



Facilitating the Implementation of the Mexican Supreme Audit Institution's Mandate

REGULATORY POLICY AND GOVERNANCE



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Foreword

Supreme audit institutions (SAIs) are technical and external institutions that ensure public scrutiny in the pursuit of effective and efficient public interventions. As part of an overall governance system, SAIs can be drivers of integrity, accountability and good management. For its part, regulatory policy seeks to promote quality in public interventions to achieve policy objectives.

The OECD has been working with Mexico's Superior Audit of the Federation (*Auditoría Superior de la Federación*, ASF) for five years to strengthen the National Auditing System (*Sistema Nacional de Fiscalización*) and its contribution to good governance. In 2019, as part of this work, ASF asked OECD to provide experiences from other countries to illustrate and guide its efforts to extend its portfolio of audits to regulatory policy and governance issues.

This report analyses ASF's current experience on regulatory policy and provides a baseline of the OECD regulatory policy approach. It also highlights international experiences of SAIs in this field. Its objective is therefore providing ASF with elements to undertake a comprehensive strategy to audit the performance of regulatory policy, including tools, practices and methodologies, as well as the performance of regulators.

For more than 30 years, OECD countries have strived to develop sound regulatory policies to improve the quality of life of their citizens, supported by the work of the OECD Regulatory Policy Committee and the Network of Economic Regulators. Mexico's experience with regulatory policy spans more than 20 years, attaining a relatively sophisticated level in terms of the adoption of regulatory tools, according to OECD regulatory indicators. However, there is always room for improvement and it is crucial to assess the implementation strategy and its main outcomes. Here, the role of the recently reformed National Commission of Regulatory Improvement (CONAMER) is critical, as is the engagement of other institutional actors, such as ASF.

In addition to auditing outcomes of regulatory policy and the performance of regulatory bodies, the ASF's mandate provides scope for contributing significantly to the achievement of national policy objectives. Furthermore, ASF's work on regulatory policy contributes to the adoption of best practices. ASF thus has a role to play in strengthening Mexico's leadership in implementing quality regulatory tools and, above all, ensuring that regulations are fit-for-purpose and lead to better policies for better lives.

ASF's engagement in regulatory governance provides an opportunity for an objective and independent assessment of the outcomes achieved in Mexico from regulatory interventions, as well as of the extent to which regulations respond to evidence-based analyses that maximise benefits. External assessments of the performance of Mexico's regulatory bodies could also strengthen their independence and accountability. Finally, ASF could become a gatekeeper to ensure the continuity of regulatory policy and keep it as a priority in the political agenda.

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Abbreviations and acronyms

Acronym	English	Spanish
AAQ	Ambient Air Quality	Calidad del Aire del Ambiente
ACCC	Australian Competition and Consumer Commission	Comisión de Competencia y de Consumidores de Australia
AEEGSI	Authority for Electric Energy, Gas and the Hydric System	Autoridad de Energía Eléctrica, Gas y Sistema Hídrico de Italia
ANAO	Australian National Audit Office	Oficina de Auditoría Nacional de Australia
ANPRM	Advance Notice of Proposed Rulemaking	Aviso anticipado de propuesta de reglamentación
APA	Administrative Procedure Act	Ley de Procedimiento Administrativo
APVMA	Australian Pesticides and Veterinary Medicines Authority	Autoridad Australiana de Pesticidas y Medicina Veterinaria
ASF	Superior Audit of the Federation of Mexico	Auditoría Superior de la Federación
BANSEFI	Bank of National Savings and Financial Services	Banco del Ahorro Nacional y Servicios Financieros
CFE	Federal Commission of Electricity	Comisión Federal de Electricidad
CNBV	National Commission of Banking and Stocks	Comisión Nacional Bancaria y de Valores
CO	Cabinet Office Regulatory Impact Unit	Unidad de Impacto Regulatorio de la Oficina de Gabinete
COFECE	Federal Competition Commission	Comisión Federal de Competencia Económica
COFEMER	Federal Commission of Regulatory Improvement	Comisión Federal de Mejora Regulatoria
CONAMER	National Commission of Regulatory Improvement	Comisión Nacional de Mejora Regulatoria
CRE	Regulatory Energy Commission	Comisión Reguladora de Energía
DBIS	Department for Business, Innovation and Skills	Departamento de Negocios, Innovación y Habilidades
DEFRA	Department for Environment, Food and Rural Affairs	Departamento de Medio Ambiente, Alimentación y Asuntos Rurales
DJ	Department of Justice	Departamento de Justicia
DT	Department of Transport	Departamento de Transporte
DWP	Department for Work and Pensions	Departamento de Trabajo y Pensiones
EBA	European Banking Authority	Autoridad Bancaria Europea
ECA	European Court of Auditors	Tribunal de Cuentas Europeo
ERDF	European Regional Development Fund	Fondo Europeo de Desarrollo Regional
ESF	European Social Fund	Fondo Social Europeo
EU	European Union	Unión Europea
FCA	Financial Conduct Authority	Autoridad de Conducta Financiera
FSB	Financial Stability Board	Consejo de Estabilidad Financiera
GBP	British Pounds	Libras Británicas
GC	Gambling Commission	Comisión de Juego
IFT	Federal Institute of Telecommunications	Instituto Federal de Telecomunicaciones
IMF	International Monetary Fund	Fondo Monetario Internacional
INAI	National Institute of Transparency, Information Access and Personal Data Protection	Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales
INE	Elections' National Institute	Instituto Nacional Electoral
INTOSAI	International Organization of Supreme Audit Institutions	Organización Internacional de Instituciones de Auditoría Superior
iREG	Regulatory Indicators	Indicadores de regulación
LFPA	Federal Law of Administrative Procedure	Ley Federal de Procedimiento Administrativo
LGMR	General Law of Regulatory Improvement	Ley General de Mejora Regulatoria

LTR	Law of Telecommunications and Radiobroadcasting	Ley de Telecomunicaciones y Radiodifusión
ME	Ministry of Economy	Secretaría de Economía
SHCP	Ministry of Treasury	Secretaría de Hacienda y Crédito Público
NDPB	Non-Departmental Public Bodies	Entidades Públicas no Departamentales
OECD	Organisation for Economic Co-operation and Development	Organización para la Cooperación y el Desarrollo Económicos
Ofcom	Office of Communications	Oficina de Comunicaciones
Ofgem	Office of Gas and Electricity Markets	Oficina de Gas y Mercados Eléctricos
Ofwat	Water Services Regulation Authority	Autoridad Reguladora del Agua
ORR	Office of Rail and Road	Oficina de Vías y Carreteras
PAAF	Annual Programme of Audits	Programa Anual de Auditorías para la Fiscalización Superior de la Cuenta Pública
PMR	Product Market Regulation	Regulación de Mercado de Productos
PROFECO	Federal Consumer Attorney	Procuraduría Federal del Consumidor
REFIT	Regulatory Fitness and Performance	Aptitud y Rendimiento Regulatorio
RIA	Regulatory Impact Assessment	Análisis de Impacto Regulatorio
SAI	Supreme Audit Institutions	Entidades de Fiscalización Superior
SCM	Standard Cost Model	Modelo de Costeo Estándar
SCT	Ministry of Communications and Transport	Secretaría de Comunicaciones y Transportes
SEAG	Statement of Expectations of the Australian Government	Declaración de Expectativas del Gobierno de Australia
SENER	Ministry of Energy	Secretaría de Energía
SEP	Ministry of Education	Secretaría de Educación Pública
SFP	Ministry of Public Administration	Secretaría de la Función Pública
SME	Small and Medium Enterprises	Pequeñas y Medianas Empresas
Sol	Statement of Intent	Declaración de Intención
TCU	Union Accounting Court	Tribunal de Cuentas de la Unión
WGFMR	Working Group on Financial Modernization and Regulatory Reform	Grupo de Trabajo de Modernización Financiera y Reforma Regulatoria

Executive summary

Key findings

Mexico's Superior Audit of the Federation (*Auditoría Superior de la Federación*, ASF) has set the objective to extend the portfolio of its performance audits to regulatory policy and governance. This is a major decision, as regulatory quality processes have direct impacts on markets and citizens' lives. ASF already has experience auditing regulatory institutions, practices and tools, which can serve as the basis for building a more systematic approach in the annual audit plan (*Programa Anual de Auditorías para la Fiscalización Superior de la Cuenta Pública*, PAAF) and establishing standard practice.

Mexico's performance against the OECD regulatory indicators (iREG) reflects good practice in the adoption of specific regulatory tools, including regulatory consultation, regulatory impact assessment (RIA) and *ex post* evaluation. However, OECD product market regulation (PMR) indicators suggest that Mexico remains a restrictive economy. Auditing performance in the implementation of regulatory quality tools could help identify areas that are behind the contrast between the iREG and PRM indicators and provide relevant recommendations.

The experience of supreme audit institutions (SAIs) in other OECD countries suggests that performance audit exercises focused on regulatory policy and governance can take different approaches, such as the following:

- Auditing regulatory policy objectives, including the system for regulatory improvement (advocate and oversight bodies, national council, etc.).
- Auditing promotion, adoption, operation and performance of regulatory policy tools (RIA, public consultation, *ex post* assessment) and strategies (implementation plans, inspection policy, sunset clauses and “one-in, x out” policy).
- Auditing regulatory improvement objectives such as simplification targets, quality of regulations, regulatory improvement plans and law mandates.
- Auditing specific regulatory frameworks, laws and industry regulations.

Auditing the governance of regulators and their performance is another important stream that ASF intends to develop. Just as in the case of regulatory policy, ASF has carried out audits that touch upon specific elements of the governance of regulators, their objectives and performance, but it could further develop its framework for undertaking such audits. The OECD *Best Practice Principles for Regulatory Policy: The Governance of Regulators* suggests focusing on role clarity, preventing undue influence and maintaining trust, decision making and governing body structure, accountability and transparency, stakeholder engagement, and funding.

By systematically extending its portfolio of audits to regulatory policy and governance issues, ASF follows a good practice trend that is becoming standard among SAIs.

Proposals for action

- **ASF could incorporate an integrated regulatory quality approach as part of its performance audit plan.**
 - ASF has experience auditing the performance of several elements or stages of the regulatory improvement cycle. These efforts, however, are scattered across a series of documents and do not seem to follow a specific strategy or series of reports.
 - ASF could develop an integrated strategy of performance audits from a regulatory quality perspective that covers the complete regulatory policy cycle, tools, objectives, institutions and specific frameworks.
- **A systematic assessment of regulatory policy implementation in Mexico could be part of ASF's performance audit plan.**
 - ASF could analyse the gap between the results of the iREG and the PMR indicators to identify implementation issues in regulatory policy in Mexico.
- **Performance audits for specific regulations and regulatory frameworks could focus on impact and outcomes, as opposed to just outputs and activities.**
 - ASF has broad experience in evaluating specific regulatory frameworks, but it has focused more on the completion and recognition of activities.
 - Assessing the impact of regulations in specific sectors or policy areas is important for improving public policies. However, these assessments should prioritise outcomes and impacts, rather than processes and adherence to regulations.
- **Assessing the institutional design of regulators could be part of ASF's performance audit plans.**
 - ASF has included governance elements in some performance audits, assessing decision-making processes, institutional co-ordination, and planning. These efforts are relevant and ASF could consider undertaking specific audits focusing on determining whether institutional design and arrangements have impacts on processes and outcomes.
 - A cross-sectional evaluation of institutional arrangements and their impacts on the achievement of objectives can be useful to derive lessons for designing institutions and upgrading results from public policy implementation.
- **OECD governance indicators could provide a framework for ASF to prioritise auditing transparency and accountability across Mexican regulators.**
 - ASF could audit whether transparency measures have led to more effective decision making or whether they facilitate effective scrutiny. ASF could also conduct audits to identify whether practices implemented by regulators have an impact on performance and issue recommendations for their execution.
- **ASF could conduct performance audits of regulators in line with the OECD best practice principles. Such audits can provide information about the institutional strength of regulators.**
 - OECD best practice principles constitute a framework for improving institutional performance and reducing the risk of undue influence. ASF could analyse performance when auditing these principles among regulators and assess their contribution to the achievement of objectives.
- **ASF could revise the analysis of performance audits, moving from a product perspective to an outcome approach.**
 - ASF conducts performance audits highlighting several omissions and lack of compliance by regulators. Most of the reports analysed also include impacts on outcomes, but these may not

necessarily constitute the core of the audits. ASF could enhance the analysis and the impact of its recommendations by focusing on outcomes.

- **ASF could prioritise performance audit objectives, targeting specific roles or regulators' objectives as a baseline for rationalising resources and maintaining a wider scope only for those regulators that are considered as priorities. By doing this, ASF can go deeper in the analysis of the governance and performance of regulators.**
 - Performance audit objectives extracted from a set of reports indicate that they were clearly identified. These audits succeeded at identifying the main omissions of regulators, but they could also provide recommendations for addressing the underlying reasons behind suboptimal performance.
 - Audit exercises require time and resources; therefore, a prioritisation of audits and targets can free up resources for cases where thorough assessments are needed.

1 Assessing and auditing regulatory quality in Mexico

This chapter addresses the relevance of incorporating performance audits with a focus on regulatory quality as part of ASF's annual working plan (PAAF). It begins with a brief explanation about what regulatory quality means and what it involves. It continues with a summary of ASF's work in this area, and some relevant examples from SAIs from selected countries. Finally, recommendations for ASF are summarised.

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Drafting regulations without quality standards jeopardises the achievement of policy objectives in detriment of the quality of citizens' lives. The implementation of regulatory policy constitutes the strategy to increase the quality of regulations. This chapter will introduce what regulatory policy is, its tools, objectives and actors, and outlines why its proper implementation is critical to improve citizen's lives. This chapter presents a summary of the main elements of regulatory policy and its role in the rule making process, as well as its potential impact on welfare and business environment.

The objective is providing ASF with elements to conduct performance audits focusing on policies, tools, objectives and institutions that contribute to regulatory policy.¹ In order to review international guiding standards for Supreme Audit Institutions (SAI), developing performance auditing, check the Fundamental Principles of Performance Auditing published by INTOSAI (INTOSAI, n.d.^[1]) and Performance Audit Standard which collects of SAI's experience in performance auditing (INTOSAI, 2019^[2]). In this way, ASF can identify opportunity areas and promote recommendations to improve the implementation of regulatory policy and, as a result, increase the quality of regulations. Auditing regulatory quality is not an easy task, as auditors need to have a good understanding of regulatory policy, but there are relevant international references from SAI that can contribute to this objective. Alternatively, to review INTOSAI's guidelines evaluating public policies, check *GUID - 9020 - Evaluation of Public Policies*, with procedures that all public servants in charge to public evaluation may conduct their work (INTOSAI, 2019^[3]).

What is regulatory quality?

Citizens, organisations and ultimately societies move and interact according to rules and norms. These rules shape and guide economic and social activities in every country. Therefore, citizens' quality of life depends in part on the regulatory framework, which is designed, issued, implemented and overseen by different institutions and actors.

The regulatory quality process links *ex ante* objectives and the real effects they produce (direct or indirect). For example, if a regulation is designed to prevent plagues on crops, it must be assessed according to relevant indicators demonstrating improvements in plague control. However, it should also be evaluated considering the unintended effects, including impact on human health.

The quality process to draft regulations regularly begins with an *ex ante* assessment, called regulatory impact analysis (RIA), which is only one instrument among several options for regulatory policy intervention—ideally it should begin with early consultation fora. RIA is a powerful tool for governments or private institutions to evaluate the effects of regulatory interventions. This assessment focuses on regulations' design and how the regulation should tackle a well-identified and relevant public problem, based on evidence.

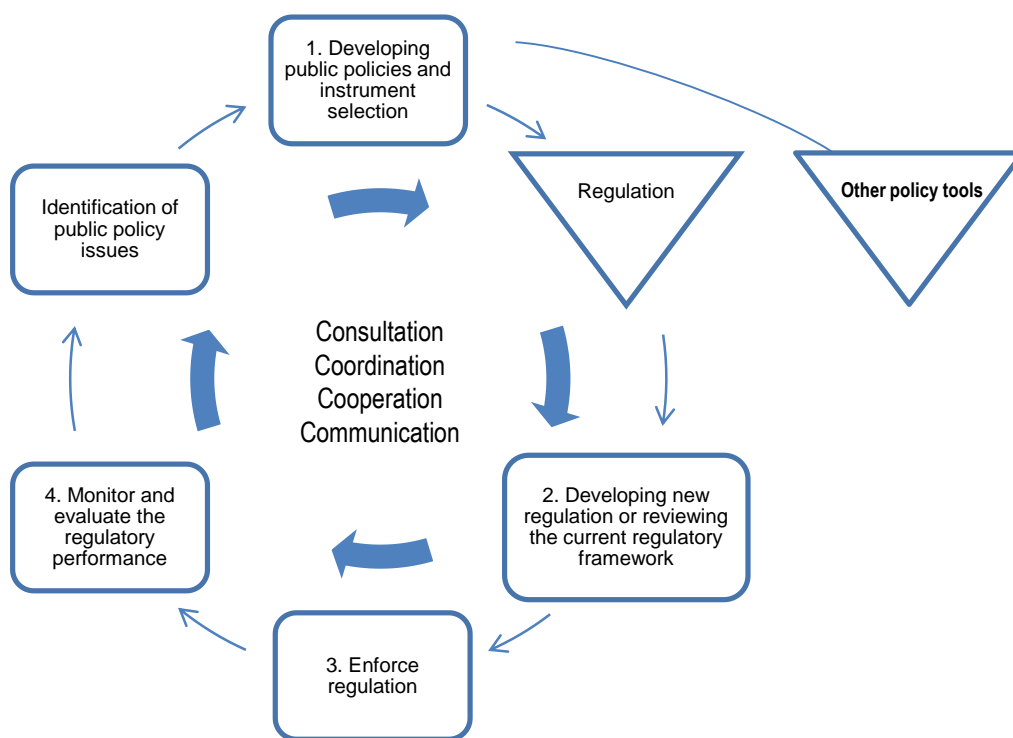
Accuracy in the definition of a public policy problem is the very first step for any government intervention. The question therefore becomes, how can a public official identify a public policy problem in, for instance, the number of traffic accidents? Every month, city authorities report the number of traffic accidents. However, is this number large, or at least, beyond what may be considered acceptable? To know this, national or international examples can be used as references. In the identification process of a public problem though, another relevant definition arises: risk. Traffic accidents could not necessarily be fully avoided, as it may require extreme measures such as prohibiting the use of vehicles, but the risk of accidents can be reduced with driving regulations, traffic lights, public spaces for cars, the use of bicycles and buses. Some solutions to traffic accidents might be regulation-based, but there are alternatives. Is a stricter transit regulation the solution? One might also consider awareness campaigns on road safety, or perhaps more traffic lights in problematic crossroads or speed limits.

