key support tasks include the publication and dissemination of extensive written guidance and manuals, as well as delivering training on regulatory quality issues. The fourth core function for regulatory institutions consists in unilaterally encouraging improvements of the regulatory framework. Advocating reform is important in helping to identify opportunities for reform and in supporting and arguing for the development and progress of reform initiatives.

OECD country experience reveals that the existence of a specific body charged with regulatory oversight, and entrusted with several of the core functions mentioned above, indicates per se a strong commitment to improving regulatory quality and is closely correlated with the development of an effective and comprehensive regulatory policy.

In addition, countries increasingly tend to adopt networked approaches for regulatory institutions. A core body, enjoying direct explicit or indirect implicit powers, coordinates a network of units in the various ministries. This contributes to policy coherence, while ensuring the interface with policy making in sectoral areas. The units collaborate and complement each other in a dynamic way when fulfilling those core functions. While decentralising the substantive work helps to foster change in the sectoral areas, this also entails issues in terms of balancing powers and priorities.

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1 Evidence from OECD countries shows that the functions of (i) coordination and supervision, (ii) challenge and scrutiny, and (iii) training, advice and technical support are concentrated in one or various institutions. This contrast with the (iv) advocacy function which has traditionally been entrusted to a different body, separated from the other three functions.
Regulatory tools

The task of improving regulatory decision-making has a number of dimensions. A range of regulatory tools must be deployed in a consistent and mutually supporting manner if systemic quality assurance is to be the result. The tools involve strategic approaches and the use of instruments to give effect to regulatory policy. The essential tools include regulatory impact assessment (RIA), the consideration of regulatory alternatives, administrative simplification, ensuring regulatory transparency and ex post evaluation.

RIA examines and measures the likely benefits, costs and effects of new or revised regulations. It is a useful regulatory tool that provides decision-makers with valuable empirical data and a comprehensive framework in which they can assess their options and the consequences their decisions may have. RIA is used to define problems and to ensure that government action is justified and appropriate.

The evaluation of regulatory alternatives is the mechanism that governments must employ to ensure that the regulations and instruments used to achieve public objectives are effective and efficient. In this context, other options and instruments may be more suited for addressing a particular policy issue and for a public intervention.

With the objective of applying administrative simplification, OECD governments have over the past two decades increasingly focussed on reviewing and simplifying red tape. Initiatives to improve the efficiency of transactions with citizens and business have included removing obsolete or contradictory provisions, producing guidelines on administrative regulations, and introducing new ways to measure administrative regulations and reduce their impact. Increasingly, innovative thinking and skilful use of information and communications technologies (ICT) are leading to new and more effective approaches to administrative simplification.

Regulatory transparency include a range of practices, from simple notification to the public that regulatory decisions have been taken, to controls on administrative discretion and corruption, better organisation of the legal system through codification and central registration, the use of public consultation and regulatory impact assessment and actively participatory approaches to decision-making. Public consultation is one of the key regulatory tools employed to improve transparency, efficiency and effectiveness of regulation. Consultation improves the quality of rules and programmes and also enhances compliance and reduces enforcement costs for both, governments and citizens subject to rules. Public consultation increases the information available to governments on which policy decisions can be based.

Ex post evaluation of rules and regulations helps assess the outcomes and results of regulatory decisions. The tools of ex post evaluation, in their most sophisticated form, examine the relevance, effectiveness, and impacts of regulatory decisions, as well as identifying unintended outcomes, reasons for failure, and factors contributing to success. Results, derived from this management tool, form a key knowledge input for decision-makers, creating a feedback loop that completes the “regulatory governance cycle”.

The next chapter presents and explains the current state of affairs and the progress achieved in Mexico in regulatory governance. The framework of regulatory policies, institutions, and tools is employed to provide structure to the chapter.
Chapter 2

Regulatory Governance in Mexico: Current Situation and Progress

2.1. REGULATORY POLICY

The 2012 Recommendation of the OECD Council on Regulatory Policy and Governance calls on countries to commit at the highest political level to an explicit whole-of-government policy for regulatory quality. Moreover, the Recommendation suggests that they should have clear objectives and frameworks for implementation, to ensure that the net benefits of regulations are maximised (OECD, 2012b).

Consistent with this view, Mexico’s policy on better regulation is formally established in the Federal Law of Administrative Procedure (LFPA). The LFPA defines the main elements of this policy which include the establishment of the Federal Commission for Regulatory Improvement (COFEMER) as the oversight body, the responsibilities of line ministries and regulators as part of the better regulation policy, as well as the establishment of tools for the regulatory improvement policy, amongst them Regulatory Impact Assessment (RIA), administrative simplification, consultation, and diagnoses of the stock of regulation.

The regulatory improvement policy also falls within the broader policy objective of economic growth and development of the Mexican government. The Mexican National Development Plan 2007-2012 (PND) states as an objective the need to improve regulation, public management, processes and outputs of the Federal Public Administration (APF). For that purpose, the Ministry of Economy (SE) and COFEMER lead the effort of pursuing regulatory policy for regulations applied to business and citizens; and the Ministry of Public Administration (SFP) for regulations inside government. Such efforts also involve the participation of regulatory agencies and the states and municipalities through the implementation of the multi-level agenda.
The SE established regulatory modernisation and administrative simplification for regulations applied to business and citizens as one of its six key objectives to promote productivity and competitiveness. The Vice-Ministry of Competitiveness and Business Regulation promotes competitiveness of businesses and economic sectors by contributing to the advance of an integral regulatory reform in its administrative and legislative aspects, enhancing consistency and regulatory neutrality. The Vice-Ministry collaborates closely with COFEMER to ensure that the positive impacts of regulatory quality reflect directly on the public and have a positive impact on economic growth and social welfare.

Regulation inside government refers to the regulations imposed by the State on its own administrators and public service providers (for example government agencies or local government service providers). The Ministry of Public Administration plays a key role on better regulation as it leads two core federal programs on regulation inside government: the “Special Programme for Management Improvement in the Federal Public Administration 2008-2012” (PMG) and the “Guillotine of Administrative Regulations”. Amongst other objectives, the PMG aims to increase the efficiency of institutions through simplifying the regulation inside government, and improving and streamlining the cooperation between regulators by reducing the number of these regulations. The PMG also intends to maximise the quality of goods and services offered by the APF.

The “Guillotine of Administrative Regulations”, which was part of the zero-based regulatory reform programme, had as one of its main goals to eliminate internal administrative regulations that simplify and standardise the operation of federal government institutions, and implement mechanisms to eliminate all rules that hinder efficient service delivery. To date, this exercise has resulted in the elimination of 70% of the internal regulatory instruments.

2.2. REGULATORY INSTITUTIONS

COFEMER oversees the better regulation policy in Mexico

The 2012 Recommendation of the OECD Council on Regulatory Policy and Governance states that countries should establish mechanisms and institutions to actively provide oversight of regulatory policy procedures and goals, support and implement regulatory policy, and thereby foster regulatory quality (OECD, 2012b). Oversight bodies are fundamental to help improve the quality of existing and new regulations. OECD reviews find a strong relationship between an effective, comprehensive better regulation policy, and the existence of a central oversight body (OECD, 2011).

COFEMER is the Mexican agency responsible for regulatory policy and has an oversight function for regulatory quality. It is part of the Federal Public Administration and it is a deconcentrated body of the Ministry of Economy. COFEMER is vested with technical and operational autonomy, but remains hierarchically subordinated to its central ministry. One of its main functions is to challenge and scrutiny new and existing regulations in most agencies.
and bodies of the APF, including its own parent ministry. The LFPA defines COFEMER’s powers
and mandate: to promote transparency in the development and enforcement of regulations,
ensuring that they generate benefits that outweigh its costs. Indeed, COFEMER performs the
functions of (i) coordination and supervision, (ii) challenge and scrutiny, (iii) training, advice
and technical support for better regulation.

There is a renewed emphasis in Mexico on
training and capacity building to improve the
quality of regulations

OECD has documented that another essential function of an oversight body is to assist
regulators in improving the quality of their regulations (OECD, 2010f). Delivering training on
regulatory quality issues has been an important way to support regulators in complying with
new disciplines, and to raise awareness and promote a cultural change among regulators
and regulated ones.

COFEMER has increased the expertise and technical level of its officials through training and
specialisation on RIA and economic and social regulation. It has also achieved successful
results by increasing the training of public servants both at federal and municipal level
and now, it has an annual programme on training given to public officials. COFEMER has
conducted specialised training sessions for regulators performing RIA. During 2010, this
body trained 476 public servants from 53 departments and decentralised agencies of the
APF throughout 17 training sessions.

Despite the high-technical level of the staff at COFEMER, public officials involved in the
regulatory process within the ministries and regulatory agencies not necessarily share
this profile. Hence, COFEMER and the Latin American Network of Regulatory Reform and
Competitiveness (LATIN-REG) devised a diploma course on regulation, for public officials
responsible for issuing regulation at all levels of government. The course aims at generating
expertise on the basic concepts and tools of regulation. It is offered on-line and lasts 60
hours divided into four modules. The first course was launched in February 2012 and had
more than a thousand participants; the second instalment enrolls more than 5,000 public
officials and individuals.

COFEMER has the technical expertise to carry
out an adequate advocacy function, but its
institutional arrangements are not oriented to
this end

Another core function for an oversight body is unilaterally encouraging improvements of
the regulatory framework. This advocacy function can be internal to the administration,
as well as external. Advocating reform is important in helping to identify opportunities
and in supporting and arguing for the development and progress of reform initiatives.
Technical expertise and an overall understanding of the regulatory process and the best
practices to adopt are necessary requirements for an effective advocacy function. COFEMER
is endowed with these capabilities. Additionally, to freely and publicly advocate for regulatory
improvement policy, political leverage and a degree of autonomy and independence are key
features that an advocacy body must have (OECD 2010f). However, the current institutional
arrangements of COFEMER are not aligned to these features.
Ministries and agencies of the federal public administration have specific obligations for the better regulation policy

The LFPA also involves all the ministries and agencies of the federal public administration in the better regulation process by instructing them to appoint a minister or senior officer to coordinate the process of regulatory improvement within the ministry. In practice, COFEMER supervises and coordinates the regulatory process with their "technical liaison", from a lower hierarchical level, established within each ministry and centralised body.

As part of their responsibilities in the better regulation policy, ministries and decentralised entities must submit to COFEMER all their legislative and regulatory drafts, along with their regulatory impact assessments (RIAs). As well, at least every two years, they must submit a programme of regulatory improvement on the regulation and formalities they apply, and periodic progress reports. They must also submit to COFEMER and keep updated the information recorded in the Federal Registry of Formalities and Services (RFTS).

There are important synergies between COFEMER and the Ministry of Public Administration in the better regulation policy

The Ministry of Public Administration and COFEMER have coordinated to include the regulatory improvement programmes that the line ministries and regulators are obliged to submit to COFEMER and implement, as part of the commitments of the PMG. With this feature, the Ministry of Public Administration is legally able to supervise the implementation of the programmes by line ministries and regulators and apply sanctions in the case of noncompliance.

This is a clear step forward to ensure the implementation of better regulation commitments by ministries and agencies of the federal government. It also helps to promote a whole-of-government approach to better regulation.

The institutional framework for regulatory improvement in Mexico is complemented with the Regulatory Improvement Council, which is expected to serve as the political arm and exercises “soft power” in benefit of the policy on regulatory improvement

To perform its coordination and supervision function, COFEMER actions are complemented with the Regulatory Improvement Council. The Council is intended to serve as a coordinating mechanism for the government, and as liaison between the public, social and private sectors to obtain their opinions in terms of regulatory improvement. It is composed of the heads of the ministries of Economy, Public Administration, Finance, Labour, and the Legal Counsellor of the President. The head of COFEMER is the technical secretariat of the Council. The council also has representatives from the business and academic sectors, amongst others. By having some of the most influential ministries, the council is expected to achieve the necessary political consensus to carry out the different actions in the framework of the regulatory improvement policy and overcome internal resistance, what is commonly known as “soft
power” for reform (OECD, 2010f). In the last five years, the Council has only had a couple of sessions, which indicates that it is not being employed to its full potential.

2.3. REGULATORY TOOLS

Mexico has now been applying RIA for more than a decade and it recently reformed the impact assessment system to align it with OECD best practice.

In Mexico, ministries and decentralised agencies prepare bills, legislative decrees, and subordinate regulations accompanied by their regulatory impact assessments (RIA), which they send to COFEMER for its review. As oversight body, COFEMER is entitled to enforce the regulatory policy by exercising quality controls of new and existing regulations, and as such, it issues opinions on the drafts and RIAs prepared by line ministries and regulators. COFEMER’s opinions are not legally binding, which means that line ministries and regulators are not obliged to modify the draft regulation and the RIAs. Nevertheless, given that all of COFEMER’s opinions, as well as the draft regulations and RIAs, are public, in the majority of cases, line ministries and regulators do follow its opinions. In addition, COFEMER’s final opinion is a requisite to publish regulation in the Official Journal of the Federation (DOF), which is absolutely necessary to provide the regulation with binding power and legality.

Mexico recently updated its system of RIA, following international best practice such as the cases of Australia and Canada. The previous system became burdensome for ministries and departments, as they were required to prepare a complete RIA, even if proposed regulations had only minor costs and impacts. After the reform, line ministries, as well as COFEMER, can concentrate their resources on regulations with the highest costs and burdens and the administration is not required to conduct a full RIA when introducing low-cost formalities or procedures. An electronic cost calculator was introduced to classify regulation initiatives as either with high or moderate impact, and the template to assess the latter was simplified reducing the time that officials have to spend on this exercise. Mexico has now been applying RIA for more than a decade, and there is a sophisticated RIA and public consultation system in Mexico, which is well embedded in the regulatory drafting culture of the country.