There is an intrinsic trade-off produced by regulations: the reduction of risk will always be accompanied by side effects. Every single rule creates burdens, barriers and distortions—even when trying to reduce

others. Thus, assessing the quality of a regulation should include identifying direct and side effects (positive and negative) on animals, humans and the environment, for example. In this case, a quality regulation is one having a net positive impact, once all effects have been considered. In the example of traffic, if speed limits are set low enough, they may cause delays in commuting time, more traffic and pollution. Likewise, a regulation promoting and strengthening firms in international trade may be assessed through indicators of exports and the number of firms participating in foreign trade, among others. However, such regulation should neither harm competition nor limit SME growth.

Regulation is just one alternative in a broader approach to implement public policies. Other alternatives include information campaigns, behavioural incentives, taxes or spending policies. The consideration of these choices is included in a process identified by OECD (Organisation for Economic Co-operation and Development), whereby regulations are conceived, assessed against other alternatives, enforced and monitored: the regulatory policy cycle (OECD, 2011^[4])—see Figure 1.1.

Figure 1.1. Regulatory policy cycle



Source: OECD (2011^[4]), *Regulatory Policy and Governance: Supporting Economic Growth and Serving the Public Interest*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264116573-en>.

The cycle shows that once a problem is identified, the selection of the most effective public policy instrument takes place. The selection can be supported using different assessment techniques, all within the framework of RIA. RIA is a tool that aims to provide formal appraisal about the potential effects of regulations (or other instruments) from the very early stage of design. RIA establishes a series of questions to make clear the justification for public intervention, the potential alternatives at hand to solve the public problem and the cost-benefit assessment of each alternative.² RIA also includes the regulatory proposal, an assessment of implementation capacities and results of the public consultation process. The regulatory policy cycle provides a framework to implement a quality process to design and draft regulations, which is crucial to policy makers and oversight bodies, as well as also to SAIs as ASF, which could make the process as a reference to audit elements of regulatory policy.

As part of the assessment of benefits and costs of draft regulations, OECD countries have incorporated tests to consider effects on gender equality, SMEs, economic competition and the environment. (See the Best Practice Principles for Regulatory Policy: Regulatory Impact Assessment) (OECD, 2020^[5]).

Once regulation is selected as the best option, the next step is drafting the rule (or alternatively, reviewing the current regulation). In this step, apart from RIA, OECD governments usually employ another regulatory management tool to improve the draft regulation: public consultation.

The consultation process is the stage in which a drafted regulation is made public, in order to collect information from different stakeholders regarding potential or real benefits, impacts, views, perceptions and experiences with the proposed regulation. This process aims to achieve at least two objectives: gathering potential information to improve the proposed regulation and share the instrument so that stakeholders can foresee and adapt to the upcoming rule. Public consultation and the elaboration of RIA may take place simultaneously and feed on each other.

Enforcing the regulation is the third step of the regulatory cycle. During this stage, the regulation must be implemented according to its design in order to achieve the expected results. Unfortunately, planning an effective implementation stage is sometimes set aside or it does not attract the same level of attention or resources from the institutions in charge of the regulatory proposal. In this stage, the regulatory agency should establish processes that will lead to the expected results. For example, a road safety agency may approve limits on weight and dimensions for trucks in order to reduce the risk of accidents. It may be the case that weight and dimensions approved are optimal to minimise such risk. However, what would be the expected outcome if the agency does not set up scales on roads to weight trailers across the country? Once truck companies realise this failure, they may be tempted to load more weight to gain supplementary income—failing to comply with the regulation, as the probability of being sanctioned is close to zero. But more important, the regulatory intervention fails to deliver on its objectives.

A performance audit or an assessment considering only the outcomes may conclude the failure is in policy design. However, was policy design defective? Not necessarily, the failure was in the lack of implementation tools to ensure success. In this case, the tools may comprise a series of elements, for example, 1) scales located according to traffic flows in the country; 2) a scheme of sanctions and incentives for those subject to the rule; 3) a strategy to promote the basic requirements of the rule; and 4) fast track procedures to pay fines and surveillance or to avoid corruption. These tools will lead to the fourth stage of the regulatory policy cycle: monitoring.

Ministries and regulators need to verify if the regulation in place is complied with. There are several instruments to verify this such as requests for information, the establishment of administrative formalities such as permits, licences or authorisations, as well as a powerful, but sometimes misunderstood tool: inspections. Inspections are processes to verify that regulated entities comply with the regulation. Inspections should neither be a source to collect revenue nor have the objective of sanctioning agents. The *Regulatory Enforcement and Inspections* report (OECD, 2014^[6]) and the *OECD Regulatory Enforcement and Inspections Toolkit* report (OECD, 2018^[7]) provide valuable insights on how enforcement activities, including inspections, can help to increase the effectiveness of regulation.

The monitoring stage is also fundamental in the evaluation of any policy. During this stage, it can be identified if the regulation was properly implemented. An important issue to consider is that a policy should not be categorised as ineffective if implementation was poor.

A complementary and key additional activity to monitoring the regulatory framework is an *ex post* evaluation. The objective of *ex post* evaluation is to identify if the regulation, after a period of implementation, has accomplished the objectives for which it was established. Conducting this task is challenging for several reasons; it requires evidence, human and financial resources, and the evaluation should be protected from political influence. Second, *ex post* evaluation is hindered if the commitment of the government or the institution to invest in policy evaluation is weak or lacking incentives.

Ex post evaluation of a regulation can be broad in its design. For instance, it can be a cost-benefit analysis of the policy, or an impact evaluation of the main effects or an estimation of administrative burdens. The type of assessment depends on the objective of the regulation and the exercise at hand. (See (OECD, 2015^[8]) and (OECD, 2018^[9]) for a summary of *ex post* assessment practices in OECD countries).

In summary, regulations, as any public policy, should be justified, designed, promoted, implemented, assessed and audited. The regulatory policy cycle offers a framework to carry out these activities, and ASF could consider the stages of the policy cycle to audit performance of regulatory frameworks, tools and strategies.

Implementation of regulatory policy and tools in OECD countries

Regulatory policy involves a group of policies, institutions, tools and practices whereby governments conceive, develop, implement, enforce and evaluate regulation. Each of these elements and stages could be audited by ASF, as they contribute to the policy-making process. ASF could prepare an integrated plan to approach this task and complement the work it has already done under the scope of regulatory policy. In fact, OECD recommended to ASF auditing high-risk programmes and programme performance to increase the value of its reports for the budgetary decision-making process (see (OECD, 2017^[10])).

The OECD work on regulatory policy is based on the *Recommendation of the Council on Regulatory Policy and Governance* (OECD, 2012^[11]). The Recommendation sets out the measures that governments can and should take to support the implementation and advancement of systemic regulatory reform to deliver regulations that meet public policy objectives and will have a positive impact on the economy and society. These measures are integrated into a comprehensive policy cycle (see Figure 1.1) in which regulations are designed, assessed and evaluated *ex ante* and *ex post*, revised and enforced at all levels of government and supported by appropriate institutions (OECD, 2015^[8]). The Recommendation could also be a framework to prepare an integrated audit plan focusing on regulatory policy.

Implementation of regulatory policy varies according to available resources, legal systems, government strategies, policy priorities and experience. Some countries have established a whole-of-government approach to regulatory policy, while others focus their interventions on specific targets and institutions (simplification, burden reductions or reviews of the stock of regulation). A whole-of-government approach implies the formal establishment of the policy, along with the appointment of institutions in charge of its promotion and oversight. The elements of a whole-of-government approach in the adoption of the regulatory policy system in Mexico is a potential source to audit performance. (See (OECD, 2015^[8]) and (OECD, 2018^[9]) to review the elements of a whole-of-government approach).

In México, the General Law of Regulatory Improvement (*Ley General de Mejora Regulatoria*, LGMR) provides for the adoption of regulatory policy in the country. It establishes the main rules, actors, objectives and roles that intervene in its implementation, which are the basis of the whole-of-government approach for Mexico. All these elements are subject to be scrutinised or assessed in their contributions to regulatory policy.

Among these institutions and actors, the LGMR grants the National Commission for Regulatory Improvement (*Comisión Nacional de Mejora Regulatoria*, CONAMER) with different roles in the national system of regulatory policy. At federal level, CONAMER is the advocate of the policy and the oversight body; at subnational level, it is the promoter. This dual role calls for an external institution to assess or audit the effectiveness of CONAMER in its duties and to identify opportunity areas and reduce the risk of institutional bias during the implementation of regulatory policy.

OECD has worked extensively on the elements and functions that an oversight body of regulatory policy should have (see (OECD, 2012^[11])). Moreover, in the 2018 *Regulatory Policy Outlook*, a brief section on oversight bodies' location and functions across OECD countries is presented (OECD, 2018^[9]). For regulatory policy, the oversight function is crucial to supervise compliance and policy achievements. Therefore, ASF could be the external institution scrutinising the strategy and its achievements through performance audits.

The main regulatory policy tools implemented by OECD countries include RIA, stakeholder engagement and *ex post* evaluation. Their implementation may encompass different steps that are needed to achieve regulatory objectives. These steps include the methodology, systematic adoption, transparency, oversight and quality control, which are subject to be audited or assessed to identify areas of improvement. The OECD *Regulatory Policy Outlook* presents an overview of the adoption of these tools across countries, as well as indicators measuring these dimensions (OECD, 2018^[9]). As it is explained in the next sections, Mexico is a top performer in the adoption of practices across OECD countries, but an audit assessing the impacts of these tools on policy outcomes would contribute to understanding their contribution to evidence-based policymaking. Likewise, auditing the implementation of such regulatory tools is required to identify areas for improvement.

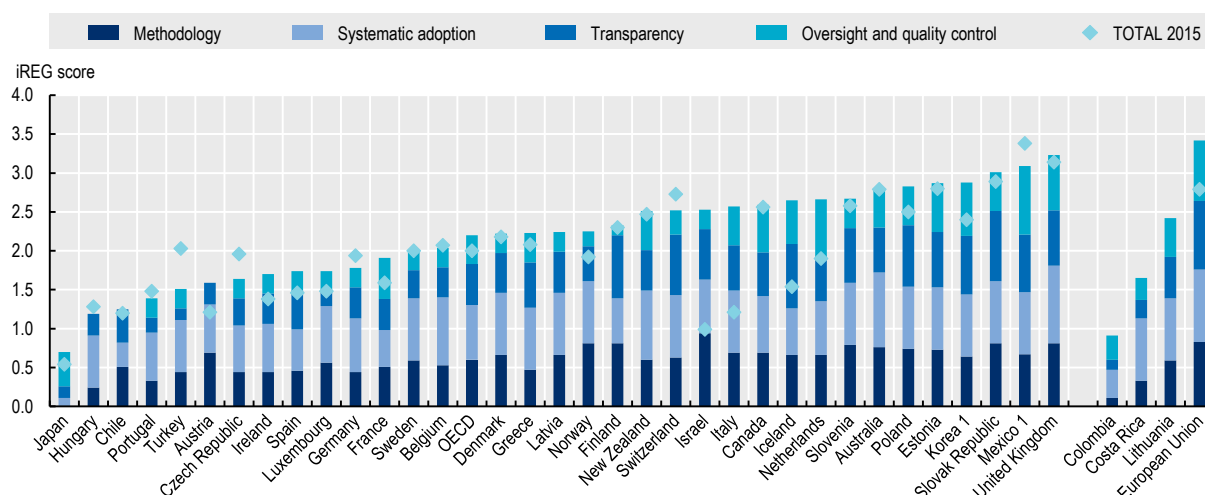
Stakeholder engagement

Stakeholder engagement is a tool that governments employ to learn about public problems, get relevant information or collect public opinions regarding draft regulations. The evidence indicates that OECD countries employ this practice frequently during the design of regulations in order to collect evidence to improve the quality of public interventions. Notwithstanding, it should be present in all stages of the regulatory cycle (OECD, 2015^[8]). Stakeholder engagement can take different format designs (formal or informal consultation, for specific groups or open to the public, on-site or through web platforms, as an early consultation or as part of RIA, among others) and periods of consultation. Furthermore, comments and opinions expressed during the process should be published, passed on to policy makers, and regulators should provide feedback to the public (OECD, 2018^[9]).

Figure 1.2 and Figure 1.3 present the composite indicators for stakeholder engagement for OECD and accession countries in developing primary and subordinate regulations, respectively.³ As illustrated, Mexico records good performance in the practice of stakeholder engagement in both primary laws and subordinate regulations. However, it is worth noticing that for both, primary and subordinate regulations, the score in 2015 was higher than in 2018—such a difference is more relevant for primary regulations.

A challenge for the Mexican system is to keep the good performance in stakeholder engagement. Thus, performance analysis of the causes behind the recent decrease in the score could identify which elements need to be strengthened. A brief summary of Mexican regulation and implementation of public consultation is illustrated in Box 1.1 Moreover, stakeholder engagement encompasses more than public consultation as part of RIA. A systematic adoption of consultation processes in different stages of rulemaking may improve the quality of regulations, including through early consultation and during the implementation phase. OECD has made recommendations to enhance outreach and communication strategies among key stakeholders (see (OECD, 2017^[10])).

Figure 1.2. Composite indicators: Stakeholder engagement in developing primary laws, 2018



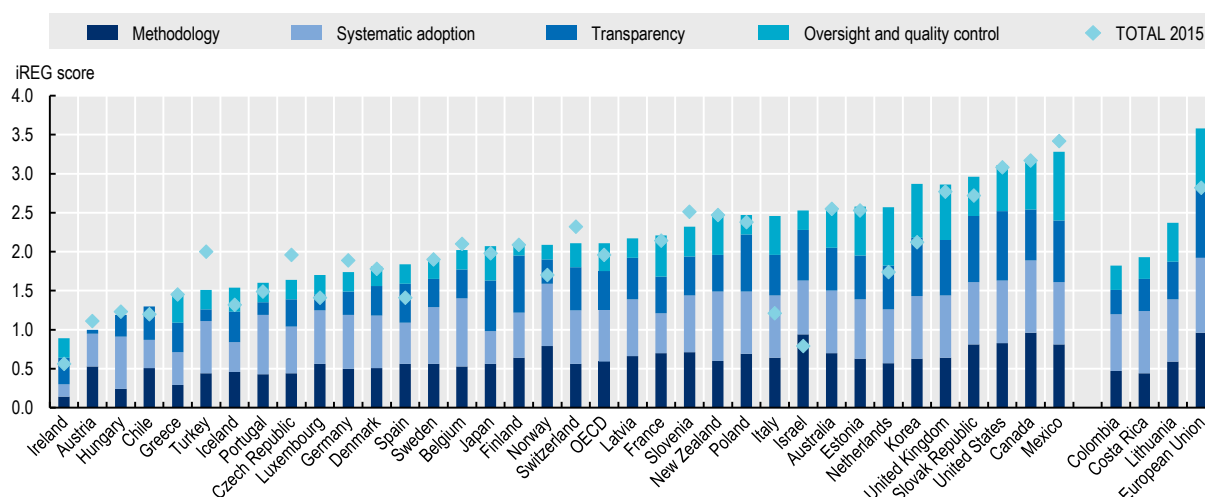
Note: Data for OECD countries is based on the 34 countries that were OECD members in 2014 and the European Union. Data on new OECD member and accession countries in 2017 includes Colombia, Costa Rica, Latvia and Lithuania. The more regulatory practices as advocated in the 2012 Recommendation a country has implemented, the higher its iREG score. The indicator only covers practices in the executive. This figure therefore excludes the United States where all primary laws are initiated by Congress.

1. In the majority of OECD countries, most primary laws are initiated by the executive, except for Mexico and Korea, where a higher share of primary laws are initiated by the legislature.

Source: OECD (2018^[9]), *OECD Regulatory Policy Outlook 2018*, OECD Publishing, Paris. <https://doi.org/10.1787/9789264303072-en>, from Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, <http://oe.cd/ireg>.

Another challenge for Mexico is to increase the percentage of primary laws that go through stakeholder engagement activities. In Mexico, only primary laws initiated by the executive go through this process, which from 2014 to 2016 represented only 34% of all the primary laws issued by Congress (OECD, 2018^[9]).

Figure 1.3. Composite indicators: Stakeholder engagement in developing subordinate regulations, 2018



Note: Data for OECD countries is based on the 34 countries that were OECD members in 2014 and the European Union. Data on new OECD member and accession countries in 2017 includes Colombia, Costa Rica, Latvia and Lithuania. The more regulatory practices as advocated in the 2012 Recommendation a country has implemented, the higher its iREG score.

Source: OECD (2018^[9]), *OECD Regulatory Policy Outlook 2018*, OECD Publishing, Paris. <https://doi.org/10.1787/9789264303072-en>, from Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, <http://oe.cd/ireg>.

Box 1.1. Public consultation in Mexico

Public consultation in Mexico is part of the RIA process since 2000, first as a self-promoted practice and latter embedded in the Federal Law of Administrative Procedure (*Ley Federal del Procedimiento Administrativo, LFPA*), and finally in the General Law of Regulatory Improvement (*Ley General de Mejora Regulatoria, LGMR*) since 2018.

According to the LGMR, all draft regulations should include a Regulatory Impact Assessment (RIA) and be subject to a minimum of 20-days public consultation process led by the authority for regulatory improvement, which at the federal level is CONAMER—at subnational level, the authorities are state regulatory improvement commissions or their equivalent. Once a federal public institution submits a draft proposal to the RIA process through the digital platform managed by CONAMER, it is automatically published for consultation. On the website <http://187.191.71.192/portales>, CONAMER publishes all draft regulations for public consultation.

The objective of the public consultation process is to gather information and opinions from stakeholders. The platform collects and publishes all opinions from stakeholders, together with CONAMER's comments. CONAMER is obliged to take into account all comments received during the consultation process for its formal opinion regarding the regulatory draft. In consequence, the regulatory entity has to respond to CONAMER's opinion to clear the process.

The LGMR indicates that the RIA format for draft regulations must incorporate a description of all previous efforts regarding public consultations undertaken to support the proposal, as well as opinions collected during the drafting of the regulatory agenda that all regulated entities should elaborate.