In order to increase the technical level of regulation and RIA, COFEMER performs economic research on the proposed regulation and its RIA, which serves as evidence to issue recommendations explaining to regulators the costs and benefits of all the alternatives that may be applied to a specific project of regulation. As well, in the case of regulation of high impact, COFEMER calls for the standards of the RIA to be raised. These actions are expected to lead to the improvement of rule-making through evidence-based analysis.

Mexico has robust practices in transparency and consultation in the rule making process.

In Mexico, transparency in the rule making process is well embedded. COFEMER is obliged to make public all draft regulation and their RIAs from the moment it receives them, as well as all opinions from the general public on the subject. Similarly, it is obliged to make public all its resolutions and opinions derived from the process of evaluation of draft regulations.
and their RIAs. Hence, public consultation is mandatory during the rule making process, as established by the LFPA and reinforced by the Federal Law of Transparency and Access to Public Government Information. The exemptions from these obligations are specifically stated in the LFPA.

Public consultation undertaken in the RIA process has two key features. First, it is open to all interested public without any requirement; and, second, it is available through all means of written communication, including postal service, fax, personal delivery, e-mail, and COFEMER’s website. COFEMER, line ministries, and regulators are obliged to consider all public opinions. However, line ministries and regulators retain the capacity to decide whether to modify the draft regulations and the RIAs. In any case, the transparency of the process is a strong incentive for regulators to provide justification when public opinions are not incorporated into the regulatory proposals. In summary, the legal framework and current practices in Mexico show a robust system of transparency and consultation in the rule making process.

International best practice has been adopted in the programme to reduce administrative burdens

COFEMER also reviews and makes diagnoses on the national regulatory framework. It has the mandate to issue opinions on the regulatory improvement programmes prepared by ministries and decentralised entities every two years, with the aim to reduce and simplify the regulatory stock. Recently, Mexico has adopted the internationally recognised Standard Cost Model, which has brought a renewed impetus across the federal government to reduce administrative burdens generated by formalities. Following international practices, Mexico has set the objective of reducing 25% of administrative burdens as part of the regulatory improvement programmes for the years 2011-2012 submitted by line ministries and agencies of the federal government.

Complementary administrative simplification strategies have been priorities of the Mexican government

COFEMER also manages the Federal Registry of Formalities and Services (RFTS), which comprises all the formalities and services provided by the federal government. The registration of formalities in the RFTS is mandatory for all the federal governmental entities, which is a prerequisite for the formalities to be legally enforceable.

Over the past few years Mexico has implemented several high-profile administrative simplification strategies: the online one-stop shop Tuempresa.gob.mx under the responsibility of the Vice-Ministry for Competitiveness with the main objective of streamlining the federal formalities required to legally incorporate a business, by consolidating them in a single process that can be completed on a web portal; the one-stop service for foreign trade allows businesses carrying out import-export activities to request the necessary licenses and permits and submit the corresponding information obligations in a single place and deal just with one authority; the programme to review the stock of zero-based regulation aimed at reducing the stock of both types of regulation: regulation inside government (RIG) and regulation applied to businesses and citizens (RABC).
Mexico set very ambitious outcomes for these programmes. In the case of Tuempresa.gob.mx, and the one-stop shop for foreign trade, they are expected to contribute to an increase in economic activity through a boost in the number of business start-up and by a rise in the import and export activity; and in this way to increase competition, efficiency, and productivity. Zero-based strategy was meant to produce meaningful reductions in the regulatory stock for both RIG and RABC in benefit of the broader economic activity.

The programme of simplification for regulation inside government has delivered significant results

In 2009 and 2010, in the framework of the zero-based programme, the Ministry of Public Administration led an exercise to review the stock of regulations inside government which resulted in the elimination of about 70% of the internal regulatory instruments and in the elaboration and publication of nine administrative handbooks of general application for the internal activities of the government. The handbooks cover: procurement, public works, human resources, financial resources, material resources, information and communication technologies, transparency, auditing, and control. They aim to provide a standardised and unique framework to guide the actions of public officials in each subject area.

By eliminating duplicative and overlapping rules, and establishing a clear and unique internal regulatory framework, these programmes seek to minimise the use of resources for internal government activities while increasing the quality of public goods and services, as well as the effectiveness of federal public administration agencies.

Following OECD recommendations aimed at minimising the flow of new regulation inside government, the “Presidential Agreement instructing agencies and entities as well as the Office of the Mexican Attorney General, to refrain from issuing regulations on the matters indicated” was issued on August 10th 2010. The agreement establishes provisions that control the flow of new regulations: first, it prohibits the issuance of new rules on matters already contained in the new handbooks; and, second, it establishes clear exceptions to issue new rules.

Recently, COFEMER has carried out a range of research-based diagnoses on Mexico’s regulatory framework

In addition, COFEMER has conducted several research-based studies. In 2011, it used the Gilardi Index with reference to the Cukierman indicator on Central Banks and the Agency costs’ perspective to measure the institutional framework of the social, economic, and financial regulators of the Mexican regulatory system. The outcome was a diagnosis on the degree of autonomy of each of the reviewed regulators. COFEMER has also carried out reviews and diagnoses on the design of regulatory policy based on risks, on the impact of the System for Quick Business Start-Up (SARE), analyses and recommendations on regulatory policy for smoking, among others.
Chapter 3

Regulatory Governance in Mexico: Assessment and Recommendations

3.1. REGULATORY POLICY AND INSTITUTIONS

Mexico should embrace a “whole-of-government” culture for regulatory improvement policy

In the last years, Mexico has made several efforts to design and implement a regulatory improvement policy. The institutions involved in the better regulation policy have played a key role on enhancing regulatory quality. This includes COFEMER, the Ministry of Economy, and the Ministry of Public Administration. As a result, Mexico is currently at a stage where positive results are being obtained. However, this is not the time to slow down and instead; further work should be fostered to step up to a new phase of regulatory quality which embeds an effective and profound regulatory improvement culture across the Federal Government.

The following suggestions should be considered to establish a “whole-of-government” culture for regulatory improvement policy:

- Creating a small committee or council of ministers to review and approve high-impact regulations;
- Establishing a network of units placed inside ministries that provide expert support in regulatory policy and governance matters; and
- Enhancing the role of the Ministry of Public Administration.

Creating a small committee or council of ministers to review and approve high-impact regulations

Currently, the opinions issued by COFEMER on draft regulations and their RIAs are not legally binding, which limits the potential of the better regulation policy in Mexico. To address this challenge, Mexico should consider centralising and consolidating the approval of high-impact regulation in one mandated central body, preferably one that can provide collective
oversight. Its purpose would be to make the approval of high-impact regulations binding and conditional upon demonstrated compliance with regulatory policy principles, or stated and specific government policy objectives (i.e. how regulations support efficiency gains, economic growth, competitiveness, productivity, etcetera).

This could be achieved by creating a small committee or council of ministers to review and approve high-impact regulations submitted before them by individual ministers. Proposing ministers must demonstrate compliance with clear and public criteria (i.e. regulatory policy principles, specific government objectives), and such compliance must be a condition for approval. This would offer the benefits of providing a “collective” ministerial review and approval function, therefore improving compliance and accountability of ministers and officials proposing regulations, and driving a “whole-of-government” culture for regulatory improvement policy.

This committee would only focus on draft regulation considered to be high-impact. COFEMER would be the body in charge of making recommendations to the council regarding the approval, modification or rejection of the regulation, based on the corresponding RIA process, and the results of public consultation. The final decision would rest on the council, in which transparency and accountability mechanisms would have to be established regarding the council’s decisions. This option presumes the need for an adequate legal instrument, such as a new law on regulatory policy and governance, to create the committee, or update the status of current bodies, such as the Federal Council on Regulatory Improvement.

Box 2. The regulatory process in Canada

The approval process for regulations in Canada is governed by the Statutory Instruments Act (SIA). Canada has three broad classes of regulations:

- Governor in Council (GIC) Regulations: These regulations require the authorisation of the Governor General on the advice of the Queen’s Privy Council (currently represented by the Treasury Board Ministers). This means that a cabinet of minister has the authority to accept or reject these regulations;

- Ministerial Regulations: Where an Act gives an individual minister the authority to make regulations; and

- GIC or Ministerial Regulations requiring Treasury Board approval: These regulations require approval from the Treasury Board (TB) when there are financial implications or when a department’s enabling act requires Treasury Board recommendation to the Governor in Council

The main features of the process of developing GIC regulations are:

**Analysis:** Departments conduct analysis and develop the regulatory impact assessment statement (RIAS) that includes a description of the proposal, alternatives considered, a benefit-cost analysis, results of consultations with stakeholders, compliance and enforcement mechanisms. They obtain approval of the RIAS from the Regulatory Affairs Sector in the Treasury Board of Canada Secretariat (TBS-RAS).

**Sign-off by Sponsoring Minister:** The proposed regulation package is signed off by the sponsoring minister. By signing the documents, the minister formally recommends pre-publication or exemption from pre-publication and final approval. In cases where regulations
require Treasury Board recommendation to the Governor in Council, the department will send a submission to TBS.

**Review by TBS-RAS:** TBS-RAS will review the consistency with the Cabinet Directive on Streamlining Regulation (CDSR) and other government initiatives; review the supporting documents; and prepare a briefing note for consideration by TB.

**Request to TB for Pre-publication:** The first time that a regulatory proposal is seen by TB, the sponsoring minister is seeking approval for pre-publication in the Canada Gazette, Part I. Pre-publication allows for public scrutiny and comment on the proposal, generally for a period of 30 days or 75 for regulations with an impact on international trade. It is expected that the department will address public comments in a revised regulation, or provide reasons why a given concern could not be addressed.

Source: http://www.tbs-sct.gc.ca/

**TB Recommendation for GIC Approval:** TB Ministers make the decision to recommend approval of the regulatory proposal by the GIC. If approved, the Governor General grants validity to the regulation by signing it; and the regulation is subsequently registered with the Registrar of Statutory Instruments. If not approved, the sponsoring department must decide: to modify the initiative and go back to the beginning of the approval process; or abandon the initiative entirely.

*Establish a network of units placed inside ministries that provide expert support in regulatory policy and governance matters*

Additionally, it must be understood that COFEMER is not the only entity responsible for regulatory improvement policy within the Mexican administration. Line ministries and sectoral regulators should recognise the important and key role they play in adopting and promoting a better regulation culture. Line ministries and sectoral regulators hold a large share of the responsibility for issuing and enforcing high-quality regulation. Therefore, Mexico should consider establishing a strong coordination network to bind the work of different parts of the administration on regulatory policy.

To this end, Mexico should aspire to establish a network of units placed inside ministries that provide expert support in regulatory policy and governance matters, such as in the preparation of RIA, administrative simplification, administrative burden measurement, consultation, and communication. This approach is directed to embed regulatory quality practices from the early stages of the process to design and develop regulation, and make line ministries and regulators directly responsible and accountable for their regulatory performance to businesses, citizens, and the society at large. Apart from providing expert advice, the units of regulatory improvement would ensure that RIA guidelines are followed from the initial stages of the drafting of regulation, encourage line ministries and regulators to engage in public consultation themselves during these stages, and follow up the implementation of administrative simplification measures, including measuring administrative burdens.

The units would be part of the line ministries’ structures and could be created with existing staff, just as in the case of the current transparency units. COFEMER’s functions would include the capacity to issue guidelines, methodologies, and criteria for the operation of
the units. In turn, the units would be one of the main official contact points for COFEMER, and they would receive training, capacity building and direct support from COFEMER. By working alongside line ministries and regulators, the units of regulatory improvement would be able to maximise the effects of the regulatory policy tools, and generate ownership of the regulatory improvement policy agenda within the entities of the public administration.

In order to successfully implement these measures, Mexico might consider enacting a new law on regulatory policy and governance to create the network of units of regulatory improvement, and to update the institutional status of COFEMER to give it the powers to interact and collaborate with these units. The upgrade of the institutional status of COFEMER is addressed in the next finding.

Box 3. The culture of better regulation in the United Kingdom

The United Kingdom has successfully started up a new phase in the “institutionalisation” of Better Regulation encompassing most of the actors that need to be part of the process. The Better Regulation Executive (BRE) is an influential, well-resourced and well-connected central unit, with high-level leadership in the shape of a permanent secretary. However, the BRE itself does not deliver Better Regulation. It operates as the centre point of a radial network of relationships drawing in other important actors, within the central government executive and beyond (the parliament, the National Audit Office, national regulatory agencies) as well as at the local level. The BRE seeks to influence a very large and disparate set of actors. Structures such as the identification of a minister responsible for Better Regulation in each department contribute to the strength of the system. The BRE has also successfully embraced a significant “political” dimension, to persuade ministers of the value and necessity of following Better Regulation principles.

In order to embed a profound regulatory culture throughout the whole government, the BRE has successfully developed a range of contacts and relationships (including through secondments from other departments) and set up a network of structures across central government operating at different levels. This network comprises Better Regulation ministers, board level champions (officials to support ministers), impact assessment sign off by ministers, and Better Regulation units within departments to support and deliver better regulation processes and programmes. On-line training for the application of better regulation tools and processes is also well developed, with the support of specialists, and as part of general training programmes for civil servants, which tackle issues such as impact assessment and consultation. A highly structured performance measurement system for all public officials involved is also in place, covering the main dimensions of Better Regulation.


Enhance the role of the Ministry of Public Administration

Finally, the role of the Ministry of Public Administration in the better regulation agenda of Mexico must be enhanced. In addition to ensure its participation in the ministerial committee suggested above, two main activities of the Ministry of Public Administration in regulatory improvement in Mexico must be clearly set: its responsibility in promoting and effecting better regulation for regulation inside government; and regarding regulations applied to businesses and citizens, its capacity to enforce the commitments and responsibilities of
line ministries and regulators in coordination with COFEMER and the Ministry of Economy, and issue sanctions in the case of noncompliance.