The LGMR also establishes specific periods for consultation processes in cases of *ex post* assessments of regulations undertaken to identify potential effects of regulations (30 days) or the drafting of the regulatory agenda of public entities (with a minimum of 20 days).

Source: General Law of Regulatory Improvement (*Ley General de Mejora Regulatoria*).

Regulatory Impact Assessment

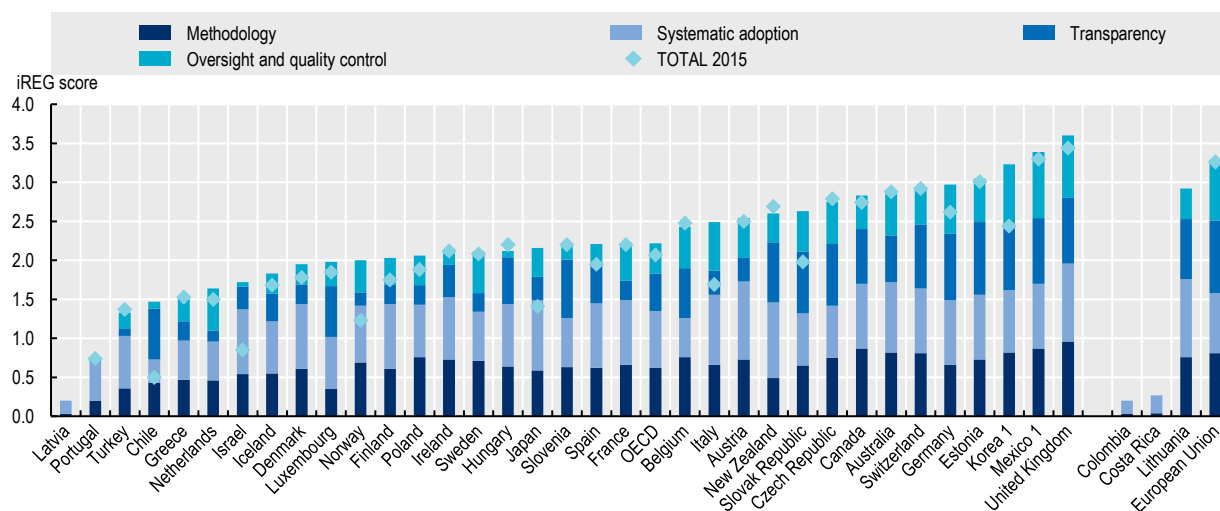
A Regulatory Impact Assessment (RIA) provides a systemic approach to assess regulations since the earliest stage of design—it is an *ex ante* assessment. The objective of this tool is to cut down the risk of implementing regulations out of purpose and evidence. A systematic implementation of RIA is challenging because it requires co-ordination among actors and institutions involved, as well as trained officials to evaluate draft regulations and assessments. Besides, there are several types of RIA, according to features of the regulation and its context.

Composite indicators for the adoption of RIA in OECD countries for primary and subordinate regulations are presented in Figure 1.4 and Figure 1.5. Mexico's performance in the practice of RIA is amongst the best, however there is still room for improvement. In principle, high performance of Mexico in the practice refers to its design but there are no comprehensive assessments or audits regarding the implementation of the practice. Given the scope of its performance audits, for example, ASF could analyse if the policy to carry out RIA is being efficiently and effectively implemented, if the desired results are being achieved, its social and economic impact, strengths and weaknesses. See Box 1.2 for a more detailed description of the Mexican RIA system.

Nevertheless, just as in the case of stakeholder engagement, only a small fraction of primary regulatory production in Mexico goes through RIA controls, as Congress is the main producer and it does not

systematically apply these regulatory management tools (OECD, 2014^[12]). Thus, a challenge for the Mexican system is the establishment of quality controls for a bigger proportion of draft regulations, particularly those initiated by Congress.

Figure 1.4. Composite indicators: Regulatory impact assessment for developing primary laws, 2018

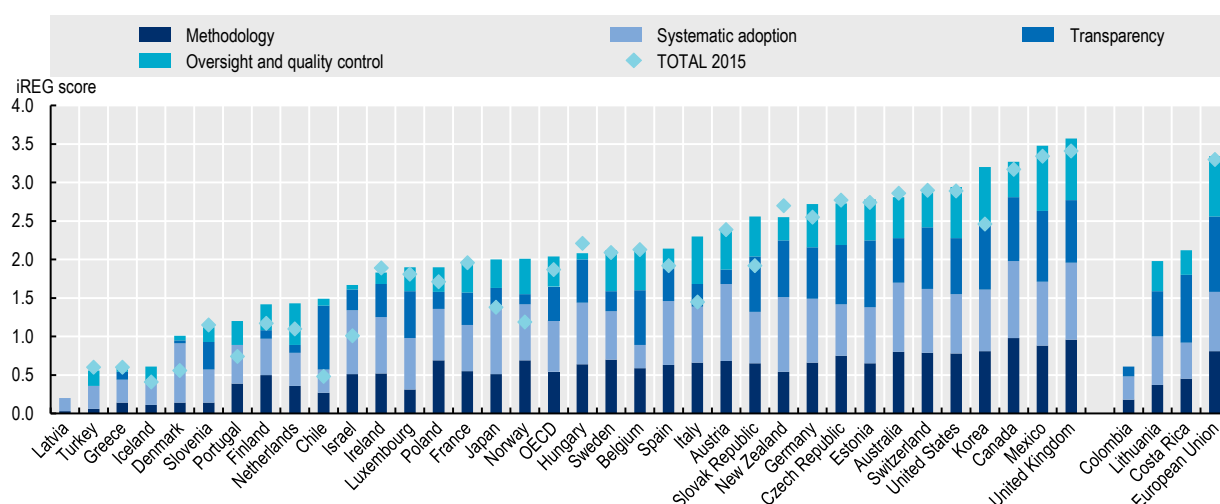


Note: Data for OECD countries is based on the 34 countries that were OECD members in 2014 and the European Union. Data on new OECD member and accession countries in 2017 includes Colombia, Costa Rica, Latvia and Lithuania. The more regulatory practices as advocated in the 2012 Recommendation a country has implemented, the higher its iREG score. The indicator only covers practices in the executive. This figure therefore excludes the United States where all primary laws are initiated by Congress.

1. In the majority of OECD countries, most primary laws are initiated by the executive, except for Mexico and Korea, where a higher share of primary laws are initiated by the legislature.

Source: OECD (2018^[9]), *OECD Regulatory Policy Outlook 2018*, OECD Publishing, Paris. <https://doi.org/10.1787/9789264303072-en>, from Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, <http://oe.cd/ireg>.

Figure 1.5. Composite indicators: regulatory impact assessment for developing subordinate regulations, 2018



Note: Data for OECD countries is based on the 34 countries that were OECD members in 2014 and the European Union. Data on new OECD member and accession countries in 2017 includes Colombia, Costa Rica, Latvia and Lithuania. The more regulatory practices as advocated in the 2012 Recommendation a country has implemented, the higher its iREG score.

Source: OECD (2018^[9]), *OECD Regulatory Policy Outlook 2018*, OECD Publishing, Paris. <https://doi.org/10.1787/9789264303072-en>, from Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, <http://oe.cd/ireg>.

Box 1.2. Regulatory Impact Assessment in Mexico

Regulatory Impact Assessment (RIA) in Mexico is a tool to advance the quality of regulations and ensure that benefits outweigh costs. The establishment of RIA began in 1997 and by 2000, it became compulsory for all institutions of the executive power when drafting laws, legislative decrees and general acts with compliance costs—regulations free of costs only have to submit an RIA exemption for CONAMER's review. Compliance costs are incurred when proposed regulations create new responsibilities or increase the current ones; create or modify formalities; reduce or restrict rights or benefits; or may create potential effects on rights, benefits and obligations. RIA in Mexico includes the following sections:

- Problem definition and objectives.
- Alternatives to regulation.
- Impacts of regulation (identification and estimation of cost-benefit analysis).
- Compliance and implementation.
- Assessment.
- Public consultation.

RIA is not the same for all types of regulations. In July 2010, CONAMER (formerly COFEMER) published an agreement, including RIA guidelines. Directive C of these guidelines describes the *calculator of regulatory impact*. The calculator indicates, according to its results, the type of RIA to be submitted—high or moderate impact. Those regulations creating compliance costs for the public, which are not under emergency and are not of periodic update, must go through RIA—and the calculator. To assess the impact of regulations.

In Mexico, the following versions of RIA exist:

- **High impact:** when potential effects of regulations are considered high on the economy and the population.
- **Moderate impact:** when the potential impact of regulations is moderate on the economy.
- **Periodic update:** when the preliminary draft modifies provisions that must be updated periodically, without imposing additional obligations.
- **Emergency RIA:** when the draft meets the criteria for issuing emergency regulations (which are in force for less than six months, and have the objective to prevent, mitigate or eliminate negative effects on welfare, the environment and natural resources).

In 2013, CONAMER and the Competition Commission (COFECE) signed an agreement to co-ordinate and assess regulations with potential effects on markets and economic competition. In 2016, an RIA version focusing on foreign trade and competition was published in the Official Gazette. RIA in Mexico also requires the identification of impacts on SMEs, sectors, economic agents, prices, availability or quality of products and services, and a risk analysis for health (human, animal or vegetal), safety (general and work) and the environment.

Source: General Law of Regulatory Improvement; SNMR (2019^[13]), *Estrategia Nacional de Mejora Regulatoria*, Sistema Nacional de Mejora Regulatoria, Mexico, https://www.gob.mx/cms/uploads/attachment/file/486718/Estrategia_Sistema_Nacional.pdf (accessed on 6 April 2020); and COFEMER (2010^[14]) Agreement to establish due dates for COFEMER to clear draft projects and publish the guidelines of the Regulatory Impact Assessment (*ACUERDO por el que se fijan plazos para que la Comisión Federal de Mejora Regulatoria resuelva sobre anteproyectos y se da a conocer el Manual de la Manifestación de Impacto Regulatorio*), https://www.dof.gob.mx/nota_detalle.php?codigo=5153094&fecha=26/07/2010 (accessed on 11 June 2020).

According to (OECD, 2020^[5]), RIA must be proportionate with the size of the regulatory impact. The basic principle is that policy makers should target RIA towards regulatory proposals that are expected to have the largest impact on society and ensure that such proposals are subject to scrutiny. However, not all legislative proposals should go through the same level of analysis. The depth of the analysis should depend on the significance of the regulation. At the same time, an oversight body should have the power to intervene and suggest a deeper analysis in case the proportionality principle has not been applied. The scope of the analysis of RIA by oversight bodies is an important element to be scrutinised and assessed, as it has a direct impact on the performance of the tool. In fact, there is international experience analysing the quality in the drafting of RIAs by regulators and their assessment by the oversight body.

RIA implementation is also challenging because, if carried out properly, it takes time and resources. To ensure the right focus of the RIA framework, it is advisable to focus on the most important and impactful regulatory measures. Possible alternatives to identify which legislative proposals have to go through a certain level of analysis include the setting of quantitative thresholds for potential impacts, introducing a set of multi-criteria analysis, or applying a general principle of proportionate analysis (OECD, 2020^[5]). Experience across OECD countries regarding the adoption of RIA exemptions may suggest the need for establishing more proportionality in its application, whereby only regulations with major impacts need to be comprehensively assessed—because some RIA exemptions are justified due to the low impact of regulations (OECD, 2015^[8]). All these elements of RIA can be audited in their performance by ASF.

Ex post assessment of regulations (RIA ex post)

Ex post evaluation is a tool to collect information about the impacts of regulation after some years of implementation. These assessments can be used to compare actual results with *ex ante* estimations, but also for regulations that were not subject to previous evaluations. Several OECD countries have adopted *ex post* assessment as part of the regulatory quality process (as a practice or after a formal mandate), however *ex post* evaluation systems are still underdeveloped in most of them.

A review of *ex post* evaluation practices among OECD countries recognises that methodologies to assess impacts are dependent on specific conditions (OECD, 2018^[15]), such as:

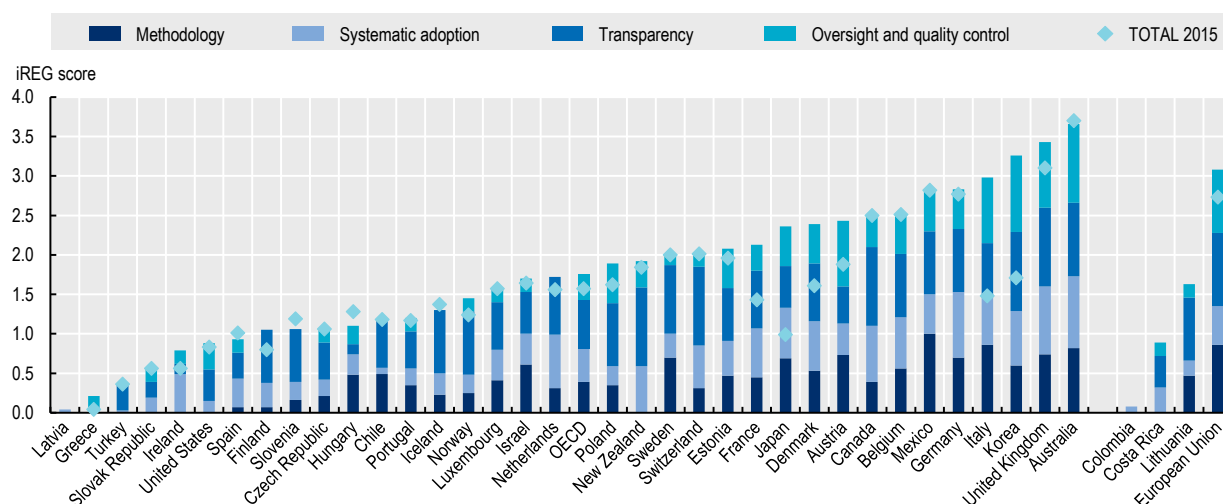
- The scope of regulation (law reform, law amendment, regulatory framework, set of laws).
- The time the regulation has been in force.
- The capacity to collect baseline information or control situation.
- Data availability.
- Access to beneficiaries, and affected agents and their characteristics.
- The ability to isolate effects of other regulations.
- Technical and financial resources to undertake assessment methodologies.
- Balance between the cost of evaluation and the potential effects, target population and evidence of causality.

According to OECD (2018^[15]), *ex post* evaluations are at least a two-step process, starting with the identification of impacts and, if possible, their measurement. Thus, recognising that measurement may be challenging because of data availability, a first step is collecting information and evidence of impacts, which can be done through academic or empirical studies. OECD (2018^[15]) also explains that academic literature provides a wide range of quantitative and qualitative methodologies—each with strengths and drawbacks. The document continues with the recognition of qualitative methodologies in recent years, when data is not available and their usefulness when these are combined with statistical or deterministic methods.

Composite indicators for the adoption of *ex post* assessment among OECD countries are presented in Figure 1.6 and Figure 1.7. In primary regulation, Mexico records a good performance in the practice of *ex post* evaluation amongst OECD and accession countries. Most opportunity areas were identified in the

systematic adoption of the practice, as well as oversight and quality control. For subordinate regulation, major opportunity areas were in oversight and control. The Mexican score for primary laws remained unchanged since 2015, for subordinate regulation, the score was higher in 2015 than in 2018. Box 1.3 provides more details of the practice of *ex post* evaluation of regulations in Mexico.

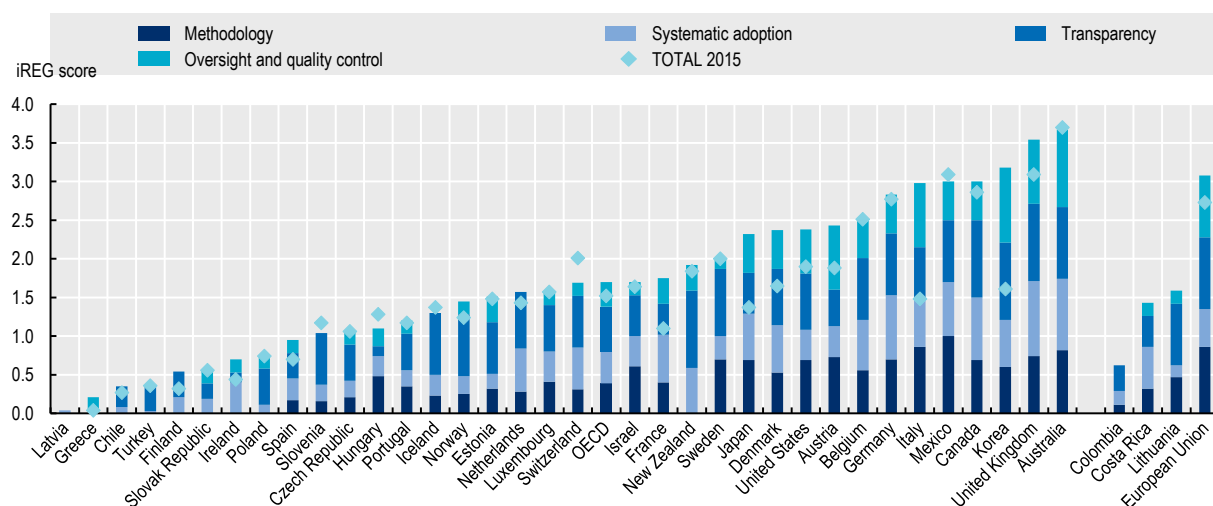
Figure 1.6. Composite indicators: *Ex post* evaluation for primary laws, 2018



Note: Data for OECD countries is based on the 34 countries that were OECD members in 2014 and the European Union. Data on new OECD member and accession countries in 2017 includes Colombia, Costa Rica, Latvia and Lithuania. The more regulatory practices as advocated in the 2012 Recommendation a country has implemented, the higher its iREG score.

Source: OECD (2018^[9]), *OECD Regulatory Policy Outlook 2018*, OECD Publishing, Paris. <https://doi.org/10.1787/9789264303072-en>, from Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, <http://oe.cd/ireg>.

Figure 1.7. Composite indicators: *Ex post* evaluation for subordinate regulations, 2018



Note: Data for OECD countries is based on the 34 countries that were OECD members in 2014 and the European Union. Data on new OECD member and accession countries in 2017 includes Colombia, Costa Rica, Latvia and Lithuania. The more regulatory practices as advocated in the 2012 Recommendation a country has implemented, the higher its iREG score.

Source: OECD (2018^[9]), *OECD Regulatory Policy Outlook 2018*, OECD Publishing, Paris. <https://doi.org/10.1787/9789264303072-en>, from Indicators of Regulatory Policy and Governance Surveys 2014 and 2017, <http://oe.cd/ireg>.