The latter role as enforcer of better regulation commitments should include the supervision of the following responsibilities of line ministries and regulators:

- Simplification commitments that derive from the regulatory improvement programmes;
- Registration of formalities in the **Federal Registry of Formalities and Services**, and
- Compliance with consultation obligations.

In order to achieve the “whole-of-government” culture for regulatory improvement policy, the institutional design of COFEMER must be revised

**COFEMER requires a strengthened institutional setting in order for Mexico to achieve an integral regulatory policy culture. COFEMER is vested with technical and operational autonomy, but remains hierarchically subordinated to its central ministry. As a result, COFEMER does not have legal personality or financial independence, as its budget is dependent on the Ministry of Economy. This situation can weaken the oversight function of COFEMER, because of legal, political, administrative, and budgetary interference.**

The Commission needs an institutional design that grants it sufficient legal and financial autonomy to discharge its mandate as a central oversight body for regulatory quality. Such autonomy would reinforce its technical independence, protect its professionalism, and distance it from cyclical influences within the Mexican public administration. In a setting in which line ministries and regulators take more responsibility in their better regulation obligations, a stronger institutional setting for COFEMER is needed so as to allow the system to function and deliver results effectively.

COFEMER currently performs the function of challenge and scrutiny of new and existing regulation, mainly through the regulatory tools of RIA, administrative simplification, and reviews of the regulatory stock. Similarly, COFEMER carries out the function of providing training and giving advice and technical support on regulatory tools and improvement policies. To successfully perform these functions COFEMER requires to be shielded from political interference and private interests in order to establish its technical independence, and assure a high level of technical capacity of its staff. The measures to achieve this can include an autonomous budget, more independence on its capacity to exercise its power, and strengthened policies for hiring and retaining staff. Adequate resources are not only needed to make an oversight body competent and effective, but lack of these can also compromise the proper fulfilment of tasks (OECD, 2010f).

An oversight body also needs access to the highest political level to preserve influence within the government. Political support is required to back the oversight body and give effective life to it. When regulatory oversight bodies receive a say on regulatory instruments, they are necessarily close to the centre of the political process. To be effective, they also need to be close to a political champion, which will ensure the quality of oversight within the executive branch. Therefore, a potential more robust institutional setting would locate COFEMER close to core executive functions, either at the centre of government itself, or as part of a central ministry with significant coactive power. This would allow the agency to have access to the highest political levels to preserve influence within government.
In the proposed setting in which there is an approval committee of high-impact regulation, COFEMER’s opinions are taken into account by such a committee, the need to provide COFEMER with a stronger political stance vis-à-vis line ministries and sectoral regulators is more acute. This reinforces the necessity to grant more autonomy to COFEMER.

Box 4. **Institutional design and location of the oversight body**

The location of the oversight body involves a number of trade-offs within the State apparatus. Finding a right formula for successful oversight deals with the design and function of the body and its relationships with other institutions. The choice of location involves balancing between the wish to grant some autonomy, so that the unit can function effectively (including selection, hiring and firing of the head, budget, powers), while preserving credibility through access to the key decision makers, accountability to the political level, and relevance in the machinery of government.

Objectivity and credibility of the oversight process are essential. The location needs to reflect the intended relationship between regulators and the reviewer. An oversight body will need access to the highest political level to preserve influence within the government. Yet, excessive autonomy may result in more limited access to the decision makers. As a result, many OECD governments established the oversight body close to the Centre of Government (CoG) to ensure that its outputs are embedded into Cabinet processes. Moreover, the role of “regulating the regulators”, is eminently an executive branch function, which has to be located close to the core of the government decision-making process. This was originally the reason for locating OIRA within the Executive Office of the President in the United States and has been key to its success; where located in a core and powerful executive arm, it has authority over most of the federal administration rule making undertakings. The importance of ensuring access to policy making is also patent in Germany where the Federal Chancellery has established a special Better Regulation Unit to coordinate the administrative burden reduction programme for business, working in tandem with the dedicated external advisory agency, the National Regulatory Control Council (NRCC).

Source: OECD (2010), Strengthening the institutional setting for regulatory reform, the experience from OECD countries, OECD, Paris.

The actions to strengthen COFEMER should be accompanied by the setting of transparency and accountability rules that ensure fairness and credibility. Experiences across OECD countries reveal that as oversight bodies are vested with significant powers, they have also been checked by clear transparency and accountability rules, to make sure their approach and processes can resist external scrutiny (OECD, 2010f).

Given the political and policy sensitivity of regulatory quality oversight, no country has provided uncontrolled powers over regulators to an oversight body. When governments delegate authority to an oversight body, they also establish constraints and limits. One of the ways for governments to address this issue has been to include strict political accountability mechanisms in the mandate of the oversight body. Without clear limits and accountability rules, an oversight body may be subject to the same criticism that justified its establishment. In this new setting, the functions of the Regulatory Improvement Council can be enhanced so as to become one of the bodies to which COFEMER is accountable to.
Box 5. Accountability mechanisms of oversight bodies on better regulation in selected OECD countries

Denmark: Better Business Regulation Division of Danish Commerce and Companies Agency (DCCA). The DCCA reports twice a year to the Coordination Committee chaired by the Prime Minister, and once a year to the parliament, on the progress of the simplification programme, including ICT and initiatives at EU level. Every six months, the DCCA provides progress reports about reaching the targets of administrative burden reduction through the Ministry of Economic and Business Affairs.

Germany, National Regulatory Control Council (NRCC). Both the federal government and the NRCC are legally required to report on the programme annually (the burdens and reductions achieved). These reports are an important tool for encouraging results. The first Cabinet report was presented to the parliament and the public in October 2007. All reports are available online on the central federal government’s homepage related to the reduction of bureaucracy. The NRCC also publishes an annual activity report, available online in German and English.

Netherlands, Regulatory Reform Group (RRG). Each ministry has to report to the RRG on the progress in reduction of administrative burdens for businesses. RRG then reports to the ministers of Finance and Economic Affairs, the Cabinet; and, quarterly, to the Parliament on general progress.

Source: OECD (2010), Strengthening the institutional setting for regulatory reform, the experience from OECD countries, OECD, Paris.

The advocacy function is a key element to achieve a “whole-of-government” culture for regulatory improvement policy. Mexico should consider the creation of an agency that would unilaterally advocate for regulatory reform.

A core function of a regulatory improvement policy consists in unilaterally encouraging improvements of the regulatory framework. Advocating reform is important in helping to identify opportunities for reform and in supporting and arguing for the development and progress of reform initiatives. This advocacy function can be divided in two: internal to the administration, and external. In the case of internal advocacy, oversight bodies are empowered to recommend quality regulation through specific deregulation/reregulation initiatives to ministries, regulators or agencies. In other cases, oversight bodies have the opportunity to advocate publicly and engage in external communication, calling upon stakeholders and the policy debate to push through a programme for regulatory improvement (OECD, 2010f).

A key consideration for Mexico may be to modify its current institutional arrangements for regulatory policy to establish and foster the external advocacy function. Mexico should consider the creation of an agency that would unilaterally advocate for regulatory reform. Such advocacy function could be important in Mexico to identify reform opportunities and support the development of reform initiatives. It would also ensure that regulatory reforms are broadly understood and accepted by business, and civil society. In this regard, such an advocacy function would require interaction with stakeholders and affected parties.
—seeking external assessment, perceptions and support— which will help to drive future regulatory improvements.

The creation of an external advocacy agency, completely independent from government decisions, has the merit of ensuring that a truly external view of business and citizen needs is captured and counteracting the bureaucratic view and “status quo bias” that prevails inside government. In creating an external agency, it would have an important role in advising the government on the impacts of existing regulations by providing _ex post_ analysis of the effectiveness of regulatory policies and programmes with suggestions for possible reforms. In this regard, it would be critical that the agency set institutional functions that effectively separate its policy evaluation process from the political process. A number of factors would need to be considered in order to contribute to this separation:

1. The agency would need statutory independence and a standing function that is accepted by all major political parties.
2. The analysis carried out by the agency would need to give clear consideration to the stated objectives of government policy and not substitute its own policy objectives.
3. The examination would need to be undertaken transparently using broad welfare analysis that would take into account a diversity of policy considerations and the impacts on the overall economy.
4. The analysis would provide a single voice in policy debate yet be informed by inputs from multiple actors and stakeholders. Therefore, coordinating and consultation mechanisms would have to be established with these stakeholders, including the Ministry of Economy, COFEMER and regulators.
5. The analysis would need to take a national focus, thereby overcoming the potential for policy fragmentation associated with multiple layers of regulatory authority in Mexico.
6. And finally, while the analysis of the agency would not have to be formally considered or approved by the government —thus tying the government's hands— it would remain in the public domain as a reference to assist policy debate and in guiding future policy development. To counter the potential for status quo bias, the government should be required to formally respond to the agencies analysis and recommendations.

**Box 6. The Australian Productivity Commission**

The Productivity Commission (PC) is an independent research body that advises the Australian Government on a range of economic, social and environmental issues that affect the welfare of Australians. Its charter is to improve the productivity and economic performance of the economy, taking into account the interests of the community as a whole, considering environmental, regional, and social dimensions; not just the interests of particular industries or groups. An important function of the PC is modelling the economic costs and benefits of alternative policy options. It may make recommendations on any matter that it considers relevant, and it is up to the government to decide how to use the advice provided. The PC is unique among OECD members for its standing inquiry and policy advising work across a range of economic, social and environmental issues.

The government directs the PC on what areas to study through the issuance of formal terms of reference, but the PC is independent in its analysis and findings. The processes of inquiry...
Regulatory governance comprises the system whereby regulations are designed, implemented, enforced, and evaluated once they are in force. OECD recommends that policies for better regulation must be applied throughout the cycle. This approach will permit to establish a whole-of-government policy on regulatory improvement. The legislative power is therefore one of the pillars of this cycle, since it is the primary source of laws, from which secondary regulation emanates.

Regulatory quality policies applied only to the Executive power do not allow for the full attainment of the benefits of regulatory improvement. The legislative process exercised by the Mexican Congress does not contain, to date, any type of better regulation analysis. This contrasts sharply with the regulatory improvement policy applied within the federal public administration.

The regulatory improvement process envisaged by the LFPA only comprises secondary legislation issued by the APF and initiatives of primary legislation presented by the Federal Executive. This means that all legislation proposed by Congress itself is not included in the policy of regulatory improvement. For instance, primary laws prepared by Congress are not subject to any formal or informal obligation to perform an impact analysis, neither \textit{ex ante} nor \textit{ex post}, or to carry out public consultation on the impact and effects that the intended legislation has on society.

In fact, about 90% of the bills passed by the current legislature had their origin in Congress and were not subject to impact analysis. This gap implies the risk that ministries and agencies may try to avoid the regulatory quality process by convincing legislators to present a bill with the regulatory requirements they would otherwise issue via secondary regulations, which have to be accompanied by a RIA.

The Chamber of Deputies has an Economic Commission and the Senate has an Economic Promotion Commission. These Commissions have been recently making efforts to promote legal reforms with a focus on administrative burden reduction. Despite these efforts, Congress lacks specific rules, committees or commissions with a special interest in regulatory quality since there is no legal obligation to carry out any form of regulatory improvement process when enacting primary legislation.

Congress should consider adopting specific tools of regulatory policy as part of its legislative activities. For instance, the legislative power should consider adopting techniques for \textit{ex ante}
and ex post evaluation of the impact of legislation. Transparency in the process of law making should be enhanced, and the inclusion of formal and institutionalized public consultation should be a permanent aspect of congress activities.

The adoption of specific tools on regulatory policy in the process of law making should not create additional burdens. Similarly, these tools should be embedded in the process so as to avoid additional delays or bottlenecks. To this purpose, there should be prioritisation of the laws to be evaluated, based on specific and objective criteria. Another option in the short term to avoid extra steps in the law making process, while adopting at the same time better regulation practices, is to set up tools for ex post evaluation of laws, as a first measure. Ex post evaluation of regulatory impact can help Congress drawn lessons which can guide the law making process.

Box 7. Law evaluation in Chile

The Chilean legislature is seeking a more systematic approach to better law making with a focus on ex post law evaluation. In the past, evaluations were undertaken on an ad hoc basis by the various legislative commissions. Following these efforts, the Chilean Chamber of Deputies established the Law Evaluation Department (Departamento de Evaluación de la Ley) on 21 December 2010, created by an agreement of the Commission on Internal Regime, Administration and Regulations. The main responsibilities of this Department are the following:

1. Evaluating the legal norms approved by the National Congress in coordination with the Secretary of the commission in charge. The evaluation is made based on the effectiveness and influence on society. The Department might propose corrective measures to improve the implementation of the evaluated law.

2. Creating and maintaining a network of social organisations interested in participating in the evaluation process.

3. Informing the Secretary-General, through the Commission of Internal Regime, Administration and Regulations, about the results of the evaluation.

4. Suggesting amendments to the current legislation, if needed.


As regards to ex ante evaluation of the impact of regulation, the adoption of this practice would ensure consistency in the treatment of proposed primary legislation. In principle, the same level of regulatory impact scrutiny should be applied to all proposed legislation, regardless of whose initiative has given rise to it. Should this step be taken, it would be important to develop procedural requirements ensuring that an impact assessment be available to legislators prior to the draft legislation being debated substantively. The application of impact assessment to draft bills originating in Congress would have, among others, the following benefits:

- Contributing to define policy alternatives and, if adequate, regulatory interventions and improving the quality of the information available for Congressmen, so that they can anticipate unintended consequences of legislation.

- Enhancing transparency by opening new possibilities for stakeholders’ participation and facilitating the buy-in of target populations of legislation.
• Increasing accountability of the legislative process.
• Reducing risks of regulatory failure by promoting evidence-based decision making.
• Setting out *ex ante* evidence and expectations as the basis for *ex post* assessment to monitor performance and consistency with expected results.

In consequence, Congress should consider the development of institutions and methodologies for impact analysis. There have already been some initiatives to propose impact analysis within Congress and to implement public hearings, but they have not gone too far. The international experience suggests different models to do it, such as relying on legislative commissions or developing a technical unit with the mandate and expertise to do it, among others. In any case, the body responsible for impact assessment would need to work in close consultation with the ministry or independent regulator responsible for the relevant policy area, building on the coordination mechanisms already in place.

**Box 8. International experience with regulatory impact assessment in legislative bodies**

International experiences convey good practices in this matter. In fact, there seems to be no uniform model of legislative evaluation unit. Although some parliaments do have formal units dealing with evaluation (i.e., the US Congressional Budget Office), many others do not; using, instead, a mixture of research bodies, libraries, and committees to undertake evaluation. Hence, the international experience illustrates that effective evaluation can be undertaken using a range of institutional and organisational structures and methods, some formal, others more *ad hoc*.

The governmental system of Switzerland gives high priority to the evaluation of laws and federal government activities. Evaluation is undertaken by the Parliamentary Control of the Administration (PCA), which is part of the Parliamentary Services Department of the Federal Assembly. Established in 1991 the PCA is an example of a specialised service that carries out evaluations on behalf of Parliament. Evaluations are presented to Control Committees, which are mandated by the Federal Assembly to exercise parliamentary oversight of the activities of the Federal Government and the Federal Administration, the Federal Courts and the other bodies entrusted with tasks of the Confederation.

In the French National Assembly, the Commission for Evaluation and Control (CEC) has been monitoring the application of legislation since 2008 and assesses public policies that go beyond the powers of a single standing committee. The CEC relies on the staff of the Secretary General of the National Assembly and external experts, as well as on the possible assistance of the Court of Accounts (*Cour des Comptes*). The reports produced are first examined by the CEC and then within the concerned committees. Debates may take place in plenary meetings with the participation of representatives of the government. After six months of submitting a report, a follow up document is prepared on the implementation of the conclusions. Eleven reports were submitted and published between July 2010 and February 2012, as well as five follow up reviews for the first reports published.

In the Swedish Parliament (*Sveriges Riksdag*) the Parliamentary Evaluation and Research Unit is in charge of *ex-post* evaluation and coordination. The Unit was established in 2002 and was placed under the *Riksdag* Research Service. The Unit is headed by the Committee coordinator of the *Riksdag* Administration. The unit consists of eight positions: four senior evaluators,
three senior research officers, and one clerical officer. The Unit works closely to support parliamentary oversight committees in their evaluation functions and undertakes, among others, the following tasks:

- Helping the committees prepare, implement and conclude follow-up and evaluation projects, research projects and technology assessments.
- Locating and appointing researchers and external experts to carry out projects.
- Preparing background materials for evaluation and research projects at the request of committees.
- Requesting up-to-date reports from government agencies on the operation and effects of laws.
- Contributing to the structuring, implementation and final quality control of projects.
- Contributing to the general development of the committees’ evaluation and research activities.

The Riksdag has twice (2001 and 2006) incorporated guidelines for follow-up and evaluation as one main task to be undertaken by committees. The guidelines state that the Riksdag must obtain information to assess if the laws adopted have had the intended effects, as well as other forms of follow up and evaluation, such as whether resources have been distributed in accordance with political priorities.


Formally include the management of tax procedures and the Mexican Social Security Institute as part of the regulatory improvement programme

Mexico should consider eliminating tax formalities from the exceptions of the LFPA, in order to include them in the RIA evaluation process, in the programmes for administrative simplification and burden reduction, and in the other tools of the regulatory improvement programme of Mexico. It must be clearly stated, that the objective is to make the management of tax formalities and procedures part of the better regulation programme. This does not include the capacity of the state to levy taxes by raising current tax rates or by creating new taxes.

The 2004 OECD Review of Regulatory Reform Policies of Mexico recommended the revision of the exemptions from tax regulation. In line with these recommendations, the Mexican government issued the Regulatory Quality Agreement on February 2007 instructing the Ministry of Finance to reduce administrative burdens and apply measures of administrative simplification on tax payment formalities. As a result, on June 2010 and March 2012, administrative simplification measures on tax formalities were launched, which have brought about significant benefits to businesses, especially SMEs. Nonetheless the very positive results, the inclusion of tax formalities under the scope of a comprehensive policy for regulatory quality will help simplify them and reduce their compliance costs.

The programme of better regulation should also be extended to those formalities dealing with health care provided by the Mexican Institute of Social Security (IMSS). Article 9 of the Social Security Law excludes these proceedings from the application of Title 3A of the
Recent OECD research shows that administrative simplification programmes can be very effective in reducing both administrative burdens, and sources of irritation amongst citizens when dealing with the government in the provision of services (OECD, 2010a). The inclusion of IMSS formalities in the programme for regulatory improvement of Mexico will contribute to raise the standard of services for the benefit of citizens.

**3.2. REGULATORY TOOLS**

Consultation should be enhanced and be made systematic from the early stages of regulatory development, in order to advance in the whole-of-government approach to regulatory improvement.

While consultation on the basis of the RIA in Mexico is extensive in nature and is one of the strengths of the impact assessment process, there is no formal requirement for consultation to be conducted prior to this assessment. The adoption of the transparency law appears to have significantly expanded the amount of consultation effort undertaken by line ministries and regulators overall, but there are wide divergences in practice.

While some line ministries and regulators undertake substantial pre-RIA consultation, others do none, preferring to use the RIA evaluation process as their main consultation vehicle. In fact, there is no legal obligation for line ministries and regulators to publicise the regulatory proposals and engage in public consultation at the early stages of the regulatory cycle. This transfer of consultation responsibilities to COFEMER does not help advancing a whole-of-government approach, in which each ministry must commit to regulatory quality.

COFEMER sometimes receives comments on RIA documents from a large number of stakeholders, which is laudable, but there are potential gains in engaging in consultation with the public at early stages of the regulatory governance cycle as well: extended consultation during RIA evaluation while of substantial value in its own right is not a complete substitute for pre-RIA consultation.

Despite the public consultation mechanisms currently available, the OECD recorded the concern from regulated agents, such as business chambers and associations, as to having the opportunity of commenting and issuing opinions on draft regulations at earlier stages of the rule making process. They expressed their concern that once the regulatory proposal reaches COFEMER, there is no much room left to modify it.

The Mexican government should consider enhancing the current consultation requirements by mandating that regulators and ministries conduct consultation with stakeholders at early stages in regulatory development. This consultation should be completed before a draft RIA document is prepared and submitted to COFEMER and should provide input to that document. The scope, depth, and nature of pre-RIA consultation could be commensurate with the impact of the proposed regulation, so that high-impact regulations would merit extensive early consultation. Such prioritisation would help target resources and avoid “consultation fatigue”.

The development of a culture of pre-RIA consultation should go hand in hand with the adoption of mechanisms, safeguards and rules of engagement to prevent interest groups from trying to delay the process, and to avoid the risk of regulatory capture. Regulatory
transparency and consultation should not be employed as instruments by interest groups to either stall the regulatory process, or to influence the orientation of the regulation to benefit private interests, to the detriment of the objectives of public policy.

Pre-RIA consultation could provide a better way for individual citizens and businesses and other less well organised and resourced stakeholders to express their views, thereby providing useful information to policy makers to improve the rule making process from early stages. In particular, the following potential benefits can be identified:

- Early consultation can potentially spot in a timely way situations in which the identified problem has been poorly understood and does not, in fact, merit government intervention.

- Problems in terms of the acceptability of a regulatory proposal to key stakeholders may be identified at an earlier stage and this factor taken into account more effectively in the process.

- Engagement with the public at an earlier stage of the policy process, before there is strong commitment to a particular regulatory path, may help to identify additional tools (regulatory or non-regulatory) to address the policy objectives, potentially yielding more effective responses.

- Consultation at an early stage can be conducted on a less technical and more inclusive basis. Wider participation decreases the possibility of regulatory capture and increases the perceived legitimacy of the resulting regulation.

A number of different approaches to adopting pre-RIA consultation could be adopted. A new law on regulatory policy and governance or amendments to the LFPA would be strong mechanisms to support it. Specific consultation guidelines could be issued by COFEMER that would set out broad expectations as to the nature, extent, and specifics of pre-RIA consultation, including who should be consulted, what information should be made available regarding the proposal, and how much time should be allowed for responses to be received.

In addition, the sections of the RIA template where regulators explain what prior consultation with stakeholders has been undertaken and summarise the main viewpoints received could be upgraded, in order to require a more specific explanation about the methodologies employed and how public participation was encouraged. For the case of moderate-impact regulation, when pre-RIA consultation does not take place, the regulator should be asked to explain why. For the case of high-impact regulation, a requirement that pre-RIA consultation be carried out before a specific regulatory proposal was finalised should be adopted. Besides providing guidance materials, COFEMER could offer training to improve consultation practices.

In consequence, the role of COFEMER should be to ensure that valid and systematic input from stakeholders is considered by ministries and agencies. By promoting and facilitating a culture of timely and effective consultation, COFEMER will ensure a whole-of-government approach, in which the line ministries and regulators assume their own share of responsibilities in consultation.

During the RIA evaluation process, COFEMER should also consider requiring regulators to publish a non-technical summary of the RIA document, together with specific questions to stakeholders that would highlight the key issues in question. This can help to enhance the ability of the general public and other smaller stakeholder groupings to participate in public consultation on regulatory proposals.
Finally, Mexico should consider setting up mechanisms to have consultation after the enactment and implementation of regulation, as a way to assess regulatory performance. This approach presupposes that performance indicators and the plan for ex-post assessment of regulation should be part of the RIA. In this way, Mexico’s policy on better regulation would adopt performance evaluation in a “life cycle” approach.

Box 9. Public consultation in the United Kingdom

The United Kingdom has a longstanding tradition of general consultation, with a flexible framework. Currently, the legal instrument that establishes this framework is the Code of Practice on Consultation, published in 2000 and revised in 2004 and 2008. The Code applies to all central government departments and those agencies which have a close relationship with a parent department. With a few exceptions, such as emergency legislation or tax, consultation takes place in all policy areas and must follow the Code. Public justification must be provided if the Code is not applied.

In the 2008 revision of the Code, which consisted in a programme of 20 stakeholder events around the United Kingdom to hear views on how the government consults and where improvements could be made, the stakeholders expressed negative views on the consultation process, such as poor organisation on information access, lack of transparency and responsiveness to stakeholders opinions, and a need for an independent quality monitoring of government consultations. In response to these concerns, the Code was updated, taking into account the following five criteria:

- **When to consult:** Formal consultation should take place at a stage when there is scope to influence the policy outcome.
- **Duration of the consultation exercise:** Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
- **Clarity of scope and impact:** Consultation documents should be clear about the process, what is being proposed, the scope to influence, and the expected costs and benefits of the proposals.
- **Accessibility of consultation exercises:** Consultation should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
- **The burden of consultation:** Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees’ buy-in to the process is to be obtained.


The quality and accountability of RIA analysis could be improved further

As a means to enhance RIA quality and accountability, the Mexican government should consider the merits of having the Minister responsible signing off the RIA in order to certify its quality. The concept of requiring ministers to take personal responsibility has been a feature of RIA systems at least since the mid-1990s. This would constitute an important quality assurance factor, since it creates direct incentives within the regulatory agency or ministry for high quality RIA to be developed. Particularly where the RIA document is publicly available, such a requirement has the potential to be a powerful factor in encouraging a high-level analysis to be completed. Furthermore, ministerial endorsement would foster
accountability within ministries thereby driving deeper a regulatory reform culture among those responsible for developing and administering regulations.

At the same time, Mexico should consider to exempt sectoral regulators from this mechanism. In the framework proposed by OECD in this report in which there is strengthened independence and accountability of regulators (see Chapter 4), regulators should be directly responsible for the quality of RIA.

Box 10. Ministerial endorsement of the RIA: international experience

One example of a requirement for ministerial authorisation of the RIA document is that of the United Kingdom. As early as 1996, it implemented a requirement for ministers to personally consider the RIA document and to sign a Regulatory Quality Certificate, which confirmed that the proposed regulations strike an appropriate balance between benefits and costs. The ministerial approval requirement has been maintained to date and is supplemented by a second approval process. Thus, the minister is required to endorse public RIA documents, while the approval process is further strengthened by the parallel requirement for the ministry’s Chief Economist to endorse the accuracy of the benefit and cost estimates, and the impact analysis which it contains. Where there is no minister directly responsible for the regulatory proposal, the RIA must be endorsed by the chair or chief executive of the department or agency in question.

Another notable example of a ministerial approval requirement is that of the Australian state of Victoria. Here, the requirement is directly established in primary legislation. The minister must provide, in respect of all delegated legislation, a written certificate stating that the RIA requirements of the Subordinate Legislation Act have been complied with and that, in his/her opinion, the RIA document adequately assesses the likely impact of the regulatory proposal. In this case, the importance of ministerial endorsement of the RIA document is further strengthened by the legislated requirement for review of the proposed regulation and its accompanying RIA document by a parliamentary committee, which may recommend its disallowance in cases of significant procedural defect.