Box 1.3. *Ex post* assessment in Mexico

COFEMER (now CONAMER) started with the implementation of *ex post* evaluations in 2012 as a tool to assess high impact Mexican Official Standards (*Normas Oficiales Mexicanas*, NOM), according to the results of their corresponding RIA and when public institutions requested assessments for those regulations that followed the regulatory quality process and were published in the Official Gazette. The Agreement by which the RIA *ex post* is implemented (*Acuerdo por el cual se implementa la Manifestación de Impacto Regulatorio ex post*) set up the mechanisms and processes to evaluate impacts of regulations that were subject to RIA *ex ante*, followed by their publication in the Official Gazette (DOF) (COFEMER, 2012^[16]).

By 2018, the General Law of Regulatory Improvement indicates that CONAMER must promote *ex post* assessments for existing regulations at the federal level; and that the *obligated subjects* (institutions) must adopt *ex post analysis* following best international practices. The law also indicates that obligated subjects should undertake an *ex post* evaluation for all regulations creating compliance costs every five years.

CONAMER can also request the obligated subjects to conduct *ex post* exercises, evaluating the implementation, effects and monitoring of regulations—it can also suggest modifications to support the regulation in achieving its objectives. The assessment must be in public consultation for a 30-day period.

The National Council is the entity approving the general guidelines for *ex post* assessment. An *ex post* evaluation should include the following elements:

- An evaluation regarding the identified public policy problem that gave birth to the regulation and the scope of the achievements.
- An evaluation of costs and benefits after the implementation of the regulation.
- The outcome assessment regarding the mechanisms and capabilities in the implementation and inspection of the regulation (CONAMER, 2019^[17]).
- Description of mechanism, indicators and methodologies assessing the achievement of objectives.

An example of an *ex post* evaluation is the report assessing the regulations on access and services for pipeline gas transportation and storage (CRE, 2018^[18]). The report, published in 2018, summarises the analysis of impacts according to performance indicators, an assessment of administrative burdens, outcomes from specific regulations and impacts on competition. Therefore, the assessment of regulating gas transportation and storage after a change in market participation from a monopolistic scheme to an open market concluded that:

- There was evidence to conclude that regulation in place mitigated partially the problems identified.
- There were opportunity areas in the reduction of administrative burdens, processes and concepts of regulation.
- There were elements that evidenced market dynamism, but regulation in place should be strictly enforced to achieve better results.
- There is room for improvement regarding the information published in the Registry of Formalities (*Registro Federal de Trámites y Servicios*).
- Most regulatory activities were directed towards collecting information to understand market behaviour and incentivise the development of infrastructure.
- The assessment concluded that the cost-benefit analysis identified a net positive impact of regulations, which promoted a level playing field and greater market efficiency.

Source: COFEMER (2012^[16]), *ACUERDO por el que se implementa la Manifestación de Impacto Regulatorio Ex post*, https://dof.gob.mx/nota_detalle_popup.php?codigo=5279502 (accessed on 12 June 2020), CONAMER (2019^[17]), *Estrategia Nacional de Mejora Regulatoria*, Comisión Nacional de Mejora Regulatoria, https://www.gob.mx/cms/uploads/attachment/file/490503/Estrategia_Nacional_de_Mejora_Regulatoria-Portal.pdf (accessed on 4 June 2020), CRE (2018^[18]), *Reporte de Evaluación Ex post respecto de la regulación denominada "Disposiciones Administrativas de Carácter General en Materia de Acceso Abierto y Prestación de los Servicios de Transporte por Ducto y Almacenamiento de Gas"*, Comisión Reguladora de Energía, Mexico City, <http://187.191.71.192/expediente/17526/emitido/48945/COFEME> (accessed on 12 June 2020) and the General Law of Regulatory Improvement

An effective system of RIA, together with public consultation and *ex post* evaluation, should contribute to improve the quality of the regulatory framework in any country. RIA and public consultation are designed to ensure potential net benefits of new regulations, while *ex post* evaluation is intended to verify if the anticipated benefits of the regulation indeed happened. *Ex post* evaluation is also useful because several regulations in force were not properly assessed *ex ante* and identification of their impacts and performance is relevant.

As mentioned before, Mexico is a top performer in the adoption of regulatory quality tools, according to indicators constructed by the Regulatory Policy Division of the OECD (OECD, 2018^[9]). However, paradoxically, Product Market Regulation indicators also measured by OECD, suggest that Mexico remains as a restrictive economy, compared to high-performing countries (See Figure 1.8). Restrictive economies may be affected by distortions induced by state regulations and barriers to domestic and foreign investment. As effective RIA and *ex post* evaluation systems should contribute to the quality of regulations, they should reduce their restrictiveness in economic activities captured by PMR indicators. Therefore, auditing performance in the implementation of these quality tools could identify the opportunity areas leading to the contrast between iREG and PRM indicators and provide relevant recommendations (OECD, n.d.^[19]).

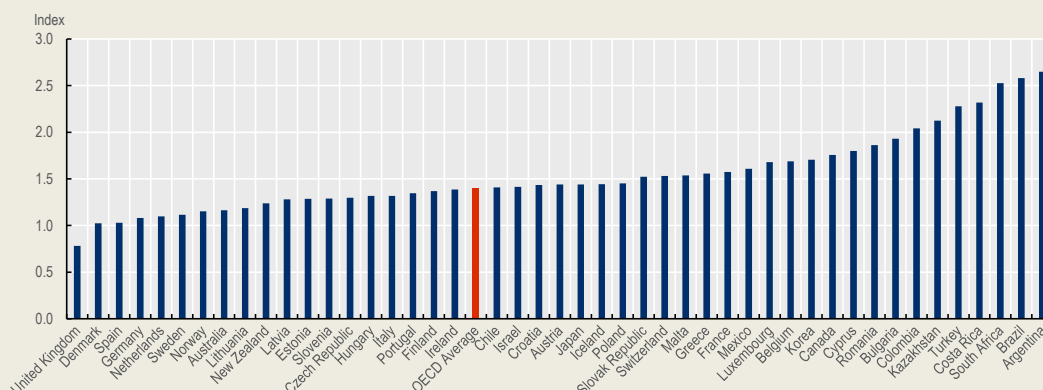
Box 1.4. Product Market Regulation indicators

Product Market Regulation (PMR) indicators measure how policies promote or inhibit a competitive environment for products and services, reflecting the status of existing laws and regulations. These indicators, however, do not capture the level of enforcement. Performance of Mexico in PMR indicators is illustrated in Figure 1.8. Sectors measured by PMR indicators include electricity, gas, communications, transport, water, retail distribution, professional services, state-owned firms, administrative burdens on start-ups, licensing, design and evaluation of regulations, public procurement and barriers to foreign trade.

In addition to an economy-wide PMR indicator that provides an overall measure of the quality of product market regulation, a set of sector PMR indicators quantify regulatory barriers to firm entry and competition at the level of specific network and service sectors. The indicators for network sectors assess eight industries: electricity, natural gas, air transport, rail transport, road transport, water and fixed and mobile telecommunications. Service sector indicators cover accountants, architects, civil engineers, real estate agents, lawyers and notaries (OECD, n.d.^[19]).

The information on laws and regulations is collected through a questionnaire and vetted by OECD experts. The questionnaire is filled in by ministries, regulators and other relevant authorities in the countries surveyed and information is collected at federal or national level, but representative lower-level jurisdictions are involved if the relevant sector or area is regulated by them. It is important to notice that PMR are *de jure* indicators and do not capture the level of enforcement (OECD, n.d.^[19]).

Figure 1.8. OECD Product Market Regulation indicators, 2018



Note: The OECD PMR indicators were completely revamped in the last edition of 2018. As a result, the last edition is not comparable to previous vintages (2013, 2008 and 2003). PMR score ranges from 0 to 6, from the most to the least competitive economy.

Source: OECD 2018 Product Market Regulation database.

Source: OECD (n.d._[19]), *Indicators of Regulatory Policy and Governance*, 2018, <http://www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm> (accessed on 20 May 2019).

Several factors may explain why Mexico's PMR score seems to be inconsistent with the high performance on RIA and *ex post* evaluation processes in the iREG scores. This might include:

- RIA applies to all prospective regulations coming from the executive, including primary laws and subordinate regulations. However, only a fraction of the primary laws undergoes an *ex ante* analysis, and even in this case, they may go through significant changes in Congress. The majority of primary laws are prepared and presented by Congress, without a strict regulatory quality discipline. It is widely accepted that most of the restrictions on economic activities come from primary laws.
- The RIA system in Mexico has not undergone an independent appraisal to identify whether it is delivering on its objective to ensure that all draft regulations are providing a net positive benefit to the country and are not creating unnecessary barriers or obstacles to economic activity.
- The process of consultation in Mexico, which is interlinked closely with the RIA process, takes place systematically at the stage when a draft regulation is ready (OECD, 2018_[9]), (OECD, 2014_[12]). Early consultation, that is, when a problem is being identified and potential alternatives delineated, is still a developing practice in Mexico.
- Subnational levels of government, namely the federal states and municipalities, have ample regulatory powers (OECD, 2014_[12]). The adoption of RIA or any other practice of *ex ante* evaluation of regulation is still incipient in these levels of government (ONMR, n.d._[20]).
- The practice of *ex post* evaluation in Mexico is still not systematised (OECD, 2018_[9]), (OECD, 2014_[12]), and it is seldom undertaken at subnational level.
- The *ex post* evaluation exercises in Mexico have not undergone an independent appraisal to determine their degree of effectiveness in improving the regulatory framework. Moreover, it has not been analysed whether these assessments have led to real reforms to laws and regulations.
- Although programmes to improve regulations such as "Everyday justice" (*Justicia Cotidiana*) (Mexico, n.d._[21]), or to reduce burdens through administrative simplification such as SIMPLIFICA

(CONAMER, 2019^[22]), have been widely used at federal and subnational level, but they have not undergone an independent appraisal to assess whether they have achieved the policy objective of improving the stock of regulation in benefit of citizens and businesses.

It is worth noticing that the PMR and iREG indicators do not capture the enforcement of public policies. Therefore, it would be timely to undertake performance audits to assess whether RIA in Mexico is really a tool advancing the quality of regulation or it is perceived as a mere formality by regulators, as well as to verify if RIAs prepared by regulatory agencies in Mexico are of high quality. In other words, performance audits could assess whether practices such as stakeholder consultation or RIA, which are ranked as best practices in Mexico, are really feeding the rule making process to improve the quality of regulations. On the contrary, poor performance in the PMR may be suggesting that these tools are applied following a “tick the box” approach, where compliance is merely of an administrative nature, but it is really not feeding the regulatory governance cycle.

ASF’s experience auditing regulatory quality

ASF has not launched a comprehensive strategy to audit the performance of the elements or institutions involved in designing and delivering regulatory policy in Mexico. Notwithstanding, ASF has conducted several ad hoc audits of regulatory policy and institutions, such as those relative to CONAMER, to specific regulations and to the performance of particular regulators⁴—some of these audits will be discussed further throughout this report. ASF has set the objective to launch a strategy to perform audits on regulatory quality issues in order to identify opportunity areas in the regulatory framework and improve public policy outcomes.⁵ The main argument to launch this new stream is the alignment of regulatory quality issues with two objectives of its Strategic Map 2018-26 (*Mapa Estratégico de la Auditoría Superior de la Federación 2018-2026*): improving preventive aspects of inspections and the identification of causes for non-compliance, and strengthening the impact of auditing.

OECD experience on regulatory policy may suggest that performance audit exercises in this field could have different approaches or stages, such as the following:

- Auditing regulatory policy objectives, including the system for regulatory improvement (advocate and oversight bodies, national council, among others).
- Auditing promotion, adoption, operation and performance of regulatory policy tools (RIA, public consultation, *ex post* assessment) and strategies (implementation plans, inspection policy, sunset clauses and *one-in, x out* policy).
- Auditing regulatory improvement objectives such as simplification targets, quality of regulations, regulatory improvement plans and law mandates.
- Auditing specific regulatory frameworks, laws and industry regulations.

Efforts towards an integrated strategy to audit regulatory policy in Mexico could take advantage of these approaches in a multi-annual working plan. However, it is important to recognise that assessing and auditing public policies may overlap with the analysis of regulatory frameworks or specific regulations, which is a task that ASF is already performing. Therefore, ASF could start acknowledging these audits, as preliminary elements of the strategy.

A selection of performance audits under the scope of regulatory policy will be presented in the next sections. Moreover, these sections will present relevant examples regarding performance audit focusing on regulatory policy conducted by SAIs, such as the European Court of Auditors of the European Union (ECA)⁶ (ECA, 2020^[23]) and the National Audit Office of the United Kingdom (NAO). ASF could take relevant insights, methodologies, approaches or examples from these experiences to be implemented in its own work.

The International Organization of Supreme Audit Institutions (INTOSAI) alternatively, opened a Working Group on Financial Modernization and Regulatory Reform (WGFMR) with projects organised in three working subgroups (INTOSAI, n.d.^[24]):

1. Subgroup 1: Identifying and providing guidance on leading practices, tools, and methodologies for auditing financial regulatory agencies and financial systems.
2. Subgroup 2: Improving co-ordination both between participating Supreme Auditing Institutions (SAI) and between SAIs and other international bodies (e.g., the Basel Committee on Banking Supervision, Financial Action Task Force, Financial Stability Board (FSB), G-20, International Monetary Fund (IMF), and World Bank).
3. Subgroup 3: Identifying and informing SAIs and the public about areas of potential reform, regulatory weakness, and gaps within the national, supranational, and global financial systems.

These teams are currently working on projects to share best practices while implementing Superior Audit Institutions' recommendations related to regulatory oversight and financial-sector reform, examining opportunities for financial sector parallel audits, among others. In particular, the work regarding oversight bodies could be of ASF interest to steer performance audits in CONAMER. Likewise, experience of regulatory reform in the financial sector can provide insights to promote regulatory amendments in Mexico.

Auditing regulatory policy

ASF's experience auditing performance of regulatory policy and the system for regulatory improvement at the national level is illustrated in specific reports. In 2012 and 2013, ASF worked on two analyses to scrutinise the achievements of regulatory policy goals and objectives. In 2012, the audit focused on the objective to improve business environment through better regulation, the federal registry of formalities and the implementation of financial resources (ASF, 2012^[25]). In 2013, ASF completed an analysis with the objective to scrutinise the achievements of regulatory policy goals and objectives (ASF, 2013^[26]). In both audits, ASF assessed the performance of CONAMER (formerly COFEMER) (see Table 1.1).

Table 1.1. Objectives of audits on regulatory policy issues in Mexico

Objectives of the audit plan and main findings for the 2012 and 2013 audits

Audit objective	Findings	2012	2013
Co-ordination of the Federal Council of Regulatory Improvement	The council did not meet during 2013 (2013)		√
Diagnostic of the regulatory framework	COFEMER did not provide information to demonstrate its knowledge of the regulatory framework (2012) COFEMER did not provide information to demonstrate its knowledge of the regulatory framework (2013)	√	√
Simplification plans	91% of federal institutions submitted simplification plans COFEMER did not publish guidelines to produce the plans (2013)	√	√
Reviewing regulatory drafts and the corresponding RIAs	COFEMER had 1,312 regulatory drafts registered on its website (2012) COFEMER had 1,249 regulatory drafts registered on its website (2013)	√	√
Simplification of government formalities (and economic impact of regulations)	COFEMER achieved reductions on opportunity costs for MNX 445 million due to simplification of formalities (2012) Reduction in cost and timing for government licencing and processes, such as opening a business (2013) COFEMER computed the cost of regulation and it found a cost reduction of 0.21% of the GDP (2013)	√	√
Co-ordination with the Legal Office of the Presidency and SFP (Ministry of Public Administration)	COFEMER did not provide complete information regarding co-ordination activities with SFP (2013)		√
Advice to stakeholders	COFEMER provided 613 advice sessions in 32 Mexican states (2013)		√
Effective achievement of goals and objectives in the three layers of government	The activities to promote an integrated regulatory policy in the three layers of government did not have specific goals, limiting the assessment of the adoption of regulatory policies (2013) COFEMER worked on five diagnostics to assess co-ordination with subnational governments (2013)		√
Budget expenditure	COFEMER's spending was lower than the original budget and justified the differences.	√	
Performance of international indicators	COFEMER surpassed the goal to rank 53 in the Doing Business indicator for starting up a business—reaching position 36. (2012)	√	

Source: Organisation for Economic Cooperation and Development with information by ASF (2012_[25]) *Mejora Regulatoria para la Competitividad*, Auditoría Superior de la Federación (ASF), Mexico, http://www.asf.gob.mx/Trans/Informes/IR2012i/Documentos/Auditorias/2012_0485_a.pdf (accessed on 15 April 2020) and ASF (2013_[26]), *Simplificación Administrativa*, Auditoría Superior de la Federación (ASF), Mexico, http://www.asf.gob.mx/Trans/Informes/IR2013i/Documentos/Auditorias/2013_0065_a.pdf (accessed on 16 April 2020).

In both audits, ASF issued recommendations, some of them tackled during the audit process, while others were not subject to follow up in the subsequent years. The reports indicated that, in general, despite some gaps, COFEMER (now CONAMER) achieved its objectives and promoted savings through simplification for business and citizens. An amount of MNX 140 935 million in 2012 and 25 608 million in 2013 were computed by CONAMER methodology and ASF concluded that the methodology was aligned with the Standard Cost Model (SCM).⁷

Furthermore, the PAAF 2019 included a performance audit to CONAMER, which was delivered in October 2020, whose objective was auditing CONAMER's performance regarding regulatory governance and RIA implementation. ASF concluded there was progress in 2019 in establishing a national regulatory policy, as institutions were set, laws were approved, and tools were developed to articulate regulatory governance in the three levels of government (i.e., federal, state and municipal). Likewise, ASF argued in the audit report that the design, scope and use of RIA ex ante and ex post should be strengthened to increase the effectiveness of regulatory policy to address public problems.⁸

Simplification efforts are a relevant element of regulatory policy. In fact, OECD (2014^[12]) recommended CONAMER to strengthen the methodology to measure administrative burdens in order to move closer to best international practices. Therefore, it would be relevant to audit the performance of CONAMER in this respect and identify if it has addressed the recommendation. Examples of SCM-based methodologies can be found in (OECD, 2019^[27]), where a measurement of administrative burdens and simplification efforts in the Mexican Institute of Social Security (IMSS) is described, and in (OECD, 2015^[28]) for business-related formalities in the states of Colima and Jalisco.