COFEMER sometimes appears to duplicate efforts by redoing the technical analyses contained in RIAs presented by line ministries and regulators. This reduces the incentives for ministries and agencies to do quality regulatory proposals since they know their analyses will be improved anyway. This dynamic also hinders the adoption of a whole-of-government approach. Instead, COFEMER’s role should focus on quality control, ensuring that regulatory proposals and their RIAs fulfil with high professional standards, publicly credible, and fully compliant with policy expectations. Ministries and agencies should possess specific expertise, know their stakeholders, and be in a good position to develop regulations. COFEMER should demand and rely on this responsibility to avoid duplication. In consequence, it should consider the benefits of adopting additional measures to support regulators to obtain access to adequate technical capacities to undertake high quality regulatory development and RIA. Potential strategies could include:

• Reshaping the Economic Intelligence Unit (EIU) to interact and collaborate with the units of regulatory improvement suggested previously. Through these units, the EIU would
develop a dedicated capacity to provide technical assistance on benefit/cost assessment of regulatory proposals to line ministries and regulators at early stages of policy development, up to the point where preliminary RIA documents are lodged. This proposal assumes that the adequate regulatory instruments are created or modified to formally establish the attributions of the EIU.

- Considering the possibility of making use of private sector expertise, where appropriate, to supplement, not replace, internal resources and build capacities to conduct assessments of the impact of proposed regulation. In this task, the Mexican government needs to be careful to avoid the emergence of “clienteles” or interest groups behind consultants, which would imply a risk for the objectivity of their analyses.

COFEMER should continue its current efforts to provide methodological guidance to ministries and regulators to assist them in preparing high quality RIA that adopt consistent approaches and assumptions. Special focus should be given to review current advice on discount rates and ensure that the advice provided is consistent with Mexico’s circumstances and underpinned by a sound policy rationale; and to develop guidance on appropriate estimates for the Value of a Statistical Life in the Mexican RIA context.

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**Box 11. International experience on guidance to carry out RIA**

The Victorian Guide to Regulation provides a framework for the design and assessment of government regulation. The Victorian Competition and Efficiency Commission (VCEC) provides a good example of methodological guidance to prepare RIA. The Commission meets the departments preparing RIA early in the process of policy development and at key moments. It also offers regular and free training workshops for policy officers who prepare RIA to provide them with an introduction to the process and equip them to prepare high quality analyses (i.e., cost-benefit analysis). The VCEC may debate the quality of problem definition, data, analysis, and alternatives examined, but does not take policy positions. It may also provide lists of consultants to support departments in preparing RIA, but does not endorse any provider. Finally, the VCEC has developed guiding materials on cost effectiveness, cost recovery, costing methodologies, the suggested value of a statistical life, and consultation practices, among other topics.

In Canada, the Centre of Regulatory Expertise (CORE) exercises strong leadership and expertise in implementing the Cabinet Directive on Streamlining Regulation by providing expert advice and services to help departments build their internal capacity to develop sound, evidence-based regulatory proposals, and to facilitate the development and promotion of best practices and learning opportunities for federal regulators. The CORE consists of a Director and five experts on risk assessment, cost-benefit analysis, performance measurement, evaluation, and a “generalist”, with a broad range of experience in many aspects of regulatory development, including instrument choice, regulatory cooperation, triage, and regulatory coordination. CORE experts are at the disposal of departments to offer the following guidance: i) Analytical services (experts can be assigned to a department for periods from two weeks to two months), ii) coaching/advisory role based on periodic meetings to assess progress and provide feedback, iii) workshops/presentations, and iv) peer review by providing feedback on analyses before completing the regulatory submission. The CORE also accepts applications to cost share consulting services should departments lack financial resources to hire them.

Consolidate and advance the policy of reducing the cost of regulation

Mexico has recently embarked in a programme of reduction of administrative burdens using an adaptation of the Standard Cost Model (SCM). The challenge is to consolidate this policy, and strengthen it with complementary policies on the reduction of broader regulatory costs.

Mexico is rapidly catching up with other countries in terms of adopting the SCM, and has the possibility of learning from this experience. The programmes for regulatory improvement that line ministries must submit to COFEMER as part of their better regulation obligations every two years are well entrenched in the regulatory policy culture of Mexico. Mexico should continue using this well rooted tool so as to establish the programme of measurement of administrative burdens using the adapted SCM methodology and the reduction of these burdens as a permanent feature. Special focus should be given to the implementation of simplification actions and, if possible, to the evaluation of their impact. Additionally, coordination between COFEMER and the Ministry of Public Administration, which resulted in the incorporation of programmes for regulatory improvement as part of the commitments of line ministries to the Special Programme for Management Improvement in the APF, must continue. This will make permanent the benefits that derive from having the Ministry of Public Administration enforcing the implementation of the regulatory improvement promises of line ministries with the threat of legal sanctions if they are not met. Mexico should consider extending this type of mechanism to other areas of the better regulation policy, such as in the registration of formalities in the Federal Registry of Formalities and Services, and in the compliance with consultation obligations.

Consistent with one of the latest OECD recommendations in that quantification of burdens should be used cautiously, with the concept of efficiency in mind, Mexico invested reasonable resources in producing a baseline measurement of administrative burdens. Mexico embarked in the collection of data from around 500 interviews, and using a combination of statistical and mathematical techniques, and internal assessments, extrapolated the data to estimate the burdens. Nevertheless, Mexico should consider strengthening these measurements via more interviews, or expert opinions through panels. Mexico might consider these approaches only to a core of the most burdensome formalities or key economic processes. Finally, Mexico should consider measuring other costs of the regulation, such as substantive compliance costs. Qualitative techniques could be employed to identify other sources of irritation for businesses and citizens, which might not be correlated with the amount of administrative burdens.

Box 12. **Focalised reduction of regulatory costs in the Netherlands and Denmark**

Denmark and the Netherlands have embarked in the simplification of regulatory costs on a clearly defined set of formalities, information obligations or regulations. The definition of these sets follows specific priorities in terms of achieving certain economic or social objectives, such as ensuring that the reduction of regulatory costs are felt by businesses or citizens. This view contrasts with the one in which a wide baseline measurement of administrative burdens is carried out. Moreover, the objective of these exercises has been to reduce other kinds of regulatory costs, not only administrative burdens.

In Denmark, the following measures have been taken in order to reduce the costs of specific regulations:
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- **Burden Hunters Project.** It is a cross-ministerial project that focuses on administrative burden reduction experienced by SME’s, taking into account other factors besides administrative cost and time invested by the entrepreneur. In this exercise, officers from the Danish Commerce and Companies Agency (DCCA) and experts visited companies to gather evidence through interviews and observations of the practices of the enterprise, their relationship with public authorities, and the challenges and experiences connected with business regulations that they were experiencing.

- **Ten Business Flows.** The programme identifies the ten processes where all enterprises interact inefficiently with the government and finds how these processes can be optimised to benefit them. This simplification can be done through digitalisation, reusing data, strengthening of the communication channels between public and private sectors, etcetera.

- **De-bureaucratization programme.** Its main objective is to simplify rules, requirements and procedures that place unnecessary burdens on local and central governments and on public service employees, as well as documenting the results and effects of regulation.

In the Netherlands, the following focalised cost reduction programmes have come into effect:

- **Top Ten Bottlenecks.** This programme identifies the ten most irritating burdens and interactions between government and citizens, and makes recommendations on how to improve the experience.

- **Life Analysis.** It consists in the mapping of the nine possible routes that a citizen may take throughout his life in respect of bureaucratic procedures, viewed from the perspective of the citizen. The areas that stood out were paying taxes, obtaining a passport, and getting a driver’s license. The main aim is to reduce administrative burdens for citizens.

- **Citizens Service Number.** It gives a unique number to citizens, businesses and other government organisations in order to simplify their interactions with government agencies.

- **Kafkabrigade.** It represents a group of experts that adopt the perspective of the citizen to resolve problems in the public sector that affect its interaction with the citizen. After a review was carried out with the authorities and civil servants involved, the experts issued recommendations to improve the current functioning of the system.

Source: OECD (2010), Better Regulation in Europe: Denmark; OECD (2010), Better Regulation in Europe: Netherlands.

**Ensure the effectiveness of administrative simplification strategies**

Mexico should aspire to ensure the effectiveness of administrative simplification strategies, in order to guarantee that they deliver on their promises. This could be achieved by incorporating evaluation methods early in their process of development and by integrating them on the broader regulatory policies.

Over the past few years Mexico has implemented several high profile administrative simplification strategies: the online one-stop shop for business opening *Tuempresa.gob.mx*, the one-stop service for foreign trade, and the programme to review the stock of zero-based regulation. Mexico has placed these simplification strategies high on the priorities for regulatory improvement policies. Yet, Mexico should consider taking steps to ensure their effectiveness in terms of delivering the expected outcomes. For instance, the rate of usage of *Tuempresa.gob.mx* can be increased significantly.
The Ministry of Economy is currently developing the version 2.0 of Tuempresa.gob.mx which aims at improving the interface with entrepreneurs and notaries, and address several of the challenges detected in the first version. One way to complement these efforts and contribute to safeguard the effectiveness of administrative simplification strategies is to incorporate an evaluation strategy before the project is launched. The aim would be to systematically assess the progress of the project throughout its life-cycle: its development phase, once the initial outputs are obtained, and in a periodic way afterwards to assess whether the expected outcomes are reached.

Similarly, Mexico should consider having these and future similar simplification strategies under the responsibility of a steering committee, with the objective of embedding them more deeply into the broader better regulation agenda. Mexico could take advantage of the Federal Council for Regulatory Improvement, which brings together COFEMER, the Ministry of Economy, and the Ministry of Public Administration, plus many other stakeholders, to design, implement, follow up, and evaluate these administrative simplifications actions. This can help to ensure their consistency and complementarity with other regulatory tools such as RIA, public consultation, and ex post assessment.
Chapter 4

Independence, Performance, and Accountability of Regulators

4.1. CURRENT SITUATION AND ASSESSMENT

This analysis focuses mainly on three regulatory agencies - the CRE (Comision Regulatoria de Energia), the CNBV (Comision Nacional Bancaria y de Valores) and the SENASICA (Servicio Nacional de Sanidad, Inocuidad y Calidad Agroalimentaria) which have been picked up as a representative sample of Mexican regulators (economical, financial and social regulator). These three regulators kindly responded to the OECD questionnaire and their representatives were interviewed by the OECD team. The report also uses some conclusions on the functioning of the COFETEL (Comision Federal de Telecomunicaciones) from the OECD Review of Telecommunication Policy and Regulation in Mexico as well as information from the three reports on the institutional strength of the Mexican regulators published by COFEMER in 2012.

Independent regulators represent a key feature of modern regulatory governance. They are part of building a regulatory State where the regulatory function is clearly distinct from the ownership and policy making function. The rationale for establishing independent regulatory agencies is to ensure that decisions affecting key infrastructure and economic sectors are shielded from short-term political considerations and from specific private interests. Independent regulators have been established when setting up new market-oriented regulatory arrangements for utility sectors with network characteristics, financial services, or for the social and environmental arena.

From a public governance perspective, regulators are “agencies” vested with significant regulatory powers that are granted a certain level of independence in their decision-making process. Whereas traditional agencies still report to the executive, even if they are granted...
significant operational and budgetary autonomy, independent regulators are often designed in a way that ensures significant independence. They belong to a system of “checks and balances”, designed to match the powers of ministries and interest groups (see OECD 2005).

The OECD Recommendation on Regulatory Policy and Governance sees a consistent, whole-of-government policy on regulatory agencies as a crucial element to ensure citizens’ and businesses’ trust in regulatory decisions and the whole regulatory framework (see Box 13).

Box 13. An excerpt from the OECD Council Recommendation on Regulatory Policy and Governance

7. Develop a consistent policy covering the role and functions of regulatory agencies in order to provide greater confidence that regulatory decisions are made on an objective, impartial and consistent basis, without conflict of interest, bias or improper influence.

7.1 The legislation that grants regulatory authority to a specific body should clearly state the objectives of the legislation and the powers of the authority.

7.2 To ensure that regulatory agencies are integrated into the regulatory system, governments should compile and maintain a public register of all entities in government with authority to exercise regulatory functions. The register should include the details of the statutory objectives of each regulatory authority and a listing of the regulatory instruments that it administers.

7.3 Independent regulatory agencies should be considered in situations where:

• There is a need for the regulatory agency to be independent in order to maintain public confidence;

• Both the government and private entities are regulated under the same framework and competitive neutrality is therefore required; and

• The decisions of regulatory agencies can have significant economic impacts on regulated parties and there is a need to protect the agency’s impartiality.

7.4 Mechanisms of public accountability are required that clearly define how a regulatory agency is to discharge its responsibility with the necessary expertise as well as integrity, honesty and objectivity.

7.5 Regulatory agencies should be required to follow regulatory policy including engaging with stakeholders and undertaking RIA when developing draft laws or guidelines and other forms of soft law.

7.6 Agency performance should be subject to regular external evaluation.

Box 14 Regulatory agencies covered in this review

The Energy Regulatory Commission (CRE)

The CRE was first created in 1993 by a government decree as an advisory body for the electricity sector, and then reformed with the 1995 Energy Regulatory Commission act, as an autonomous agency for electricity and natural gas. The powers of the CRE include the granting and revocation of permits for the activities of private generators, the approval of the regulatory instruments and methodologies that govern the relationship between licensees and the supplier.
The main objective of the CRE is to promote the efficient development of the activities referred in Article 2 of its own Law through a regulation that allows: to safeguard the provision of public services, to promote healthy competition, to protect the interests of users and to facilitate appropriate national coverage and address its reliability, stability and security of supply and delivery of services.

The National Banking and Securities Commission (CNBV)

The CNBV was created in 1995 in response to Mexico’s economic crisis of 1994. The new organisation consolidated in a single body decentralized functions that previously had been performed by the National Banking Commission and the National Commission of Values. The Commission was also given the authority to issue rules designed to preserve liquidity, solvency and stability of intermediaries. Its mission is to safeguard the stability of the Mexican Financial System and foster its efficiency and inclusive development for the benefit of society.