Moreover, the 2012 and 2013 ASF's audits to the policy on regulatory improvement did not include an integrated approach, as they lacked the implementation perspective, *ex post* assessments or inspection policy. For example, future audits could focus on the enforcement of *ex post* assessment for the stock of regulations and its performance. It could include planning, priority criteria as well as assessment and follow up of findings.

In the report *Supreme Audit Institutions and Good Governance*, OECD identified that a set of SAIs looked at the processes for the development of regulations and regulatory policy, including: 1) the clarity of objectives of regulatory policy frameworks; 2) the incorporation of risk management; 3) the openness and consultation of the process; and 4) the alignment of regulatory policy with international principles (OECD, 2016^[29]). The report underlines the experience of Brazil's Programme for Strengthening Institutional Capacity for Regulatory Management (Pro-Reg), established in 2007 and audited by the *Tribunal de Contas da União* (TCU). The audit exercise provided recommendations based on international good practices of regulatory agencies. The TCU experience illustrates how SAIs can contribute to improvements within the regulatory landscape without jeopardising their independence.

International experience provides valuable examples regarding the need to develop performance scrutiny of regulatory policies by SAIs. These exercises take different forms such as performance audits, special reports or external assessments and overviews, among others. For example; the European Commission drafted and published the report "*Better regulation: taking stock and sustaining our commitment*" (see Box 1.5) (European Commission, 2019^[30]). The document recognises that ECA pointed out a failure at having a consistent approach to evaluate legislation among the European Parliament, the Council of the European Union and the European Commission. The report continued its analysis underlying that the European Commission does not have adequate information about how legislation works in Member States because it, as adopted by co-legislators,⁹ does not maintain the proposed measures to allow data collection to facilitate evaluation; obtaining data about performance and impacts of European Union law in practice across all Member States remains a challenge; and co-legislators add requirements for a range of different reviews or impose deadlines for evaluating legislation (European Commission, 2019^[30]). The solution to improve quality evaluation was highlighted by ECA (2018^[31]) and requires co-operation between the European Parliament, the Council and the Commission. In principle, the document states that the Commission will pay special attention to the inclusion of monitoring and reporting provisions in future proposals. Moreover, evaluations and impact assessments should be linked so that the findings from one institution can be used effectively by others. Finally, the report indicates that evaluation should always look at all relevant regulations and their implementation.

Box 1.5. Better regulation in the European Union

The “*Better regulation: taking stock and sustaining our commitment*” is a document published by the European Commission recognising the relevance of the Better Regulation policy for the European Community. It states that the Juncker Commission was set to promote changes and priorities at the European level, and one of the priorities was open and participative evidence-based policy making to enhance the legitimacy of EU action. The Commission transformed its internal working methods and planning processes to build better regulation into all stages of the planning and programming cycle and to deliver streamlined annual work programmes.

The report includes a brief overview of the better regulation activities for the period 2015-18 that encompasses 417 public consultations, 259 evaluations, 21 impact assessments, 151 draft delegated acts published for feedback, 691 roadmaps published for feedback, 150 simplification measures and 89 REFIT platform opinions.¹⁰ The report also has a section with lessons learned and considerations for the future. An extract of the main lessons learned may be summarised as follows:

- The rationale for better regulation is in fact even stronger now than in the past.
- Better regulation practices are not cost-free.
- Better regulation tools and procedures are there to support political decision-making, not to substitute it.
- To be successful, better regulation must be a shared effort.

Considerations highlighted by the report include:

- Public consultation demonstrated that there is still a relatively low level of knowledge about opportunities to participate in the Commission’s policymaking.
- Impact assessments are also an important communication tool for the legitimacy of EU action since they explain the content of the Commission proposals and they weigh the evidence underpinning the choices made.
- There is a need to consider why simplification is often complicated and burden reduction burdensome. It is important to avoid pushing the efforts to quantify costs and benefits beyond a reasonable limit, as simplification is the objective, not quantification *per se*.

Source: European Commission (2019^[30]), *Better regulation. Taking stock and sustaining our commitment*, European Commission, https://ec.europa.eu/info/sites/info/files/better-regulation-taking-stock_en.pdf (accessed on 17 April 2020).

The experience of ECA publishing performance audit reports and other types of assessment focusing on regulatory policy implemented at the European Community level constitutes a relevant reference for ASF’s objectives. In the first place, ECA, based on its assessment of the main risks to EU spending and policy delivery, identifies regulatory policy as a relevant area subject to be audited or assessed. This can be observed in ECA’s audit plans of recent years (ECA, 2017^[32]), (ECA, 2018^[33]), (ECA, 2019^[34]).

An important report published by ECA for 2020 is a review of the Commission’s current “Better Regulation” framework and key lessons on the main regulatory tools and procedures after 20 years of experience: impact assessment, stakeholder consultation, monitoring the application of EU law, ex-post review and evaluation. The review is not an audit exercise, but presents and establishes the facts surrounding regulatory policy in the EU. It draws on relevant results from previous ECA audits, international benchmarking on regulatory policies carried out by OECD, an analysis of documents published by the European Commission and academic research, as well as consultations with representatives of the European Parliament and Council, the Committee of the Regions, the European Economic and Social Committee and with experts in the field. (ECA, 2020^[35]). (See Box 1.6).

Box 1.6. Law-making in the European Union after almost 20 years of Better Regulation

In the report, ECA indicates that *Better Regulation is not about "more" or "less" EU legislation, and it is not about deregulating or deprioritising certain policy areas. Instead, it means providing solid evidence as a basis for timely and sound policy decisions.* ECA also recognises that Better Regulation is important for it, as an external auditor, because “...well-designed policies and laws also make for effective accountability and public audit”.

Moreover, ECA knows that “*Better regulation depends for its success on the Commission applying Better Regulation tools efficiently, effectively and consistently across policy areas*”. For this reason, an assessment of the regulatory policy at the European Community level was relevant. ECA concluded and confirmed the Commission’s own assessment that there is scope for improving the implementation of regulatory policy tools at the European Community level, such as the consultation process, the evidence for decision-making, and the promotion, monitor and enforcement of EU law.

The main focus of the report was an analysis of the lessons learned by the Commission, public participation in policy making, evidence for policy making, the stock of legislation and inter-institutional co-operation in law making.

The analysis of ECA, built-up from previous audits such as Special Report 16/2018, *Ex-post review of EU legislation: A well-established system, but incomplete* (ECA, 2018^[31]); or Special Report 14/2019 *‘Have your say!’: Commission public consultations engage citizens, but fall short of outreach activities* (ECA, 2019^[36]), concludes that the key challenges for the Commission, the European Union co-legislators and Member States are:

- ensuring that EU policies and legislative initiatives are sufficiently covered by good quality consultation, evaluation and impact assessment
- ensuring that legislative proposals make provision for sufficient evidence to be collected to support effective monitoring and evaluation
- further simplifying EU legislation and monitoring its implementation and application in Member States
- improving the transparency of the legislative process for citizens and other stakeholders.

Source: ECA (2020^[35]), *Law-making in the European Union after almost 20 years of Better Regulation*, European Court of Auditors (ECA), https://www.eca.europa.eu/lists/ecadocuments/rw20_02/rw_better_regulation_en.pdf (accessed on 12 October 2020).

In the United Kingdom, the NAO recognises that regulation exists to protect people, business, and the environment; but it also creates costs (NAO, n.d.^[37]). For this reason, the NAO publishes a series of manuals to contribute to the understanding and promotion of regulatory policy issues. Examples of manuals published by the NAO include:

- *A short Guide on Regulation* (NAO, 2017^[38]) explains briefly when and how to regulate and the effects of regulatory burdens (see Box 1.7).
- *Using alternatives to regulation to achieve policy objectives* (NAO, 2014^[39]) details the main findings while exploring alternatives to regulation.
- *The Business Protection Surveys* (NAO, 2014^[40]) analyse the perceptions of business regarding the regulatory environment.
- *Performance Measurement by Regulators* (NAO, 2016^[41]) is a guide to assess the progress of regulators in fulfilling their duties.

Box 1.7. A short guide to regulation by the National Audit Office of the United Kingdom

In 2015, NAO published a guide summarising insights about what regulation does, how much it costs and what to look out for across main business areas and services. The guide was then updated in 2017 (NAO, 2017^[38]). The document is an infographic guideline to train public officials about the regulatory process and the efforts made by agencies regarding identification, measurement and reduction of administrative burdens created by regulation.

The first section of the document explains what regulation is used for, the purpose and alternatives to regulation, and the burdens of regulation. Furthermore, an explanation of the efforts made by the government to reduce such burdens is presented, as well as their achievements. The *Red Tape Challenge* and *One-in, X-Out* are included within the initiatives described to deliver better regulation,

Section two of the guidelines is about the future challenges for regulators according to NAO: 1) Volume and complexity of change driven by the operating environment and stakeholder and internal requirements; 2) operational demands associated with change, costs, performance measurement and resourcing; and 3) a complex and extended delivery environment with multiple stakeholders and competing objectives.

Finally, a brief overview of key regulators, including their main functions, background, expenditure and headcount is illustrated for the 2013-14 annual report. The regulators listed are the Competition and Markets Authority, the Office of Gas and Electricity Markets, the Office of Communications, the Water Service Regulation Authority, the Civil Aviation Authority, the Office of Rail and Road, Monitor, the Food Standards Agency and the Health and Safety Executive.

Source: Perkins and Jenner (2017^[38]), *A Short Guide to Regulation*, National Audit Office, <https://www.nao.org.uk/wp-content/uploads/2015/08/Regulation-short-guide.pdf> (accessed on 17 April 2020).

In 2011, NAO also published the report “*Delivering regulatory reform*” (NAO, 2011^[42]) which explains the basics of regulatory reform, including the key players and their roles in the United Kingdom. In such document, NAO recognised that “*regulation enables departments to advance important policy objectives and to deliver benefits in a wide range of areas for individuals, businesses and society*”, however, it creates costs on businesses and other actors. NAO calls for awareness of the relevance to assess the achievement of benefits and bear down the costs imposed by regulations and their management.

In the United Kingdom, a concern of NAO after a number of reports with a focus on regulatory tools such as RIA, administrative burden reduction and business perception of regulations was that there has been little progress in improving business perceptions. For that reason, the report examines the management of regulation across the central government, specifically the impact of regulation on business, how departments choose to regulate, and the implementation of regulation. A selection of the main findings of the report includes the following:

- Governments understood which areas were more concerning for business, but ignored the total impacts of regulation. On the other hand, businesses knew the objectives of regulation, but they believed it was burdensome and lacked information about how to comply with it.
- Previous work by NAO on impact assessment highlighted weaknesses in departments’ assessments of costs and benefits when designing regulation. In the same line, policymakers entered into formal public consultation late in the process.
- The Better Regulation Executive reported progress assessing individual regulators and commenting on their effectiveness. Furthermore, government departments have conducted reviews regarding the stock of regulation, but there is a lack of a systematic approach and there is no overall attempt to review the stock faced by businesses. Besides, government departments do not regularly evaluate real effects on business once a regulation has come into effect.

The main recommendations of the report refer to an effective understanding of costs and benefits of regulations, deeper engagement with business and an increasing and adequate evaluation of regulations.

Auditing regulatory policy tools and strategies

The implementation of regulatory policy tools and strategies can be another source of audit performance from a regulatory policy perspective. For example, ASF could audit the performance of RIA implementation, the public consultation, the *ex post* assessment guidelines for regulations, the simplification plans, the inspection practices, the adoption of sunset clauses and *one-in, x out* policies, as well as the re-engineering process to make government more efficient.

In this regard, ASF could also review adherence to regulation as part of its annual audit programme of the public account. Table 1.2 illustrates a selection of these reports. As it can be observed in the brief summary of audit results in the table, conclusions relied on strict adherence to rules. However, based on these exercises, ASF could audit the performance of such processes, identifying opportunity areas to make them more efficient or finding out if the goals established are linked to the implementation process.

Table 1.2. ASF audits focusing on formal processes and rules adherence

Year	Entity	Name of audit report	Selected audit results
2008	Ministry of Interior	Audit of the process to authorise raffles (and the inspection of the public account). (ASF, 2008 ^[43])	The ministry complied with the process established by regulation.
2008	National Lottery	Audit to the process to authorise corner shops as commission agents of the National Lottery. (ASF, 2008 ^[44])	In general, the National Lottery followed the process established by regulation, with some exemptions indicated in the report.
2014	Consumer Protection Agency (PROFECO)	Surveillance of compliance with applicable regulations and strengthening of legal certainty in relations between suppliers and consumers. (ASF, 2014 ^[45])	PROFECO did the corresponding surveillance of the regulatory framework for gas and commercial establishments. However, the number of irregularities has not been reduced.

Source: Organisation for Economic Cooperation and Development with information of ASF (2008^[43]), *Auditoría al Proceso de Otorgamiento de Permisos de Sorteos in Informe del Resultado de la Fiscalización Superior de la Cuenta Pública 2008*, Auditoría Superior de la Federación (ASF), Mexico, ASF (2008^[44]), *Auditoría al Proceso de Autorización a los Expendios como Comisionistas de Lotería Nacional in Informe del Resultado de la Fiscalización Superior de la Cuenta Pública 2008*, Auditoría Superior de la Federación (ASF), Mexico and ASF (2014^[45]), *Regulación y Simplificación Administrativa*, Auditoría Superior de la Federación (ASF), Mexico, http://www.asf.gob.mx/Trans/Informes/IR2013i/Documentos/Auditorias/2013_0065_a.pdf (accessed on 16 April 2020). *Supervisión de la Actividad Minera*, Auditoría Superior de la Federación (ASF), Mexico, http://www.asf.gob.mx/Trans/Informes/IR2014i/Documentos/Auditorias/2014_0244_a.pdf (accessed on 16 April 2020).

The main motivation to audit performance of institutional processes, which also include formalities (*trámites*) and obligations to be accomplished by citizens and firms, is that the implementation of public interventions is the connection between policy design and expected results. Therefore, a correct implementation of processes and activities should allow the achievement of policy objectives. For this reason, ASF could pay more attention to auditing enforcement and make recommendations to improve efficiency and economy in the accomplishment of goals. If the inspection policy were implemented as planned with no effects on policy objectives, a reform of inspection practices should be undertaken.

A relevant example of an audit conducted by ASF from a regulatory quality perspective, and focused on inspection practices, can be found in the 2014 report “*Surveillance of compliance with applicable regulations and strengthening of legal certainty in relations between suppliers and consumers*” (ASF, 2014^[45]). One of the most relevant conclusions of the report from a regulatory policy approach was that the inspection process had no impact on the reduction of law infringements. It means that the Consumer Protection Agency (*Procuraduría Federal de Consumidor*, PROFECO) followed the process designed and established by regulation, but the inspection policy did not achieve its objectives. Hence, a conclusion

stemming from the analysis is that PROFECO should implement mechanisms to plan inspections, which effectively inhibit abusive practices. In this respect, ASF could consider this report as an example to: 1) issue enforcement recommendations; 2) enhance the *value for money* approach in performance auditing; and 3) set the basis or evidence for regulatory reforms.

Apart from these examples, ASF does not have many audits focusing on regulatory tools and strategies, aiming to ensure that regulation is of quality and has a valid purpose. In consequence, ASF could include in its plan regular audits with this objective. These audits should not only focus on the accomplishment of duties by oversight bodies, according to the law, but also on the implementation of these tools as standard practices and their effectiveness in improving the quality of regulations.

In this way, ASF could promote regulatory reform and recommendations according to its findings and based on evidence. For example, ASF could ask itself if *ex ante* and *ex post* assessment of regulations indicated in law are properly and efficiently implemented, and if these tools are a baseline to draft evidence-based regulations. Also, ASF could inquire whether public consultation in Mexico, which is top-ranked among OECD countries in its design, and inspection practices can provide useful insights to improve the adoption of regulations.

The international experience from SAIs provides examples of performance audits and assessments focusing on regulatory tools. The (OECD, 2016^[29]) report indicates that five institutions from a sample of selected countries looked at the effective and efficient application of regulatory tools, including: diagnosis of regulatory issues that cut across levels of government, impact assessments, *ex post* review of regulatory stock, and reporting on performance of regulatory outcomes. In this area, the report highlighted the experience of France, where the *Cour des Comptes* published a document exploring the relationship between the tax administration, businesses and private individuals and the complexity of the administration's regulations (Cour des comptes, 2012^[46]).

At the European Union (EU) level, an audit report published by ECA in 2020 examined the costs to the European Commission and to the Member States of implementing Cohesion policy funds through operational programmes, and whether the information that Member States have to report to the Commission on the costs forms a sufficient basis for management decisions on legislation and on simplifying rules and provisions. The working plan for 2020 did not categorise the report with a focus on regulatory policy tools, however, the final report addressed the capability to identify and compute simplification impacts from the implementation of cohesion funds in the European Union (ECA, 2020^[47])—see Box 1.8. In this audit process, ECA selected five Member States: the Czech Republic, Poland and Portugal for *in-site* evaluation and Austria and Latvia for desk research. Moreover, auditors interviewed officials of Member State authorities and European Commission staff and undertook two surveys at member state level: one centred in the collection, analysis and reporting of information on administrative costs, and the second to all European Union SAIs about the cost of implementing cohesion policy funds and national aid schemes.

This report can provide insights on qualitative methodologies to audit performance of regulatory policy tools. In particular, ASF could review the methodologies and the approach for auditing simplification efforts.

Box 1.8. Simplification savings assessment in the European Union

Implementing Cohesion Policy: Comparatively low costs, but insufficient information to assess simplification savings

The aim of cohesion policy in the European Union is to reduce development disparities between regions, restructure declining industrial areas and encourage co-operation within the European Union. Cohesion policy expenditure accounts for around 37% of overall spending under the European Union budget and the responsibility for implementing the policy and the related funds is shared between the European Commission and the Member States (shared management). The funds are implemented through operational programmes, drawn up by Member States and adopted by the European Commission. The activities required for implementing such programmes (including management, monitoring, evaluation, communication, control and audit) generate administrative costs incurred by the European Commission, member state authorities or beneficiaries.

In this context, ECA examined the costs of implementing cohesion policy funds. It analysed whether information reported by Member States regarding such costs constitutes a baseline for management decisions on legislation and simplification rules.