A major change to the Mexican financial oversight architecture was an amendment to the Banking Law in February 2008 whereby most regulatory powers of the Ministry of Finance were relocated at the CNBV. The aim of this amendment was to establish an authority capable to oversee the complete regulatory and supervisory cycle of banking institutions and to provide efficiency to the administrative procedures, avoiding duplicity.

The National Service for Health, Safety and Food Quality (SENASICA)

The SENASICA was established in 2001 as a decentralized body of the Ministry of Agriculture, Livestock, Rural Development, Fisheries and Food (SAGARPA). The mission of SENASICA is to regulate, administer, and promote agro-food health, safety and quality, reducing the hazards inherent to agriculture, aquaculture, livestock production, and fishery activities in benefit of producers, consumers, and industry. The functions of SENASICA include implementing and monitoring compliance with the provisions on plant and animal health and impose appropriate sanctions; issue Mexican Official Standards (NOMs) and other legal provisions to combat pests and diseases affecting agriculture and livestock; make risk analysis, among others.

SENASICA is responsible, among others, for regulating and monitoring the animals, plants, their products or by-products that are imported, mobilized or exported from the country, so that they do not jeopardize the general welfare. Also, the agency verifies the product quality and safety in agriculture, aquaculture and fisheries. SENASICA’s regulation addresses problems related to information failures and externalities that may occur in the agricultural, livestock, aquaculture and fisheries activities associated with risk.

Mexico’s regulatory agencies are “administrative deconcentrated bodies”, subordinated to a Ministry in terms of their property, accountability and budget.

Most of the regulatory agencies in Mexico have the status of the so-called “administrative deconcentrated bodies”. They have generally been created either through laws or decrees without a whole-of-government perspective. The relative situation of the various regulatory agencies reflects a fairly heterogeneous institutional design. The hierarchical subordination implies technical autonomy, but the degree of organic autonomy, administrative or financial
autonomy substantially differs. The differences and main weaknesses of the governance system of regulators are described in three recent reports produced by COFEMER dealing with the institutional strength of economic, financial and social regulators (COFEMER, 2012a-c).

The traditional administrative organisation in Mexico is based on direct authority exerted by the ministers on all bodies or units under their responsibility. Deconcentrated bodies have more freedom or independence than other administrative bodies in day-to-day activities but remain ultimately subordinated to a ministry in terms of their property and budget and do not have legal personality. This distinguishes Mexico from other countries with a system of protected autonomy, involving constitutional autonomy, and decentralisation.

In the Mexican context, the practice of ministerial oversight has generally overshadowed the role of regulators, particularly in the most important cases. Ministers are accountable for regulators’ decisions to the President, who is elected, and to Congress, which can also influence the content of policy contained in legislation. In general, this means that there are no restrictions protecting the decision making process from political interference. Line ministries have the power to give direct instructions to the regulatory authority or to veto its decision. This distinguishes Mexican regulators from their OECD counterparts and may cause problems in case of conflicting goals of the regulator and the line ministry.

Transposing a regulatory model based on fully independent regulators represents a challenging task in this context because it requires deeper changes in several laws, and possibly the Constitution, and a significant transformation of the way public administration actually functions.

A clear division of attributions among regulatory authorities and ministries is important. In Mexico, a wide range of powers is exercised together with the supervising ministry, or are advisory powers to the ministry. These shared powers raise a number of difficulties and may generate a problem of “double-window” (i.e., in the telecommunications sector, see OECD 2012c) as regulated subjects may not always know who will be the contact institution during the administrative process.

In some cases, overlapping demands for licensing and prudential requirements may trigger a heavy and uncoordinated regulatory burden. In other cases, regulators may share powers with ministries, which can blur the situation. The second greatest difficulty is when regulatory responsibilities overlap at federal and local levels (i.e., water management).

Price setting power is generally limited. In the energy sector, the CRE participates in setting the prices; however, it is the Ministry of Finance which in fact decides. Other issues concern licensing procedures. In the financial sector, the power to release and revoke authorisations is shared by the CNBV and the Ministry of Finance.
Clear procedures for appointment and dismissal of managers for Mexican regulators ensuring their independence are lacking

The governance structures and procedures for appointment and dismissal of managers matter for effective functioning of regulatory authorities, and they influence the level of independence. Heads of some of the regulatory authorities are appointed by the President (CRE) while in some cases it is the management board of the agency that appoints the chair (COFETEL). In the case of SENASICA, the Ministry of Agriculture, Livestock, Rural Development, Fisheries and Food appoints its chairperson.

The length of the term of office is not unified, usually between 2 to 5 years, in some cases it is not even fixed at all. The situation of the members of management boards of regulators is similar. In the case of some regulators, ministries are directly represented in the board. There are no clear rules providing for political independence of the management board. The length of the term may be fixed and usually is renewable.

A low degree of independence in decision making and budgetary autonomy, and lack of performance assessment mechanisms characterize Mexico’s regulators

The independence of decision making of social and financial regulators is generally weaker than the one of the economic counterparts. Social regulators directly report to the government and the ministries can intervene with their decision making. In the case of economic regulators, usually only the courts can overrule their decisions; however, there are cases where the government can directly interfere and change the decision (i.e., COFETEL).

Budgetary autonomy is also a significant practical dimension for independence. In general, regulatory authorities in Mexico are funded through public budgets which are proposed annually to Congress via the Ministry of Finance. Budgets are determined by the “parent” ministries. In some particular cases, there might be levies and fees charged by regulatory authorities for their services to the regulated subjects; nevertheless, these revenues are revenues of the central budget, not of particular regulators. The budget control also lays, with some exceptions, with the ministries, not regulatory authorities.

Regulators are mostly able to independently set their internal structure. The degree of control over human resources and personnel policy differs; in some cases, regulators need to coordinate with the ministry, especially in the cases of higher-level managerial positions.

Mechanisms for performance assessment are mostly non-existent with the exception of specialised audits by the Higher Audit Office of the Federation. Some of the regulators have to submit annual reports to the government, while others submit their reports to Congress. There is no unified model for such reports and despite the fact that some of the regulators do try to include information on the developments in the regulated sector, the reports are not properly discussed and insufficient attention is paid to the issue of performance. There are no formal mechanisms to set the goals of regulatory authorities in a given sector which would also be helpful in analysing performance, measuring how these objectives are being achieved.
Mexican regulator’s degree of independence and institutional strength is below the OECD average

In general, when analysing the Mexican regulators, it can be said that there are substantive differences among them in many aspects of their independence and accountability. Nevertheless, the degree of independence and institutional strength is below the OECD average. Economic regulators such as CRE and COFETEL enjoy in general more autonomy than the social and financial regulators. On the other hand, in the case of economic regulators and especially CRE and COFETEL, they share regulatory attributions with the ministries and are not fully responsible for regulating their sectors. Budgetary independence is also relatively weak. Strengthening independence and accountability of regulators could help to increase their efficiency while balancing this accordingly with improved accountability mechanisms.

4.2. RECOMMENDATIONS

The institutional regulatory framework should be modernised through a review of powers, attributions, and governance arrangements of regulatory authorities

Regulatory authorities in Mexico have been created largely through an ad hoc process without a unifying general concept or model. All regulators —economic, social, financial— are at the same level of hierarchy in the administration. Despite this fact, some significant discrepancies exist among them in the range of attributions they have, their decision making processes, division of tasks with the respective ministries, nomination procedures of top managers, etcetera.

The Mexican government appears to lack an underlying philosophy, let alone an official document, articulating which regulatory frameworks should be administered by independent regulatory authorities, what should in general be their main attributions and how these authorities should be governed. The criteria for usefulness of creating separated regulatory authorities in a given sector of the economy and for setting the suitable degree of independence of the authority responsible for a given sector should be clearly set.

In some cases, several regulators exist in one economic sector. The financial sector where various regulators coexist with different statutes and regimes of governance can be used as an example. In the case of the reviewed regulators, the division of powers between the regulators and the “parent” ministry is not always clear. Joint powers shared between the agencies and ministries should be suppressed. This should prevent any “double window” and would streamline the procedures as well as clarify the regulatory framework.

It is therefore advisable to develop a whole-of-government model for the governance of regulators. This model should set the basic cornerstones of good governance of regulatory authorities in Mexico, and should be used in revising existing governance arrangements of regulatory authorities as well as for guiding the development of new regulators. Through this universal model, the independence as well as the accountability of regulatory authorities in Mexico should be strengthened where necessary (see below).

Based on the whole-of-government model and on the criteria for establishing independent regulatory authorities, all areas of regulation should be systemically reviewed with a view
to upgrade institutional arrangements. Based on this review, the government should decide on creating independent regulatory authorities in those regulatory sectors, where it will find appropriate. These new institutions should be created through:

- Changing the statute of an existing regulator,
- Merging several regulators into one with the new statute,
- Creating new institutions without a predecessor among existing regulators.

Alternatively, since revising regulatory authority roles and mandates would be a large policy and legislative undertaking, a paced approach that would take into account constitutional, economic impact and policy considerations may be taken with only partial reforms. In this case, we would suggest starting with the economic regulators, especially those in utility sectors and continue with the financial regulators in the second stage.

The Norwegian White Paper for improving the quality of the institutional framework of the tilsyn can be used as an example of such review (See Box 15).

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**Box 15. The 2003 White Paper for improving the quality of the institutional framework of the tilsyn**

The 2003 White Paper was prepared as a report to the Norwegian Parliament in order to present the pathway to modernising the institutional framework of the tilsyn in Norway. Tilsyn include agencies with management as well as regulatory functions, and other types of agencies such as inspection commissions, as well as economic regulators. They each have specific characteristics and functions. They have been set up ad hoc, so there was no single blueprint.

The objectives of the White Paper were to:

- Increase the independence of the tilsyn in relation to supervising ministries (in particular to distinguish between the political role of ministers, in terms of weighing social considerations and priorities, and the implementation function of the tilsyn, with clear and unambiguous technical objectives, leaving the major trade-offs to ministers).
- Cut off the possibilities of ministries of instructing supervisory agencies and that the decisions of supervisory agencies are only referred to special appeal bodies.
- Improve the clarity of the horizontal design of the tilsyn through creating new independent agencies or drawing borderlines between the tasks of the competition authority and sectoral agencies.

due to pressures from the affected interests or the contentious and sometimes politically sensitive nature of the decisions. In terms of the regulators explicitly covered in the review, the division of powers between regulators and their “parent” ministries was not always clear. Careful consideration should therefore be given to suppress joint powers shared between agencies and ministries. Reinforcing independent regulatory decision-making, at arm’s length from ministries, is likely to be appropriate where:

- there is a need for the regulator to be seen as independent, to maintain public confidence;
- the decisions of the regulator can have a significant impact on particular interests and there is a need to protect its impartiality;
- significant enforcement activities are performed; or
- both government and private entities are regulated under the same scheme.

Specialised and more autonomous regulators are likely to yield faster and higher quality regulatory decisions and are characterised by more transparent and accountable operations. Where they have been most effective and credible, their independence and roles have been based on a distinct statute with well-defined functions and objectives. Independence of the regulators enable long-term capital investments through creating stable and more reliable regulatory environment, and shielding markets from short-term political intervention.

The whole-of-government model for independent regulatory authorities proposed above should clearly set the framework for governance of these authorities including measures to strengthen their independence. This should include clear procedures for appointment of the head and the management board of the agency (preferably by or with the approval of Congress), setting clear conditions for the removal of the head and the management board (only narrowly defined criteria such as breaking the law or incapability to execute its function), and setting the fixed term of the office and limits for renewal of the term (preferably only once). Appointments should be based on competency and public credibility. Conditions for incompatibility with other functions, conflict of interest (e.g. through holding share in a company operating in the regulated sector), and limitations for accepting a post in such a company after the term should also be stated.

Another important factor for strengthening independence of regulators is the financing of regulators and budgetary procedures. The model should set these procedures, enabling regulators to be financed through own, more stable resources such as levies and service fees paid by the regulated industry. Last but not least, staffing and human resources policies for regulators should be set to improve competitiveness of regulators on the labour market.

Sufficient mechanisms to ensure accountability of regulators, including sound performance assessment procedures should be introduced

Performance assessment mechanisms of the regulators in Mexico are largely non-existent. If the independence of regulatory authorities is to be strengthened, this must be counterbalanced with stronger accountability mechanisms. In general, three aspects need to be considered for balancing the independence of a regulator with its accountability: building appropriate governance structures; designing a proper system of appeals that also defines which authority will hear appeals; and instituting a dialogue between regulators,
on the one hand, and Congress and citizens, on the other, in order to build institutional trust in regulators.

Mexico should consider introducing mechanisms for universal annual reporting of regulators to Congress, and ensure that proper discussion is effected on these reports. Despite the fact that some of the regulators currently prepare their annual reports to Congress, even members of Congress admit that these reports are not adequately scrutinised. The model should set their universal structure and the obligation to include statistical data on the performance of the regulator and the regulated sector. These reports should be also published to enable public discussion on the performance of regulators. Public reporting, hearings and decisions are a guard against bias and corruption, and support confidence in the free market system.

An independent review of the performance of regulatory authorities should also be enabled. The key dimension is economic evaluation, whether regulators contribute to overall economic efficiency/productivity by the quality of their regulations. Presently, it is not clear who should conduct these assessments. In many countries, it is the supreme audit office that is responsible for such assessments.

Most of the regulators in Mexico already adhere to the principles of transparency and open government, including public consultations, especially as part of the regulatory impact assessment process. Full transparency of the decision-making procedures and consultation with stakeholders on regulatory proposals and measures are key for accountability. Therefore, these mechanisms should be even strengthened and the obligation not limited to the RIA process.

The last important element for ensuring accountability is the existence of the system of appeals including the judicial review of regulators’ decisions. The legislation establishing regulatory authorities should indicate transparent procedures to be followed, and whether decisions are binding and have the force of law. Such decisions should be subject to review by the courts to allow an “appeal” mechanism and ensure the validity of decisions, if in doubt. This would enhance both independence from political intervention and transparent accountability and assessment of performance. This possibility clearly exists in Mexico but may need to be adjusted if a new type of administrative institution is created. The recently created specialised chamber on regulators of the Federal Tribunal of Fiscal and Administrative Justice is an important step forward.
Chapter 5

Multi-level Regulatory Governance

The 2012 Recommendation of the OECD Council on Regulatory Policy and Governance addresses multi-level regulatory governance in two items:

• Where appropriate promote regulatory coherence through coordination mechanisms between the supranational, the national and subnational levels of government. Identify cross cutting regulatory issues at all levels of government, to promote coherence between regulatory approaches and avoid duplication or conflict of regulations.

• Foster the development of regulatory management capacity and performance at subnational levels of government.

The OECD developed a framework to analyse key issues of multi-level regulatory governance. It claims that an analytical framework for multi-level regulatory governance should address a number of issues, including regulatory policies and strategies, institutions, and policy tools. On regulatory policies and strategies, issues related to harmonisation of regulatory policy and vertical coordination for regulatory quality must be addressed. The definition of roles and responsibilities of institutions responsible for regulatory policy is also an important element in this context, with the aim to strengthen institutional capacities. Finally, a set of regulatory policies and instruments that should be applied at lower levels of government, such as the introduction and use of regulatory impact assessment, transparency, reduction of administrative burdens, as well as tools to improve compliance and enforcement of regulation, are included in the agenda of a multi-level regulatory governance framework.

5.1. Regulatory Policies and Institutions

The federal states and municipalities of Mexico have been paying increasing attention to regulatory improvement policies in the last few years.

Achieving coordinated reform across multiple levels of government is certainly a case where the whole is greater than the sum of its parts. The federal states and municipalities of Mexico
have increasingly been paying attention to regulatory improvement policies in the last few years. In fact, 20 out of the 31 federal states and the Federal District have a law on better regulation, mandating state authorities and, sometimes, municipalities, to pursue regulatory improvement policies. In addition, eight states have laws on economic development containing a section on regulatory improvement. Ten out of these 32 subnational units have a commission in charge of advocating and implementing better regulation, 20 have a unit within a ministry (commonly the Ministry for Economic Development or equivalent), and two have some other body fulfilling this role. Likewise, 21 states make use of a citizen council to promote the active participation of citizens in their regulatory improvement policies.

The pursuit of competitiveness and good government agendas has driven the creation of institutions for regulatory improvement policies, which have been complemented with training and capacity building.

Progress in states and municipalities indicates that better regulation is a policy supported by administrations from different political affiliations, whose common feature has been to give a prominent place to the competitiveness and good governance agendas. Different factors have been behind the emergence of institutions for regulatory improvement. For example, business associations explicitly demanded a regulatory improvement policy to Jalisco’s state government, in Nuevo Leon a legal mandate determined the creation of institutions for regulatory improvement, in Colima it was basically the Governor’s leadership the key to establish regulatory reform as a priority, and in Aguascalientes one of the main incentives was to keep a good ranking in the subnational edition of the Doing Business report.

In addition to institutions, better regulation at subnational level requires staff with enough training to manage the design and implementation of the process. The number of state and municipal public servants trained by COFEMER went from 147 in 2008, to 370 in 2009, 484 in 2010, 647 in 2011, and 6540 in 2012. This comes in addition to the National Conference on Regulatory Improvement that COFEMER organises twice a year.

Multi-level coordination across states and municipalities has been fostered mainly via covenants and state laws on regulatory improvement.

The main multi-level coordination mechanisms used in Mexico consist of covenants between COFEMER, states and municipalities, as well as regulatory improvement state laws. The covenants between COFEMER and states and/or municipalities basically establish that COFEMER will provide training, advice, and implementation assistance concerning regulatory policies and tools. Regarding coordination between states and municipalities, the 20 state laws on better regulation establish coordination mechanisms, such as via the signature of covenants or the implementation of specific programmes and tools (i.e., SARE and centralised registries).

Furthermore, states and municipalities in some jurisdictions, such as Nuevo Leon and Puebla, are working on the harmonisation of start-up formalities in the main metropolitan areas (the cities of Monterrey and Puebla, respectively, and their neighbouring municipalities).
with the aim to increase regulatory transparency and streamline business procedures. In addition to the previous coordination mechanisms, the SME Fund will be used to finance projects related to regulatory improvement during 2012.

5.2. REGULATORY TOOLS

Administrative simplification has been a good starting point to raise regulatory improvement issues on the political agenda of states and municipalities.

Most of the states and municipalities that have worked on regulatory improvement issues have done it by administrative simplification initiatives. This focus on simplification can be explained by several reasons. First, officials in states and municipalities do not always understand the difference between better regulation and administrative simplification and the latter is easier to carry out than the former. Second, states have been immersed in a competition dynamic aimed at getting a good ranking in the subnational edition of the Doing Business report and other competitiveness indexes. While this competition has been a positive force to position regulatory improvement on the political agenda, it is also true that the indexes deal basically with simplification of different processes of formalities. Finally, until a few years ago, COFEMER devoted much of its attention in states and municipalities to the promotion and implementation of SARE, which is a simplification programme for start-up procedures.

SARE has delivered significant achievements, and administrative simplification has been a good starting point to raise regulatory improvement issues on the political agenda. Up until October 2011, 189 SARE had been implemented, leading to the establishment of 264,489 businesses and 701,157 jobs, implying an investment of $42,441 million pesos. According to COFEMER, the turnaround time for the municipal start-up license went down from 25.2 to 2.4 days in the municipalities that established SARE between March 2010 and November 2011.

In 2011, COFEMER assessed the impact of SARE on the creation of new businesses and jobs in the formal economy of representative municipalities from five states. The number of entrepreneurs in the sectors included in SARE catalogues increased in every state after a trimester of implementation: 27.4% in the representative case of Chiapas, 11.6% in that of Colima, 23.6% in that of Hidalgo, 14.3% in that of Morelos, and 29.9% in that of Puebla. Ten out of 20 regulatory reform state laws mandate the establishment of SARE.

A handful of states and municipalities in Mexico are implementing RIA.

Notwithstanding the benefits delivered by administrative simplification and, particularly by SARE, only a few states and municipalities have made use of more sophisticated tools that may get them closer to a regulatory governance cycle approach. In the case of RIA, five states are actually implementing this tool; these are illustrated in the following table:
5. MULTI-LEVEL REGULATORY GOVERNANCE

Table 1. RIAs issued by state

<table>
<thead>
<tr>
<th>State</th>
<th>Issued RIAs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Colima</td>
<td>1</td>
</tr>
<tr>
<td>Guanajuato</td>
<td>25</td>
</tr>
<tr>
<td>Jalisco</td>
<td>14</td>
</tr>
<tr>
<td>Morelos</td>
<td>500</td>
</tr>
<tr>
<td>Sonora</td>
<td>4</td>
</tr>
</tbody>
</table>

Source: Information provided by COFEMER

E-government tools are widely employed by states and municipalities to enhance regulatory transparency and simplify formalities

Despite different degrees of sophistication, e-government tools have been useful to advance regulatory transparency. Centralised registries can be found in several Mexican states and even in some municipalities. In fact, the 20 regulatory improvement state laws mandate the establishment of a centralised registry of formalities and public services. Availability of regulatory information facilitates the completion of required formalities to businesses and citizens and, therefore, increases compliance with regulations. However, previous field work carried out by the OECD found that it is common to find several sources of regulatory information (counters, hotlines, websites, etc.) that are not always consistent among them. This may lead to confusion, opportunity and administrative costs for businesses. Centralised e-registries are a useful tool used by Mexican states and municipalities to avoid such inconsistency. They usually work as a central database, from which other sources of information can be fed.

In addition to centralised registries, states such as Colima and Jalisco are making use of transactional portals and electronic signature. Colima, for example, launched the portal miempresa.col.gob.mx. This website allows entrepreneurs to complete online state formalities required to start up a business and find information and advice about the process. When entrepreneurs complete their formalities in this portal, they are able to see the progress of their applications online, receive e-mails informing about such progress or additional requirements, upload documents and information, make online payments, and print payment receipts and licenses with electronic signature. Likewise, Jalisco is close to launch the portal Tu Empresa en un Día, which will simplify the main state formalities linked to the start-up process and will be interconnected to the federal portal tuempresa.gob.mx.

There is an incipient application of reviews of the stock of regulation by states and municipalities in Mexico

Even though there are different types of reviews of the stock of regulation, states such as Nuevo Leon and Zacatecas are applying the technique known as “regulatory guillotine”, which is based on an instruction from the top level of government, aimed at regulatory agencies, to review the complete stock of regulations against criteria such as need and efficiency. In Zacatecas, for example, the review was accompanied by a costing exercise that helped the state government identify the formalities that imply the highest administrative
burdens, opportunity costs, and aggregate economic costs and, therefore, will be useful to target deregulation and simplification initiatives.

The OECD-Mexico initiative Strengthening of economic competition and regulatory improvement for competitiveness has contributed to boost the better regulation efforts carried out by Mexican states and municipalities. As part of this initiative, in 2009 the Ministry of Economy and the OECD carried out the project Short-term measures to improve competitiveness at the subnational level to identify the most burdensome formalities for the business sector in each participating state and simplify them. The nine participating states were Baja California, Colima, Chiapas, Jalisco, Michoacán, Puebla, Sinaloa, Tabasco, and Tlaxcala. The result was a set of more than 800 recommendations aimed at eliminating and simplifying formalities.

In parallel to short-term measures, the Ministry of Economy requested OECD to provide good international practices of regulatory reform and management to illustrate opportunity areas for the Mexican states that were performing well relative to their pairs. The OECD established the project Successful practices and policies to promote regulatory reform and entrepreneurship at the subnational level to analyse best international practices from three subnational governments recognised as top performers in different OECD countries and including three Mexican states as well. On the international side, British Columbia, Catalonia, and Piemonte participated in this study and, on the national side, Baja California, Jalisco, and Puebla. States such as Colima and Nuevo Leon have modelled their regulatory reform programmes following some of the recommendations contained in this report.

These two projects led in 2011 to the presentation of the Guide to improve the regulatory quality of state and municipal formalities and strengthen Mexico’s competitiveness and to a follow up exercise to apply its recommendations, particularly in four states (Baja California, Colima, Chiapas, and Sinaloa) and their municipalities (Tijuana, Colima, Tuxtla Gutierrez, and Culiacan, respectively). The four states welcomed the recommendations of the Guide and established an agenda to accomplish them. Notably, after the follow up exercise, the state of Colima fully applied the recommendations of the Guide and those of the project Short-term measures. The follow up exercise was also useful to identify good practices in the implementation of the Guide and make them available to other states and municipalities, which were included in the 2012 edition of the Guide.

The promotion of better regulation policies at state and municipal level as part of the OECD-Mexico initiative began by recommending simplification measures, which has led states and municipalities to significant achievements. Early results have motivated several states and municipal governments in Mexico to move ahead with more comprehensive agendas and have raised the visibility of regulatory reform. For example, Colima has established a one-stop shop for state formalities required in the start-up process. It has also certified SARE in its 10 municipalities and established Municipal Business Centres in each one of them. Such achievements have motivated the state government to aim at a more comprehensive regulatory reform agenda, which includes the implementation of RIA and a regulatory guillotine. Likewise, the state of Chiapas and particularly, the municipality of Tuxtla Gutiérrez has made significant progress on the use of e-tools to simplify business start-up and property
registration. This has been a motivation to work on the implementation of other projects such as the widespread use of electronic signature and a registry for accredited persons.

5.3. ASSESSMENT AND RECOMMENDATIONS

Institutions and capacities that support regulatory reform in states and municipalities should be developed and strengthened while increasing the degree of political commitment to regulatory quality.

The degree of political commitment with better regulation varies significantly from one state to the other. While some states have built centralised registries of formalities and regulations, carry out RIA, and apply administrative simplification making use of e-government tools, in others the issue is not on the political agenda. The same happens in municipalities, but the degree of diversity is more significant.

Despite progress, there is still wide room to develop and strengthen the institutions and capacities that support regulatory reform in states and municipalities. Monitoring the actual implementation of institutions and tools is important to ensure that they are not only confined in the letter of the law. The three levels of government, and potentially other stakeholders of regulatory reform, have a role to play to accomplish these objectives.

Institutions integrated into decision-making processes can help ensure that regulatory reform is sustainable and does not fall prey to the political cycle. In order for regulatory reform to take root and achieve continuity in the states and municipalities of Mexico, solid institutions need to be created. It has not been uncommon for regulatory reform efforts to be dismantled after a transition from one government administration to another. In fact, maintaining regulatory reform as a political priority in state administrations that last six years and municipal ones that last three years, with no possibility for re-election, has been quite a challenge. The problem is worsened because these transitions are usually accompanied by high staff rotation, so every new team coming to a state or municipal government has to understand the relevance of regulatory reform and the techniques to implement it.

Even though it is impossible to come up with a unique “recipe for success”, there are some good practices that have proved to be successful to develop and sustain regulatory reform and institutions at subnational level. Of course, it is important to consider the current status of regulatory reform in a state or municipality when thinking about developing or strengthening such institutional infrastructure. In other words, priorities differ according to progress achieved in the past. Three basic building blocks can be suggested: laws for regulatory reform, units in charge of operating regulatory reform, and citizen councils to follow up regulatory policies.