The European Commission estimated in 2017 the impact of 21 simplification measures between 2014 and 2020. The assessment found that such measures were expected to reduce administrative costs by a range of 4% to 8% for the European Regional Development Fund (ERDF) and the Cohesion Fund (CF), and by a range of 2% to 5% for the European Social Fund (ESF). However, a survey to implementing authorities conducted by ECA regarding the evolution of costs for the 2014-20 period found that 58% of the respondents expected cost increases, relative to the previous period, and 20% expected no change.

The report of ECA concluded that the costs of implementing cohesion policy funds were low, compared to other European and internationally funded programmes. However, the European Commission had not collected underlying data on costs that were complete, consistent and coherent enough to allow this data to be used, for example for assessing the impact of simplifying EU rules on how to implement cohesion policy funds.

The main recommendations of the report included:

- improving the approach to studies of administrative costs by announcing what will be examined and when
- assessing whether estimated administrative cost savings have materialised
- examining administrative practices in Member States.

Source: ECA (2020^[47]), *Implementing Cohesion policy: comparatively low costs, but insufficient information to assess simplification savings*, European Court of Auditors (ECA), Luxembourg, https://www.eca.europa.eu/Lists/ECADocuments/SR20_07/SR_ESI_Funds_EN.pdf (accessed on 12 October 2020).

The experience of the United Kingdom regarding the audit of regulatory quality tools is also illustrative as NAO has drafted special reports on the matter. In 2001, NAO produced a report on RIA and identified that its effectiveness is dependent on implementation features such as its application at early stages of the regulatory cycle, the consultation process, and the appropriate analysis of costs and benefits, see Box 1.9. The report also underlined good practices for RIA but suggested that there is always room for improvement, even if there is a high degree of sophistication in the use of the tool (NAO, 2001^[48]). As in the case of ECA and its analysis of the consultation process in the European Union, this report is an example of assessing the implementation of a specific regulatory quality tool.

Box 1.9. Better Regulation: Making Good Use of Regulatory Impact Assessment in the United Kingdom

In 2001, NAO published a report focusing in one of the most disseminated tools to assess the quality of draft regulations: the Regulatory Impact Assessment (RIA), (NAO, 2001^[48]). The report highlights that every year new regulations may affect the lives of citizens and produce costs borne by firms, but government policy is that regulation should have light impact and the right balance between under-regulating (failing to protect the public) and over-regulating (creating excessive burdens). At the time of the report, it was the Cabinet Office Regulatory Impact Unit (CO) which assisted ministries, departments and agencies in aiming for the right balance in regulation by providing guidance for the preparation of RIAs. This unit was reconfigured and the responsibilities transferred to the current Better Regulation Executive at the Department for Business, Energy and Industrial Strategy.

The report is about practice by government departments in preparing RIAs. It sets out the relevance of RIA, the key features that add value to policy making and further steps that departments could take to improve the process. In the assessment, a sample of RIAs confirmed that good practices include, for example:

- Assessing the risk of not regulating.
- Considering the likely level of compliance.
- Considering alternative approaches to enforcement.
- Setting out the arrangements for monitoring and evaluation.

The recommendations to improve the RIA process can be summarised as follows:

- The CO should refer policy makers to all relevant materials and provide examples of good practices, as drafting RIAs requires training of policy makers, many of whom are new in the practice.
- Improving access to RIA and relevant guidelines.
- Guidance should be clear about how the desired level of compliance is to be achieved in practice and realistic about the current levels of compliance.
- The CO should consider guidance about how stakeholders' interests can be more explicitly taken into account in the RIA process.
- Building a database of good practices to support the identification and evaluation of likely impacts of regulations on small business.
- Considering using business panels that provide feedback on regulatory proposals, as in the United States and Denmark.

Source: NAO (2001^[48]), *Better Regulation: Making Good Use of Regulatory Impact Assessment*, National Audit Office (NAO), <https://www.nao.org.uk/wp-content/uploads/2001/11/0102329es.pdf> (accessed on 17 April 2020).

Later in 2012, NAO published the report “*Submission of evidence: controls on regulation*”, which is the NAO’s proposal to the Better Regulation Executive’s review of controls on regulation. The review assessed the effectiveness of departmental processes to support controls on regulation analogously with processes to support controls on public spending. NAO analysed the processes based on five case study departments: the Department for Business, Innovation and Skills (DBIS); the Ministry of Justice (MJ); the Department for Work and Pensions (DWP); the Department for Environment, Food and Rural Affairs (DEFRA) and the Department for Transport (DT). Controls introduced in May 2010 include sunset clauses, *one-in, one-out* rule, red tape challenges, opinions from the Regulatory Policy Committee on impact

assessment previous to the publication and regulatory reviews of the subcommittee of Cabinet challenging the need for regulation (NAO, 2012^[49]). The main findings of the report suggest that departments:

- Do not yet treat regulation as a resource that needs to be carefully managed to achieve its objectives. The focus was on how to manage the flow of regulation, not the overall burden—with the exemption of the Red Tape Challenge, which tackles one area of regulation at a time and not the complete stock.
- Demonstrate a level of senior management involvement in processes to support controls on regulation, but engagement primarily focuses on meeting the external requirements to justify new regulation, rather than securing best value from the full range of regulatory inventions.
- Regulatory planning systems are not well integrated to facilitate choices between regulation and other delivery models.
- Only DEFRA calculated the costs and benefits of its stock of existing regulations.

The document concludes that departmental resources to pursue the deregulation agenda and to develop and implement policy initiatives are limited and need to be efficient and focused. It also highlighted areas deserving more attention: proportionality of regulation, understanding of costs of the stock of regulation, transparent post-implementation reviews, integrated planning and alternatives to regulation.

The number of reports about regulatory quality issues launched by NAO suggests that this topic is relevant for them. It is also notable that NAO's activities go beyond the assessment of regulatory policy and tools, as it also generates guides and manuals that contribute to spread knowledge about the subject and advocate for good regulatory practices. In this respect, the experience of NAO can be a valuable reference for ASF on regulatory policy issues. In general, a relevant feature of regulatory quality-related performance audits conducted by NAO is a clear identification of issues, problematics and challenges. Furthermore, recommendations aim to be clear, specific and with a practical perspective.

Auditing regulatory improvement objectives

A third potential source for performance audits focuses on regulatory policy objectives, which are in fact a type of *ex post* assessment. Table 1.3 provides a shortlist of these audits published recently by ASF. It also presents a set of conclusions about the progress in regulatory improvement targets, as well as in administrative simplification and the contribution of regulatory improvement to the quality of services.

These reports constitute examples of ASF's work auditing regulatory improvement objectives. A first finding is that ASF could increase the frequency, the scope and tools analysed by these reports, according to an integrated plan on auditing regulatory quality. For example, ASF could analyse the achievements of administrative simplification efforts at national, institutional or sector level; audit targets regarding the assessment of regulations issued by public institutions, audit the management of public consultation processes or indicators about the quality of regulations issued by the Federal Executive.

Table 1.3. Auditing regulatory policy objectives

Year	Entity	Name of audit report	Selected audit results
2013	Ministry of Public Administration (SFP)	Administrative simplification (ASF, 2013 ^[50])	In 2013, SFP made progress on simplification targets, eliminating or simplifying norms, but it did not provide evidence to verify if such achievements support government efficiency.
2015	Federal Commission of Regulatory Improvement (COFEMER)	Competitiveness and transparency of the regulatory framework applied by the government (ASF, 2015 ^[51])	COFEMER contributed to the standardisation and simplification of formalities, as well as cost reduction. However, there were gaps in the processes and in the follow-up of recommendations.
2017	Ministry of Education (SEP)	Regulating educational services, professionals (ASF, 2017 ^[52])	SEP failed in its role, as a regulatory and oversight body, of ensuring the quality of education and it did not provide evidence about its support to improve regulation of universities.
2017	Ministry of Education (SEP)	Regulating educational services, technical (ASF, 2017 ^[53])	SEP failed in its role, as a regulatory and oversight body, of ensuring the quality of education and it did not provide evidence about its support to improve regulation of technical education.

Source: Organisation for Economic Cooperation and Development with information of ASF (2013^[50]), *Simplificación Administrativa*, Auditoría Superior de la Federación (ASF), Mexico, http://www.asf.gob.mx/Trans/Informes/IR2013i/Documentos/Auditorias/2013_0065_a.pdf (accessed on 16 April 2020), ASF (2015^[51]), *Competitividad y Transparencia del Marco Regulatorio que el Gobierno Federal Aplica a los Particulares*, Auditoría Superior de la Federación (ASF), Mexico, http://www.asf.gob.mx/Trans/Informes/IR2015i/Documentos/Auditorias/2015_0419_a.pdf (accessed on 16 April 2020), ASF (2017^[52]), *Normar los servicios educativos, modalidad universitaria*, Auditoría Superior de la Federación (ASF), Mexico, http://www.asf.gob.mx/Trans/Informes/IR2017a/Documentos/Auditorias/2017_0150_a.pdf (accessed on 16 April 2020) and ASF (2017^[53]), *Normar los servicios educativos, modalidad tecnológica*, Auditoría Superior de la Federación (ASF), Mexico, http://www.asf.gob.mx/Trans/Informes/IR2017a/Documentos/Auditorias/2017_0149_a.pdf (accessed on 16 April 2020).

The relevance to audit performance of the simplification strategy in Mexico relies on its potential impacts to promote business development and reduce burdens in the provision of public services. In Mexico, the LGMR grants different attributions to CONAMER, relative to administrative simplification—and the adoption of regulatory policy tools. These functions allowed CONAMER to assess administrative burdens created by federal and local regulations across state governments and municipalities. The strategy is called *SIMPLIFICA* and measures administrative burdens of regulations, provides recommendations to make the regulatory framework more efficient and estimates economic savings after the reforms. ASF could audit the objectives of CONAMER's strategy and the impact on firms and citizens. Likewise, ASF could audit whether the strategy of CONAMER is institutionalised and properly followed-up.

At national level, there are several institutional efforts to simplify formalities and processes to improve public services. For example, in recent years, IMSS invested in tools to improve the interaction with its beneficiaries (OECD, 2019^[27]); also, the federal government changed its communication strategy with citizens and businesses by creating a single website for all government activities: www.gob.mx. ASF could consider this type of public interventions to draft performance audit plans for the upcoming years. OECD has made recommendations to improve PAAF planning, see (OECD, 2017^[10]).

Other economic regulators or public institutions under the scope of CONAMER are still subject to be audited in terms of their achievements on administrative simplification. For instance, a national wide assessment may focus on the impacts of the Regulatory Improvement Plans¹¹ prepared by public institutions and approved by CONAMER.

Another potential source of regulatory practices that ASF could consider auditing is the verification of updated and valid regulation in sector activities, and where applicable, recommending the elimination of obsolete and overlapping regulations. For example, recent financial, rail transport, air safety and telecommunications reforms involved a series of modifications of the regulatory framework, not only for primary regulation, but also in formalities and obligations of regulated entities. The authorities should update all the regulatory framework after sector reforms to maintain the stock valid. At the moment, there

is no effort (at least a public one) aiming to identify obsolete regulation as a result of structural reforms. Thus, if new and outdated regulation coexist, there is a possibility that firms and citizens will face administrative burdens, overlaps and regulatory uncertainties. This is particularly true as some recent structural reforms (i.e., education) have been reversed.

As mentioned before, administrative simplification is not the only tool implemented by CONAMER to advance quality regulations. ASF could incorporate more regulatory tools in its audit plan to organise a comprehensive portfolio on regulatory policy.

The international experience of SAIs in auditing or assessing performance of regulatory policy objectives is wide and ASF could take references as inspiration to plan its own work auditing regulatory policy outcomes. ECA, for example, planned and published a series of reports from 2018 to 2020 addressing the objectives of regulatory policy. For 2018, ECA's working programme to audit performance of regulatory policy objectives included the following published reports (ECA, 2017^[32]):

- “To assess whether simplified cost options (SCOs) in rural development lead to simplification and increased focus on policy objectives, while ensuring economy”. According to ECA's plan for 2018, the audit focus was the potential of SCOs to simplify the implementation of policy, enhance the focus on the achievement of policy objectives and ensure efficiency during implementation of the rural development policy. The published performance audit report concluded that SCOs can deliver simplification and may decrease the administrative burden for both beneficiaries and Member State authorities, but do not increase the focus on results (ECA, 2018^[54]).
- “To assess whether the simplification measures in Horizon 2020 achieved their intended objectives”. In this performance audit exercise, ECA assessed whether the Commission's simplification measures had reduced the administrative burden of beneficiaries for the programme Horizon 2020, which is the eighth EU framework programme for research and innovation. Horizon 2020 has a budget of EUR 76.4 billion for the period 2014-20 and it ranks as the world's biggest public research and innovation programme (ECA, 2018^[55]).
- “To assess whether the Commission's approach to ex post review of legislation is coherent and consistent and determining the extent to which it actually feeds into the better regulation cycle and impacts subsequent legislative initiatives” (see Box 1.10), (ECA, 2018^[31]).

This last report focused on *ex post* evaluation of regulations, which is a key tool for regulatory quality and recently adopted by several countries. Despite the high benefits in reforming the stock of regulation, *ex post* evaluation systems are still rudimentary in most OECD countries and changes since 2014 are marginal on average (OECD, 2018^[9]). Therefore, the final report “*Ex post review of the legislative system in the European Union*” (see Box 1.10) contributes to the analysis and understanding of how *ex post* assessments are implemented at the European Community.

ECA's report recognises that *ex post* reviews are fundamental for the legislative cycle and their relevance is increasing. However, it concludes that there is a lack of guidelines to draft and monitor review clauses.¹² Other conclusions are that review clauses are widely used but unclear; there is an incomplete framework for *ex post* evaluations; there is not a homogeneous methodology; and monitoring and follow up of *ex post* evaluations need to be enhanced (ECA, 2018^[31]). This report can provide meaningful insights about how to conduct performance audits for regulatory policy tools and their relevance to the public policy process.

The methodological approach of the report may also be a reference for ASF. The audit covered a sample of 133 *ex post* assessments between 2013 and 2016 from different policy fields and levels of experience in carrying out *ex post* reviews. The directorates responsible for *ex post* assessments were selected according to the number of reviews they were managing.

Box 1.10. Ex-post review of EU legislation: A well-established system, but incomplete

The *ex post* review of legislation is a key part of the European Commission's Better Regulation (CBR) policy of the European Union (EU). The objective of the *ex post* review of legislation strategy is to facilitate the achievement of public policy objectives at minimum cost and improving the added value of EU interventions.

Considering the relevance of *ex post* assessments in the EU, in 2018 ECA published the report “*Ex-post review of EU legislation: a well-established system, but incomplete*”. The objective of the audit report was to determine whether the European Union system of *ex post* review of legislation had been properly planned, implemented, and quality-controlled, and thereby contributing effectively to the Better Regulation cycle. The audit covered *ex post* reviews of legislation carried out between 2013 and 2016 by four directorates-general of the European Commission and all legislation and *ex ante* impact assessments between 2014 and 2016. The CBR uses the term *ex post* reviews for a document or set of documents that includes evaluations, reviews, fitness checks and reports of different kinds (transposition report, implementation report and application report). An evaluation according to the CBR is “an evidence-based judgement of the extent to which an intervention has been effective and efficient, been relevant given the needs and its objectives, been coherent both internally and with other EU policy interventions and achieved EU added-value” (ECA, 2018^[31]).

ECA concluded that the CBR's current *ex post* review system compares well to the situation in the majority of Member States. The Commission has designed a system which is, as a whole, well-managed and quality-controlled and therefore, contributing effectively to the regulatory cycle. However, when it comes to reviews other than evaluations, ECA identified weaknesses.

While evaluations are generally carried out in line with legal requirements and good practices, this is less the case for the other reviews, to which the Better Regulation guidelines did not apply until 2017. ECA identified shortcomings in the presentation of the methodology used and the recognition of data limitations. Further, review and monitoring clauses are widely used in EU legislation. However, in the absence of common inter-institutional definitions and drafting guidelines, their content and expected outputs are not always clear.

Finally, the rationale of the Regulatory Fitness and Performance (REFIT) programme, which aims to ensure that EU law is “fit for purpose”, and the criteria to label a programme as REFIT, are not clear.

The main recommendations by ECA to the *ex post* review of legislation policy included:

- enhancing the inter-institutional agreement on better law-making
- better ensuring the quality of *ex post* reviews by defining minimum quality standards for all *ex post* reviews
- conducting a gap analysis of data collection and management capabilities
- ensuring respect for the “Evaluate first” principle
- mainstreaming REFIT into the Better Regulation cycle.

Source: ECA (2018^[31]), *Ex-post review of EU legislation: A well-established system, but incomplete*, European Court of Auditors, https://www.eca.europa.eu/Lists/ECADocuments/SR18_16/SR_BETTER_REGULATION_EN.pdf (accessed on 17 April 2020).

For 2019, ECA also planned to publish the results of other audit and review work regarding regulatory policy objectives (ECA, 2018^[33]):

- A briefing paper with the results of ECA's audit and review tasks on the *Better Regulation* initiatives of the European Commission led by Jean-Claude Juncker for the start of the second half of 2019.
- A Special Report, published in September 2020, assessing whether the Commission's public consultations are effective (focusing on the design and implementation of the Commission's framework on public consultations). (see Box 1.11).

This Special Report about the consultation process was planned because ECA, in its 2018-20 Strategy, had identified the perceived distance between citizens and EU institutions as a threat to the EU. Moreover, the European Parliament had asked ECA to evaluate how citizens can directly participate and contribute throughout the European Union law-making process, and to assess the effectiveness, appropriateness, transparency and openness of the tools used. ECA noted that Better Regulation "is a way of working to ensure that political decisions are prepared in an open and transparent manner, informed by the best available evidence and backed by the comprehensive involvement of citizens and other stakeholders ...", and ECA assessed whether this tool is effective at reaching out to citizens and stakeholders (see Box 1.11). (ECA, 2019^[56]).

The report was based on the analysis of a sample of 26 public consultations carried out by five Directorates-General (DG) of the European Commission between 2016 and 2018. According to ECA, the audit work entailed, interviews with the staff of the European Commission and other European Union institutions and bodies, visits to two Member States and OECD to better understand the European Commission's framework in an international context, and a consultation of a group of experts to enhance the analysis.

This report is a reference for the type of performance audits that ASF could develop in the following years, which scrutinise the achievement of regulatory policy objectives. For example, an audit like this in the Mexican context could offer insights about how the consultation process is in fact being used by regulators—for example, as an instrument in the rule making process or as a mere formality imposed by law. In general, these reports could provide valuable information about the impact of regulatory quality tools on the performance of regulations.

Box 1.11. Effectiveness of the consultation process in the European Commission

'Have your say!': Commission's public consultations engage citizens, but fall short of outreach activities

In 2019, the European Court of Auditors published a report focusing on the effectiveness of public consultation to reach out to citizens and stakeholders, and making use of their contributions. The report examined: 1) the design of the Commission's framework; 2) the way that public consultations are selected, prepared and conducted by the European Commission; and 3) how the European Commission provided information about and made use of the consultation work.

The report concluded that the European Commission's framework for public consultation is of high standard. Nevertheless, ECA identified the following areas for improvement:

- European Commission's framework (improving the Better Regulation guidelines by: defining specific indicators to be monitored at individual public consultations and at Commission level; and systematically assessing whether public consultations achieve all their objectives).
- Consultation strategy (preparing and publishing consultation strategies to achieve the goal of public participation in EU law-making with the best possible level of outreach to EU citizens, explaining: which of the consultation activities [...] will be used and how the selected activities will complement each other; and the specific purpose of public consultations, their intended use

and the official EU languages into which the questionnaires and other consultation documents [...] will be translated.

- Outreach activities (improving the outreach of its public consultations by: increasing outreach activities and adapting communication strategies to promote larger participation; better engaging the European Commission's representations in the Member States, with organisations such as the European Economic and Social Committee or the Committee of the Regions and with national authorities with a view to disseminating more information on public consultations).
- Language arrangements and questionnaires (enabling all citizens to participate easily and effectively by: clarifying the criteria for classifying initiatives under the category of 'broad public interest' or 'other'; ensuring that questionnaires and other key consultation documents [...] are translated into all official languages for all priority initiatives and initiatives of broad public interest; and ensuring that each public consultation is based on a general questionnaire for the public, in line with the standards set in the Better Regulation guidelines [...] with an additional set of questions for specialists where necessary).
- Data processing and security (applying high standards of data processing and security to protect the public consultation process against manipulation of results, by: systematically checking whether the contributions submitted are unique and not artificially created and report on such checks [...]; and ensuring consistent treatment of public consultation responses [...]).
- Feedback for respondents (providing participants with timely feedback on the outcome of the consultation to ensure that the public consultation process is as transparent as possible).

Source: ECA (2019^[36]) *'Have your say!': Commission's public consultations engage citizens, but fall short of outreach activities*, European Court of Auditors (ECA), https://www.eca.europa.eu/Lists/ECADocuments/SR19_14/SR_Public_participation_EN.pdf (accessed on 6 May 2020)

Auditing regulations

The most representative type of regulatory quality-related audit is probably the assessment of specific regulations. It includes the assessment of sector regulations (financial, energy and mining) and the scrutiny of social policies such as cash transfers and service grants. Table 1.4 presents a selection of efforts by ASF at auditing the quality of the regulatory framework. These audits however, in many cases, concluded or focused on processes or outputs—lack of activities or deviations from the regulatory framework. In few cases, the core of the audits was the regulatory effects or outcomes. The scope of these audits is wide and ranges from auditing specific regulations to a complete sector framework. The methodologies employed are relatively uniformed, independently from the size of the project.

The use of quantitative information in such audits may be extensive, but the assessment of leading indicators to evaluate the effects of regulations is less evident, as they focus more on the achievement of product indicators and activities performed. For example, the main objective of the performance audit ASF carried out in (2016^[57]) was to review the contribution in optimising the operation and expansion of electric infrastructure by granting electricity permits and establishing regulation for the electricity wholesale market. In the report, ASF analysed the Outcomes Indicator Matrix (MIR) and stated that the indicators were inadequate to assess the policy. Furthermore, ASF's opinion concluded that the Energy Regulatory Commission issued 35 regulations and promoted the conditions to expand the electric system by granting permits that allowed the participation of new entrants in the wholesale electricity market. In the analysis, ASF included facts and statistics about such regulations and permits requested, as well as information about processes. Nevertheless, the report and other reviews did not assess quality and effectiveness of the policy, through elements such as quality considerations, potential burdens to participate in the wholesale market and evolution of the supply of electricity, among others.

The assessment of processes and the delivery of products and services is crucial in performance auditing, but the achievement and effectiveness of policy objectives should be another key consideration. The lack of adequate strategic indicators and information, however, may pose challenges to the performance audit process. ASF could audit the purposes that motivated the establishment of regulations in order to provide insights about their contributions to policy objectives.

Table 1.4. Performance audits of specific regulations or regulatory frameworks

Year	Entity	Name of audit report	Selected audit results
2014	Ministry of Economy (ME)	Regulation and surveillance of mining activities (ASF, 2014 ^[58])	The ME did not have as a priority the diagnostic and improvement of mining regulation.
2015	Ministry of Public Administration (SFP)	Public policy relative to census of beneficiaries of public programmes to provide subsidies and transfers (ASF, 2015 ^[59]).	Inconsistencies and gaps in the normative framework regulating the census of beneficiaries.
2015	Ministry of Communications and Transport (SCT)	Regulation and inspection of rail infrastructure (ASF, 2015 ^[60])	SCT did not have information about the physical conditions of railroads and the inspection process to review the obligations of the concession titles suggested inefficiencies.
2016	Ministry of Treasury (SHCP)	Regulation of the financial sector (ASF, 2016 ^[61]).	SHCP met its objectives on ruling and issuing regulations for entities operating in the financial system, ensuring stability and adequate operation.
2016	Regulatory Energy Agency (CRE)	Regulation and electricity permits (ASF, 2016 ^[57]).	CRE granted electricity permits promoting the electricity sector through the issuing of regulatory instruments, which eliminated entry barriers in the sector.
2017	National Commission of Banking and Stocks (CNBV)	Regulation and supervision of the Bank of National Savings and Financial Services BANSEFI in its participation in distributing benefits to victims of the earthquakes of 7 and 19 September 2017 (ASF, 2017 ^[62]).	CNBV and BANSEFI had opportunity issues while regulating and overseeing the delivery of transfers from the National Fund of Disasters, in response to the earthquakes of 7 and 19 September. In particular, the regulation to spread out financial aid in case of disasters was not existent.

Source: Organisation for Economic Cooperation and Development with information of ASF (2014^[58]), *Regulación y Supervisión de la Actividad Minera*, Auditoría Superior de la Federación (ASF), Mexico, http://www.asf.gob.mx/Trans/Informes/IR2014i/Documentos/Auditorias/2014_0244_a.pdf (accessed on 16 April 2020), ASF (2015^[59]), *Política pública de padrones de programas gubernamentales para el otorgamiento de subsidios y apoyos*, Auditoría Superior de la Federación (ASF), Mexico, http://www.asf.gob.mx/Trans/Informes/IR2015i/Documentos/Auditorias/2015_1580_a.pdf (accessed on 16 April 2020), ASF (2015^[60]), *Regulación y Supervisión de la Infraestructura Ferroviaria*, Auditoría Superior de la Federación (ASF), Mexico, http://www.asf.gob.mx/Trans/Informes/IR2015i/Documentos/Auditorias/2015_0387_a.pdf (accessed on 16 April 2020), ASF (2016^[61]), *Regulación del Sector Financiero (Sociedades de Información Crediticia)*, Auditoría Superior de la Federación (ASF), Mexico, http://www.asf.gob.mx/Trans/Informes/IR2016i/Documentos/Auditorias/2016_0060_a.pdf (accessed on 16 April 2020), ASF (2016^[57]), *Regulación y Permisos de Electricidad*, Auditoría Superior de la Federación (ASF), Mexico, https://www.asf.gob.mx/Trans/Informes/IR2016i/Documentos/Auditorias/2016_0131_a.pdf (accessed on 16 April 2020) and ASF (2017^[62]), *Regulación y Supervisión de la Participación de BANSEFI en el Otorgamiento de Apoyos a los Damnificados por los Sismos del 7 y 19 de Septiembre de 2017*, Auditoría Superior de la Federación (ASF), Mexico, http://www.asf.gob.mx/Trans/Informes/IR2017b/Documentos/Auditorias/2017_1680_a.pdf (accessed on 16 April 2020).

In these particular reviews and others consulted, ASF could have extended the focus to assess effects and outcomes rather than concentrating only on processes or adherence to the regulatory framework. For example, identifying and assessing the potential effects of the current regulatory framework of the rail industry may consider competition, tariffs of services, intensity usage of rail in transport, logistics and connectivity, among others. The assessment may also be pertinent to identify gaps and regulatory loopholes limiting the performance of the sector and its contribution to the economy.

It is important to recognise that assessing a comprehensive regulatory framework for a specific sector is challenging. In principle, assessing regulation in, for example, telecommunications or the financial sector, can include several aspects or dimensions. For this reason, it is worth defining the audit objectives *ex ante* and limit the scope of the task. However, ASF may still be interested in a comprehensive perspective of regulation in specific economic sectors, but these could be undertaken along a series of audit reports.

As mentioned before, enforcement of regulation is crucial to draw conclusions about the effectiveness of public policies, and ASF may conduct an audit assessing implementation, or it may focus on outcomes indicating sources of potential risks, such as the lack of regulatory instruments, or diversion from standard processes and guidelines. A potential first step in auditing rail regulation, for example, may be an evaluation of the inspection policy applied by the regulator and its contribution to compliance and the achievement of policy objectives. Along with the compliance audit, ASF could carry out a more general assessment of the policy.

Experience by ECA and NAO in the audit and/or assessment of specific regulations can also be illustrative for ASF. ECA includes in its yearly working plan performance auditing for specific regulations or regulatory frameworks. Some relevant examples are the following:

- In 2018, ECA published the report *Air pollution: Our health still insufficiently protected*. In such audit ECA assessed whether 1) the Ambient Air Quality (AAQ) Directive was well designed to tackle the health impact of air pollution;¹³ 2) Member States' effectively implemented the Directive; 3) the European Commission monitored and enforced implementation of the Directive; 4) air quality was adequately reflected in other EU policies and adequately supported by EU funds; and 5) the public has been well informed on air quality matters. (ECA, 2018_[63])
- In 2019, ECA published a report assessing a specific regulation for financial markets and a competitive economy "*EU-wide stress tests for banks: unparalleled amount of information on banks provided, but greater co-ordination and focus on risks needed*" (see Box 1.12). This performance audit was launched by ECA in part because there was some criticism of past European Banking Authority (EBA) stress tests. The audit aimed at assessing whether the governance and implementation of the EBA stress tests were sufficient to provide a clear answer as to whether the European Union financial system is resilient (ECA, 2019_[64]).
- For 2021, ECA planned the audit report "Assessing the effectiveness of EU's actions in promoting and regulating sustainable finance" (ECA, 2019_[34]).

Box 1.12. Regulation of markets and a competitive economy

Special report 10/2019: EU-wide stress tests for banks: unparalleled amount of information on banks provided, but greater co-ordination and focus on risks needed

The EU-wide stress test is an evaluation of impacts that a common shock could impose on the financial position of large European banks. The European Banking Authority (EBA) is tasked with initiating and co-ordinating EU-wide stress tests, in co-operation with the European Systemic Risk Board (ESRB). Stress tests in the European Union have been carried out since 2011, and all of them have been conducted according to the bottom-up approach, where banks produced the results yielded by the shock scenario based on the methodology approved by the EBA.

ECA assessed the governance and implementation of the EU-wide bank stress test conducted under the mandate given to the EBA. ECA found that the EBA specified neither the risks nor the level of severity it deemed relevant for the stress-testing procedure at the start of the process. In turn, the ESRB, which developed the stress scenario, obtained substantial input from the European Central Bank (ECB) and national central banks and authorities. As a result, the EBA lacked control over important stages of the process. In the United States, supervisory authorities rely on a top-down approach, which gives them a much larger degree of control over the results produced by banks. Conversely, in the EU, the EBA's role is limited to initiating, providing methodology for, and broadly co-ordinating stress-test activities. The EBA stress test assessed the vulnerability of the system and of banks to an economic downturn, rather than to a severe financial shock on the system. While the EBA had the objective of achieving broad coverage, certain risky banks were excluded from the stress test. The EBA's bottom-up approach resulted in limited reliability and comparability of results produced by the banks.

ECA recommended that the EBA needs to:

- enhance its control over the stress-test process
- complement the current bottom-up procedure with top-down elements
- select banks based on risk rather than just size
- introduce alternative stress scenarios.

In addition, the ECA recommended that:

- the EBA's governance structure should ensure that EU interests are duly taken into account; and that
- the informative value of publications should be increased.

Source: ECA (2019^[64]) *EU-wide stress tests for banks: unparalleled amount of information on banks provided, but greater coordination and focus on risks needed*, European Court of Auditors (ECA), https://www.eca.europa.eu/Lists/ECADocuments/SR19_10/SR_EBA_STRESS_TEST_EN.pdf (accessed on 15 June 2020).

Performance audit for regulatory policy affairs is also a relevant area for NAO, and it has carried out several reports on this matter. A selection of published reports auditing or assessing regulations include the following examples:

- *Gambling regulation* (NAO, 2020^[65]) examines the extent to which regulation effectively and proportionately protects people from gambling-related-harms and addresses emerging risks (see Box 1.13).
- *Ensuring food and safety standards* (NAO, 2019^[66]) examines if the current regulatory arrangements are effective to make food safe for customers. NAO indicates that its audit approach is based on an analytical framework with evaluation criteria, which includes a series of interviews with key actors. In particular, the report examined whether: 1) the Food Standards Agency (FSA) and local authorities identify the areas of highest risk to food consumers and are making effective use of resources; 2) the FSA has evidence that the regulatory system is effective in achieving outcomes and driving performance improvement; and 3) regulatory arrangements are coherent and sustainable in the context of emerging challenges.
- *Economic regulator of the water sector* (NAO, 2015^[67]) focuses on the duties of the water regulator to protect consumers. This report also indicates that NAO's approach is an analytical framework with evaluative criteria for the characteristics of economic regulation it expected to see. As in the previous report, the methodology includes interviews with relevant actors.

Box 1.13. Gambling regulation in the United Kingdom

In February 2020, NAO released the report *Gambling regulation: problem gambling and protecting vulnerable people* (NAO, 2020^[65]). The report focuses on the role of the Gambling Commission (GC) in the United Kingdom and considers the wider regulatory framework. The objective was to examine whether gambling regulation effectively and proportionally protects people from gambling-related harms and controls potential risks.

The audit approach of NAO in conducting this assessment was based on the identification of capacities of the regulator. In particular, if the GC:

- Has a good understanding of the problems to be addressed and has set out the objectives to be achieved to assign resources effectively.
- Is working effectively with other institutions to make gambling safer.
- Has the powers, capacity and expertise to address risks and to respond to social and technological changes.

The general conclusion of the report was that gambling-related harm is a serious problem affecting individuals and people close to them. This challenging and dynamic industry imposes high costs in society, but the GC is a small regulator in comparison. A selection of the main findings of the report are the following:

- There are about 395 000 problem gamblers in Great Britain, with 1.8 million more who may be experiencing harm.
- Evidence of causes and impacts of gambling is limited and the GC does not have full understanding of the impact of its work on consumer protection.
- The GC is clear in its objective of making gambling safer, but unclear about how to pursue such objective.

- There are gaps in data and intelligence used by the GC to identify problems related with gambling.
- The GC has increased enforcement actions against operators breaking the rules.
- The GC does not have much work at incentivising operators in making gambling safer.
- Gambling regulation does not have powers to change fees and makes difficult to invest in skills to address challenges. Thus, the response of the GC to changes in gambling is restricted.
- Modifications to regulation are limited and they are made through legislative reforms, which takes a number of years.

Recommendations to be addressed by the GC include:

- Enhancing the analytical capabilities to better identify harms and make greater use of intelligence.
- Developing a more efficient strategy to influence operators in protecting consumers.
- Developing a deeper understanding of causes and effects of gambling.
- Reviewing the licence fee model.

Source: NAO (2020^[65]), *Gambling regulation: problem gambling and protecting vulnerable people*, National Audit Office (NAO), <https://www.nao.org.uk/wp-content/uploads/2020/02/Gambling-regulation-problem-gambling-and-protecting-vulnerable-people.pdf> (accessed on 17 April 2020).

Proposals for action

ASF could incorporate an integrated regulatory quality approach as part of its performance audit plan.

ASF has experience auditing performance of several elements or stages of the regulatory improvement policy in Mexico. These efforts, however, are scattered across a series of documents and do not seem to follow a specific strategy or series of reports. According to public officials from ASF, the selection of policies and sectors subject to performance auditing follows a strong methodology that considers following up past audits, budgets, relevance of the policy, social interest and media attention.

In addition to the methodology already implemented by ASF, it could elaborate an integrated strategy of performance audits from a regulatory quality perspective, which could consider the complete regulatory policy cycle, tools, objectives, institutions and specific frameworks. This implies the assessment of each stage of the regulatory cycle and institutions involved while analysing specific relevant policies, the assessment in the adoption and promotion of regulatory policy tools by CONAMER, and the evaluation of regulatory policy goals and achievements, among others.

The performance audit section of the audit plan for regulatory policy does not necessarily depart from zero ASF could analyse which performance audits already fall into the scope of a regulatory policy and integrate additional elements. In principle, audits focusing on regulatory policy tools, oversight body and objectives are important.

A systematic assessment of regulatory policy implementation in Mexico could be part of ASF's performance audit plan.

Mexico is a top performer among OECD countries in the adoption of regulatory policy. However, the PMR indicators assessing the quality of regulations in Mexico contrast with the results in the adoption of best practices embedded in the regulatory framework. As mentioned above, the adoption of practices' performance relies on the formal design of the policy, but it does not assess implementation practices. ASF could analyse this gap to identify implementation opportunity areas in regulatory policy in Mexico.

Therefore, a performance audit of the regulatory policy *per se*, assessing the system, the tools (e.g. RIA, *ex ante* and *ex post* assessment) and the strategies (e.g. "Everyday justice", regulatory improvement plans) implemented by oversight bodies, as well as the achievements of regulatory policy, is needed to facilitate improved outcomes. These assessments could be part of the audit selection on regulatory quality issues.

Performance audits for specific regulations and regulatory frameworks could be based on impact and outcomes, rather than only outputs and activities executed.