1 Municipal administrations last for four years in the state of Coahuila. A recent reform in the state of Veracruz also extended the length of municipal administrations to four years. However, it must also be considered that given the no re-election rule, mayors sometimes quit before the end of the three or four year term to be in possibility to run for another post. This is not an argument to support the possibility of re-election, but only an indication that its inexistence implies frequent changes in political priorities and government plans, staff rotation, and incentives that make it difficult to advance the continuity of public policies.
State laws on regulatory reform have mainly two objectives: designating and often establishing the institutions to lead the regulatory reform policy in the state and mandating the design, implementation and evaluation of tools, and practices to deploy regulatory reform. A review of the 20 state laws on better regulation found that they include some common institutions, practices and tools such as bodies in charge of regulatory reform, citizen councils, business support centres, SARE, centralised registries, registries for accredited persons, RIA, and coordination with municipalities.

States and municipalities must designate a unit in charge of leading regulatory reform and following up programmes and objectives, so that the initial momentum created by the publication of a law on regulatory reform is not lost over time. The Mexican states usually use one of two forms of bodies to manage regulatory reform, a unit within a ministry (i.e., the Ministry for Economic Development or equivalent) or a body in the form of a commission, which can be decentralised (i.e., Sinaloa) or deconcentrated (i.e., State of Mexico). Whichever the institutional structure chosen, it must be set in a law and politically empowered to meet its objectives. Political commitment with regulatory reform, illustrated in empowered institutions, is key to move forward.

Short administration terms, particularly in the case of municipalities, and high staff rotation, call for other stakeholders of regulatory reform to play a role in promoting regulatory quality as a permanent policy. Hence, it is necessary to create institutional mechanisms to allow business and citizen participation in the guidance, management, and evaluation of regulatory reform. This has turned out to be a critical element for the continuity of regulatory policy in Jalisco, for example.

Regulatory reform and administrative simplification are not inherent to any public administration; therefore, special skills need to be developed. In fact, capacity bottlenecks can hamper progress towards implementing regulatory reform. Ensuring that the degree of regulatory capacity converges across jurisdictions is particularly important in multi-level governance systems, where capacity gaps might create "black spots" in the implementation of reforms, thus undermining consistency of regulatory policies across jurisdictions.

While it must be recognised that COFEMER has increased training and implementation assistance for states and municipalities, going “beyond SARE”, it is clear that its resources are limited to address the needs of every state and municipality in the country; so, the key to advance capacity building even further is to gain the commitment of state governments to add up to the work of COFEMER, as well as to engage municipalities.

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Box 16. **Institutions and capacity building for regulatory reform in British Columbia**

In British Columbia, Canada, one of the first actions taken by the administration that took over in 2001 to demonstrate its strong commitment to regulatory reform was the appointment of a ministry-level agency responsible for deregulation. In fact, regulatory reform was the only responsibility of the Minister of State for Deregulation. The office has gone through several name changes. It evolved from Regulatory Reform Office to Straightforward BC.

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The objective of registries for accredited persons is to require the registration of official documents only once when carrying out a formality. Every formality carried out afterwards will not require citizens or businesses to present the same documents again, as public agencies can consult them from a central database.
The core responsibilities of Straightforward BC include developing and executing the government’s regulatory reform strategy, maintaining the central database of regulatory counts, and producing reports for cabinet and quarterly reports for the public. Furthermore, under the Regulatory Reporting Act, enacted in November 2011, the province is now required to publish annual reports on its regulatory reform progress.

Regarding the challenging task, Straightforward BC requires a copy of the Regulatory Criteria Checklist when regulation is going to be introduced. It also conducts spot checks of the central database to evaluate how well it is being kept up. Concerning the facilitating task, Straightforward BC does not see its role as that of gatekeeper or police, but of facilitator. A key role the office has played is to help staff in other ministries evaluate whether additional regulation is the right approach and understand the implications of regulating. In addition to specific training for the staff appointed by every ministry to handle regulatory reform, in the first few years of the reforms Straightforward BC organised workshops on specific topics such as plain language, cost-benefit analysis, and outcome-based regulation. An annual conference has provided a good opportunity to reinforce that regulatory reform is a priority all across the government. Going forward, one of the main strategies consists in developing in-house expertise in the use of continuous improvement methodologies and business process mapping to assist all ministries in advancing simplification initiatives.

This institutional infrastructure has been critical to achieve a 42% reduction in regulatory requirements since 2001 and a commitment for zero net increase until 2015.


Mexico should aspire to reach convergence of regulatory policies at subnational levels and upgrade multi-level coordination

The lack of a structure facilitating political commitment to address regulatory concerns might have slowed down progress towards convergence of regulatory institutions and practices, particularly in those states that are lagging behind or do not know where to start. Even though institutions such as the National Governors’ Conference (CONAGO), the Mexican Association of Economic Development Secretariats (AMSDE), and the Federal Council for Regulatory Improvement provide venues for multi-level cooperation, they have not been used to foster a strong political commitment from the three levels of government to pursue policies to increase productivity and regulatory improvement.

Convergence of the regulatory policies of states and municipalities should be an objective to pursue in the medium term. Mexico could replicate some of the features of “cooperative federalism” to improve multi-level coordination, such as a solid political agreement to pursue regulatory reform at national and local levels; funding schemes based on performance, and institutionalised monitoring of progress. Currently, there is no mechanism for systematically pooling resources from the three levels of government on the basis of performance and the achievement of specific milestones. There is neither a monitoring mechanism, with ownership by the three levels of government, to follow up the implementation of better regulation at subnational level.
Cooperative federalism is based on the principle of subsidiarity, which is intended to assign decision making to the closest level of government to the citizen. In the case of Australia, it implied commitments by the Commonwealth and states to devolve to the extent possible responsibilities for regulation and for allocation of public goods, so that government is accessible and accountable to those affected by its decisions.

At least three elements of the model could be replicated in Mexico to upgrade multi-level coordination:

- A high level political agreement on public policies, including regulatory reform, which ought to be pursued permanently and under a coordinated mechanism: a national agenda to advance productivity and growth should be agreed and carried forward, facilitating ownership by the three levels of government. The top political figures, the president, governors, representatives of mayors, as well as of the legislative and judicial branches, should lead such an initiative. The agreement should aim at defining a common agenda, including regulatory reform, with specific policies that are to be pursued permanently, no matter the political party in power in any of the three levels of government. Institutions such as CONAGO, AMSDE, FENAMM, and AMMAC could strengthen the call for such a far-reaching political agreement.

- Reward payments, strictly based on performance: clearly, subnational governments and, particularly, municipalities will need resources to upgrade their capacities, infrastructure, and governance practices. However, the international experience illustrates that multi-level transfers work better when they are conditional on performance. This would create incentives to move towards national objectives and address reasonable concerns about the efficiency and transparency in the use of resources at subnational level. An additional alternative is to pool resources from the three levels of government to finance regulatory reform on the basis of the achievement of specific milestones.

- Permanent and institutionalised monitoring of progress of reform initiatives through transparent mechanisms that guarantee accountability: institutions and clear methodologies to assess progress towards national agreements should be set ensuring participation of the three levels of government, but also objectivity to carry out such assessments. Accountability should be a key feature of the scheme and its legitimacy, as well as the basis to access federal funding so that, the more flexibility granted for states and municipalities to spend the resources, the stricter evaluation of the outcomes of their investments.

Multi-level coordination and governance arrangements are required to enable governments to balance their obligations to be responsive to citizens and communities, and to manage the consequences and opportunities of globalisation and the national interest. Differences in the ability to manage bureaucratic resistance or foster change across government can make reform solely driven by the states difficult.

**Box 17. The Council of Australian Governments (COAG) and the framework for Commonwealth-states financial relations**

COAG is the main forum for the development and implementation of inter jurisdictional policy, comprising the Australian Prime Minister as its chair, State Premiers, Territory Chief Ministers, and the President of the Australian Local Government Association. It was established in May 1992 out of a shared agenda aimed at advancing microeconomic reform and reducing the economic costs of duplication and overlap.
In November 2008, COAG agreed to a new overarching framework for the Commonwealth’s financial relations with the states, to “reduce Commonwealth prescriptions on service delivery by the states, providing them with increased flexibility in the way they deliver services to the Australian people.” The Intergovernmental Agreement on Federal Financial Relations (IGA) was a new funding agreement with the objective of improving the well-being of all Australians through collaborative working mechanisms, including clearly defined roles and responsibilities and fair and sustainable financial arrangements, to facilitate a focus on long-term policy development and enhanced government service delivery. The framework is also based on:

- Enhanced public accountability through simpler, standardised and more transparent performance reporting by all jurisdictions, with a focus on the achievement of outcomes, efficient service delivery, and timely public reporting.
- Reduced administration and compliance overheads.
- Stronger incentives to implement economic and social reforms.

For each policy area a mutually agreed statement clarifies the roles and responsibilities that will guide the Commonwealth and states in the delivery of services across the relevant sectors and covers objectives, outcomes, outputs, and performance indicators. The performance of all governments in achieving mutually-agreed outcomes and benchmarks is monitored by the independent COAG Reform Council (CRC) and reported publicly on an annual basis. The CRC also undertakes comparative analyses of the performance of governments in meeting the objectives of the national agreements.

The CRC is a non-statutory body, whose independence is established by a COAG decision. It is composed of a chairperson, a deputy chairperson, four counsellors, and an executive counsellor. Each member is appointed for a three-year term. A permanent secretariat, headed by the executive counsellor and jointly funded by the Commonwealth and the states, supports the work of the CRC.


Effective regulatory governance maximises the influence of regulatory policy to deliver regulations that will have a positive impact on the economy and society, and which meet underlying public policy objectives.

While taking stock of progress in administrative simplification, the states and municipalities of Mexico should move towards more comprehensive, participative, and permanent regulatory policies that address the different stages of the regulatory governance cycle. The three levels of government, as well as other stakeholders of regulatory reform, have a role to play to accomplish this objective:

- Federal government: Demonstrate its leadership by getting its own regulatory policy and governance structure in place as a model for states. A solid federal model with the right
policy principles and governance structure to coordinate and drive a strong reform culture may encourage states to embrace it as well.

• COFEMER: Continue moving “beyond SARE” by helping states and municipalities to work on the different stages of the regulatory governance cycle through the application of tools such as RIA and regulatory reviews.

• States: Incorporate a regulatory governance approach into their regulatory reform laws and policies, exercise political leadership, and provide incentives for municipalities to embrace regulatory reform, particularly during transition periods.

• Municipalities: Incorporate a regulatory governance approach into their acts and policies, follow state level leadership, and set mechanisms to facilitate the continuity of regulatory reform (i.e., establishing SARE by a City Council Act or Acta de Cabildo).

• AMSDE, FENAMM, AMMAC, etc: Exercise political leadership, facilitate the exchange of good practices, advocate mechanisms to pool resources, and provide systematic feedback to COFEMER.

• Citizens, business chambers, academia, NGOs, etcetera: Engage, monitor, and let political leaders know that regulatory reform is important.

A core challenge for effective regulatory governance is the coordination of regulatory actions, from the design and development of regulations, to their implementation and enforcement, closing the loop with monitoring and evaluation which informs the development of new regulations and the adjustment of existing ones.3

It is time to move beyond purely simplification initiatives to a regulatory governance cycle approach, so that regulatory policies in states and municipalities are comprehensive, participative, and permanent:

• Comprehensive: Address the different stages of the regulatory governance cycle, from design and ex ante evaluation, including enforcement and inspection, to ex post assessment.

• Participative: Motivate citizen participation to provide feedback and input for regulatory proposals and facilitate the continuity of regulatory policies.

• Permanent: Stay beyond political transitions to become an institutionalised policy.

A regulatory governance cycle approach that includes policies, institutions, and tools would imply the implementation of techniques such as RIA, risk-based regulatory management, and regulatory reviews. Regarding RIA, despite the fact that five states are using it, the quality of the analysis varies state by state and the experience is still limited, as illustrated by the number of issued RIAs. An alternative to accelerate the implementation of RIA is to discriminate regulations according to their impact, so that it is applied to those with the highest impact and current resources and capacities are not overwhelmed. Then, the rigour of the analysis would match the impact of regulatory proposals.

In most municipalities, business activities are not regulated according to the level of risk and there is persistence of standard regulations across the board. This may hinder entrepreneurship by imposing excessive burdens on business activities that imply no risks. In terms of risk-based regulation, aside from SARE, the approach needs to be embedded since the stage of regulatory design at state and municipal level, but also to provide guidelines

for inspections and ex post evaluations. So far, there is no evidence of a systematic and widespread application of these tools at the subnational level in Mexico.

Review of the stock of regulation with the aim of reduction or simplification is probably one of the least used tools in Mexican states and municipalities. Contrary to what happens with RIA and centralised registries, regulatory improvement state laws do not consider the implementation of reviews. In fact, the regulatory governance approach would require states and municipalities to make a more systematic and periodic use of regulatory reviews, following the examples set by states as Colima, Nuevo Leon, and Zacatecas.

At the same time that more comprehensive regulatory reform agendas are developed and adopted, administrative simplification should be strengthened as a basic tool for states that are already advanced and as a starting point for those that are only beginning to develop a better regulation agenda.

States and municipalities that have not started or are just starting a regulatory reform programme can rely on administrative simplification initiatives to raise the issue on the political agenda. Highlighting “quick wins” and communicating the benefits of such initiatives to the public should be a central element of the strategy.

Regarding SARE, its continuity should be strengthened with the contributions of COFEMER, states, municipalities, citizens, and business groups. Targeting SARE according to the economic profiles of the cities where it is established can also be helpful to favour its continuity by making its benefits more visible for municipalities and businesses. Besides this, the next steps in the administrative simplification agenda involve upgrading coordination between levels of government to facilitate processes of formalities and achieving widespread use of other tools such as those based on e-government and risk-based regulation.
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MEXICO

TOWARDS A WHOLE-OF-GOVERNMENT PERSPECTIVE TO REGULATORY IMPROVEMENT

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