Assessing the impact of regulations in specific sectors or policy areas is important to improve public policies. However, these assessments should prioritise outcomes and impacts, rather than processes and adherence to regulations—as these are part of an implementation assessment. This does not mean that an implementation assessment is not important; on the contrary, only through an adequate implementation of the policy, the effects observed can be attributed to the regulatory proposal. A performance audit of any public policy should be grounded on impacts and outcomes, but identifying which elements of the implementation can enhance or block the policy objectives and the outcomes observed. The regulatory policy cycle makes explicit the roles of monitoring and evaluation, where monitoring is concerned with intermediate activities and evaluation focuses on final outcomes.

The experience of ASF evaluating specific regulatory frameworks is broad, but it has focused more on the completion and recognition of activities. In few examples, from the set of audit reports reviewed, performance indicators were the guiding elements of the assessments.

ASF could enhance the assessment of goals and targets associated to regulatory policy objectives at national or institutional level.

ASF has published reports with references to regulatory policy goals (e.g. burden reduction due to simplification efforts). Most of the conclusions were part of a broader audit scope. International experience, however, suggests that targets on simplification measures, effectiveness of Regulatory Impact Assessments and *ex post* evaluations could be the core of performance evaluation exercises at national level, but also specific strategies, policies or entities.

ASF could produce policy documents to support the dissemination of methodologies, best practices and approaches to regulatory policy and training of public officials.

SAIs regularly provide policy briefs, manuals and guidelines to increase the stock of literature, including methodologies and approaches to evaluation of public interventions. A set of reports produced by SAIs support the training of public officials and aim to build technical capacities to implement public policies, including regulatory policy. NAO, for example, publishes a set of documents focusing on regulatory policy issues and tools.

ASF could leverage on international examples auditing performance of regulatory policy elements and methodologies to design its own strategy.

ASF has set the objective to develop a new branch of performance auditing based on regulatory policy. ASF has already experience auditing regulatory policy elements, but these efforts do not necessarily fit a comprehensive approach or objectives from a regulatory policy perspective. This can be seen in the reports' objectives identified and analysed previously. ASF could take advantage of international experiences to develop audits focusing on tools, objectives, elements, approaches and methodologies to support its own strengths in this new task. The examples of Australia, the United Kingdom and the European Community may serve as references for ASF.

Notes

¹ Supreme Audit Institutions produce documents and reports beyond their compliance audit work, and this is the case for regulatory policy. These include performance audit reports and assessments, among others. The purpose of performance audit is to contribute to the improvement of economy, efficiency and effectiveness in the public sector by examining, analysing and reporting on the performance of public entities (INTOSAI, n.d.^[128]). Performance evaluation (or performance assessment) on the other hand, aids in the assessment of effectiveness, and may cover both policy and administrative aspects (ANAO, 2006^[131]). The main difference between both is that performance audits do not assess the merits of the policy. In any case, both exercises complement the work of programme management. The focus of this chapter is performance auditing, but it will present different type of documents used by Supreme Audit Institutions regarding regulatory policy.

² Through, for example, cost-benefit analysis, cost-effectiveness, and multi-analysis criteria, see (OECD, 2020^[5]).

³ At the time of writing this report, Colombia and Lithuania had already become member countries, and Costa Rica had been invited to become a member.

⁴ The approach assessing regulators will be described in Chapter Assessing the performance of regulators and their governance in Mexico.

⁵ For a formal definition and international standards to conduct performance audits, see (ISSAI, n.d.^[126]).

⁶ Performance auditing in ECA includes the examination of programmes, operations, management systems and procedures of bodies and institutions that manage European Union (EU) funds in a wide range of topics. For ECA, *a performance audit is an independent, objective and reliable examination of whether undertakings, systems, operations, programmes, activities or organisations are operating in accordance with the principles of economy, efficiency and effectiveness, and whether there is room for improvement*. The methodology can be reviewed in (ECA, 2017^[127]).

⁷ The SCM aims to identify and measure the opportunity costs and administrative burdens created by regulations and formalities faced by citizens and firms.

⁸ The Audit Report is available at <http://informepdf.asf.gob.mx/Informe.aspx>.

⁹ The European Union Treaty indicates that the European Parliament shall, jointly with the European Union Council, exercise the legislative function (European Union, 2012^[129]). Moreover, the *Inter-institutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making* recognises that the three institutions are committed to co-operation throughout the legislative cycle and recall their co-legislation role embedded in the treaties (European Union, 2016^[130]). Therefore, the three institutions act as co-legislators in the European Union.

¹⁰ The European Commission's regulatory fitness and performance programme (REFIT) aims to ensure that EU laws deliver on their objectives at a minimum cost for the benefit of citizens and businesses.

¹¹ CONAMER implements every two years Regulatory Improvement Programmes (PMR), which are plans that aim to improve current regulations and simplify procedures and services across entities the public administration.

¹² Review clauses support the making of *ex post* evaluations.

¹³ Ambient Air Quality Directive (Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on air quality and cleaner air for Europe (OJ L 152, 11.6.2008, p. 1).

2 Assessing the performance of regulators and their governance in Mexico

This chapter addresses the relevance and the main approaches in assessing the performance of regulators. First, it explains the underlying reasons for assessing economic and social regulators. The chapter then describes the ASF approach to evaluating the institutional design of regulators and their performance and international experience by SAIs.

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Regulators are entities authorised by statute to use their legal powers to achieve objectives, imposing obligations through functions such as licensing, permitting, accrediting, approvals, inspection and enforcement. They often use other complementary tools, such as information campaigns, to achieve policy objectives, but it is the exercise of control through legal powers that makes the integrity of their decision-making processes, and thus their governance, very important. The main argument for such intervention is the natural monopoly condition in industries or the presence of externalities that makes markets fail in providing the best outcomes. Even though the basic argument is under the economic sphere, the effects of the natural monopoly condition and the presence of externalities may be wider, affecting the environment, health and safety, among others. (Viscusi, Harrington and Vernon, 2005^[68])

Regulators may take a variety of institutional forms. A regulator may be a unit within a ministry or a separate entity with its own statutory foundation, governing body, staff and executive management. In some cases, a regulatory unit or function will be located within a large, independent service delivery agency. Regulatory functions may also be discharged at a national or municipal level or by a regional authority body. In some instances, a regulator may be independent of national executives and other national institutions and subject to international standard-setting entities or supranational bodies, such as independent regulators in the European Union.

The manner in which the regulator was established; its design, structure, decision making and accountability structures, are all important factors in how effective it will be in delivering the objectives it is intended to deliver. The way in which it interacts and communicates with its key stakeholders will be instrumental in levels of trust and, in turn, will impact how it will behave in regulating its responsibility. The institutional governance arrangements for regulators are critical for assisting or hindering the social, environmental and economic outcomes that it was set up for.

Therefore, auditing institutional performance of regulators is important as they scrutinise and promote the achievement of policy objectives and the best usage of financial and human resources. Furthermore, auditing the performance of regulators may help to identify whether institutional arrangements favour effective and efficient achievement of policy objectives, which can be hindered by internal and external factors.

Regulating market power

A set of regulators were established to regulate industries that may concentrate market power in few participants. These government agencies incorporate in its objective an increase of economic welfare given the specific nature of such industries, which in some segments may be characterised by natural monopoly conditions. Examples of the natural monopoly condition are the transmission of electricity, the use of radio electric spectrum in telecommunications, oil-bearing and water distribution, fixed telephone, rail and roads, and airports.

¹ It is important to notice, however, that the monopoly condition is a dynamic situation that has changed over time, as technology, administrative or economic advances allow the participation of more than one firm in economic activities—for example, in the past, all segments within the electric industry were considered a monopoly.

These types of government agencies are sometimes referred to as “economic regulators” and may have legal powers to define market conditions in order to curb the market power of the companies in the industry. Standard economic theory indicates that the larger the market power of a firm, consumers are harmed, because prices are higher—and the quality of products tends to be lower—than they should be in the presence of competition. Therefore, economic regulators aim to prevent firms from exerting their monopoly power, being those private or public. This can be done through the establishment of prices, quantities and

margins (price caps or rate of return regulation), regulating entry (at providing access), quality control, advertising, investments, among others (Viscusi, Harrington and Vernon, 2005^[68]).

The challenge, however, consists of recognising whether regulation is essential or the best alternative. In this respect, normative and positive approaches to regulation have been in debate for some years² and the main criticism relies on the fact that several industries have been regulated for years with no clear efficiency gains nor impact on social welfare—taxi, maritime transportation, among others. Another source of criticism is that industries lobby for regulation with the objective to create barriers for entry (Viscusi, Harrington and Vernon, 2005^[68]), (Posner, 1974^[69]). From an auditing perspective, the identification of opportunity areas in the implementation of tools used by regulators to achieve policy objectives can be important to improve institutional performance as an audit performance could look at both, the capacity and effectiveness of the regulator to achieve increases in social welfare by curbing the risk of market power and increasing the quality of products and services, and whether the governance arrangements of these regulators are conducive to reach these outcomes efficiently.

Regulating externalities

Externalities refer to situations in which consumers, companies, or the society as a whole are affected due to economic or social activities from other individuals, companies, governments or countries. The most salient examples refer to negative externalities, such as pollution caused by industries or the intensive use of automobiles, which harm the environment and the health of humans and animals. Externalities may generate market failures and undesired outcomes that governments attempt to minimise to limit the risk of harm to citizens.³

Governments have also established regulators to deal with market failures. For example, there are regulators dealing with the approval and oversight of food and consumer products for humans, including medicines and chemical products such as pesticides; others deal with safety and hygiene at the workplace; and some address potential or actual risks to the environment. The common thread amongst them is that they all issue and seek to enforce regulation to manage the risks that activities in specific sectors imply, for instance, safety regulations in the handling of heavy machinery at work, or approval of a new medicine. These regulators are sometimes called “social” or “risk” regulators (OECD, 2010^[70]). As mentioned above, they can be part of a ministry or be placed at an arms-length of a ministry in a separate agency, in which the degree of independence varies according to the governance arrangements.

Auditing the performance of social or risk regulators could aim at determining the extent to which these regulators meet their underlying policy objectives, that is, the reduction and management of risks, and whether their internal governance arrangements allow them to pursue these objectives effectively and efficiently.

Regarding capacities to achieve policy objectives, the literature about institutional design and arrangements to support regulators is under permanent development. Empirical and research evidence has focused on formal relations between regulators and supervisors, and their potential negative effects: regulatory capture, co-ordination issues and free riding. These issues and their relevance for a Supreme Audit Institution considering to undertake a performance audit of regulators are developed in the following section.

OECD approach to assess institutional design and performance of regulators

Economic and social regulators protect market neutrality, foster competition, and help ensure access to quality and safety of public utilities. They are the interface between regulatory regimes and citizens and businesses. To fulfil their functions, regulators need to make and implement impartial, objective and

evidence-based decisions that will provide predictability to the regulatory regime, inspire trust in public institutions and encourage investment. Sound governance structures are therefore necessary to support regulators and inspection authorities in the effective delivery of their functions. For this reason, the *OECD Best Practice for Regulatory Policy: The Governance of Regulators* aims at detailing key principles for establishing and operating regulatory agencies, and therefore, indicates the basis of their institutional and performance assessment (OECD, 2020^[5]). These principles can be of relevance for performance audit as well. The seven governance principles for regulators are based on the 2012 *Recommendation of the Council on Regulatory Policy and Governance* (OECD, 2012^[11]).

The adoption of these principles are considered as good practices among regulators from OECD countries. Indeed, the academic literature has stressed underlying reasons that support the adoption of principles such as transparency, accountability or performance evaluation. These reasons include phenomena such as regulatory capture, free riding, supervision and co-ordination. To see a brief summary of the academic literature in this area see Annex 2.A. Review of the academic literature on the underlying reasons to assess and audit the performance of regulators.

Role clarity

The underlying idea of this principle is that only through clear objectives a regulator can achieve the expected results and goals. Therefore, an effective regulator should have a clear mandate embedded in a comprehensive regulatory framework that shall be sufficiently developed to accomplish institutional objectives.

Objectives assigned to regulators should not be in conflict or in competition, as this situation can undermine institutional performance. If an institution is in charge of several objectives, it can be difficult to achieve them. Hence, only when clear efficiency gains and benefits surpass potential costs, different objectives should be assigned to regulators. In practice, however, regulators' objectives may somehow compete and a complete regulatory framework and guidelines are needed to understand potential trade-offs. The purpose and objectives assigned to regulators should shape organisational design, as they need specific functions, goals, budget and personnel. The mandate and the regulatory framework should also indicate co-ordination mechanisms by which regulators co-operate with other institutions, such as Congress, ministries or autonomous bodies, on topics of shared responsibility. In this respect, a clear separation of functions and co-ordination between regulators and ministries becomes a relevant issue.

The role of regulators supporting ministerial policy objectives varies across countries. A common practice, however, is the formal establishment of independence for regulators, which would limit the responsibility to support ministries on policy issues—such as promoting and regulating an economic sector. Notwithstanding, regulators' involvement in different stages of policy formulation is also desirable because it can reduce uncertainty and misleading expectations from stakeholders.

This principle can prompt performance audits assessing whether organisational structures are aligned with the regulators' mandates and whether they facilitate the management in the pursuit of objectives. Furthermore, ASF could audit if regulators pursue their objectives with impartiality and free of bias when assessing regulatory and advocacy objectives.

Box 2.1 explains the separation of functions between Mexico's Federal Institute of Telecommunications (*Instituto Federal de Telecomunicaciones*, IFT) and the Ministry of Communications and Transport (*Secretaría de Comunicaciones y Transportes*, SCT). This institutional arrangement, splitting regulatory and promotion activities into two institutions, makes more efficient the implementation of both tasks, as now they do not compete for financial resources, personnel and priorities.

Box 2.1. The role clarity principle: a country example

Federal Institute of Telecommunications of Mexico

In Mexico, the 2013 constitutional telecommunications reform established the IFT as the regulatory and antitrust agency for the sector. This reform also granted autonomy for the regulator, as well as legal capacity and management of its own assets. Furthermore, the Law of Telecommunications and Broadcasting (*Ley de Telecomunicaciones y Radiodifusión, LTR*) states the powers of both, IFT and SCT. The mandate of IFT indicates that:

- It must regulate, promote and supervise the use and exploitation of the radio-electrical spectrum, orbital resources, public telecom networks and concessions for broadcasting and telecommunications.
- It must regulate access to infrastructure and other essential inputs.
- It must provide technical guidelines for accessing infrastructure and equipment.
- It is the authority on antitrust issues for the telecommunications market.

The mandate of SCT is oriented towards the development of the sector with activities to ensure universal coverage, collaboration on international agreements and development of infrastructure, among others.

Formerly, there was a Commission which depended directly from SCT. As such, SCT approved and negotiated the budget of the regulatory body with the Ministry of Finance. Thus, there was a risk that SCT influenced the performance of the regulator and the implementation of telecommunications policy.

Source: Constitución Política de los Estados Unidos Mexicanos and Ley de Telecomunicaciones y Radiodifusión of Mexico.

Preventing undue influence and maintaining trust

This principle indicates that regulators need to instil trust among public institutions, supervisors, regulated entities, the public and other stakeholders. Institutional trust can be achieved through objectivity in the pursuit of goals, transparency, accountability and avoiding undue influence that may lead to regulatory capture.

As mentioned before, undue influence can arise from any public institution (ministries, Congress, the executive power, autonomous bodies or the judiciary), regulated entities and the public. The regulator, however, interacts with these parties to deploy the regulatory process, co-ordinate shared responsibilities, consult over regulatory projects and receive feedback about the strategy and instruments developed. Therefore, institutional objectives should lead the communication between regulators and stakeholders.

Practices contributing to reduce the risk of regulatory capture and create trust include:

- The *revolving doors* restriction for officials working in regulated firms after certain periods of time (“cool-off periods”, Box 2.2).
- Transparent communication between regulators and stakeholders.
- A defined and planned agenda and official channels of communication.
- Formal and legal independence.
- Implementation of regulatory impact assessment (RIA) and consultation for regulatory production.
- Selection process and the terms of board members.

As mentioned in previous sections, ASF could design performance audits assessing whether such practices have impacts on outcomes. For instance, if revolving door restrictions have effects on objectives, in the retaining of human capital within institutions or in the reduction of corruption risks. Likewise, a report auditing the efficiency and effectiveness of stakeholder engagement⁴ on regulatory capture could be of interest to ASF—it would go beyond the compliance approach to analyse whether implementation of transparency measures when communicating with regulated entities may have impacts on the reduction of risks.

Box 2.2. Post-public employment restrictions in selected OECD member countries

In response to the increasing mobility between the public and private sectors (“revolving door”), OECD member countries have established specific rules and procedures for managing conflict of interest regarding pre- and post-public employment. The rules and procedures are encouraging public servants and institutions to properly identify and manage possible situations of conflict of interest when changing positions and include prohibitions after leaving office and cooling-off periods. In many cases, countries introduce flexibility into the pre- and post-public employment system by imposing different restrictions on public sector entities and positions, depending on the extent of the risk of potential conflicts of interest.

In general, senior political or public position officials enjoy comparatively attractive post-public employment opportunities because of the power they exercise, the information and experience they possess, and the public funds they allocate. Moreover, their heightened public exposure leaves them more vulnerable to public and media scrutiny should they abuse their pre- or post-public employment restrictions. For example, in Germany, the Civil Service Act stipulates targeted cooling-off periods for civil servants after they have left public service or have reached retirement age. For members of the government and Parliamentary State Secretaries, the Federal Government may prohibit, either fully or in part, the taking up of employment (remunerated or not) for the first 18 months after leaving office, if there is a concern that the new position will interfere with public interests. The decision on a prohibition is taken in light of a recommendation from an advisory body composed of three members.

There is substantial variation between and within countries that use cooling-off periods according to positions, when it comes to time limits adopted. For example:

- In Australia, Article 7 of the Lobbying Code of Conduct sets a cooling-off period of 18 months for ministers and parliamentary secretaries, and 12 months for ministerial staff. During those times, the former is prohibited from engaging in lobbying activities pertaining to any matter on which they worked in the last 18 months of employment, and the latter in the last 12 months.
- In Canada, the Lobbying Act prohibits “former designated public office holders” from carrying on most lobbying activities for a period of five years.
- In Italy, specific national legal provisions (d.lgs.165/2001, art.53, c.16-ter, modified by the Anti-Corruption Law no.190/2012) prevent public officials who have held managerial and negotiating positions in the previous three years from performing related duties in a private sector entity.
- In the United Kingdom, the Ministerial Code does not allow ministers to lobby government for two years after they leave office. Moreover, UK ministers and senior crown servants must seek permission of the Advisory Committee on Business Appointments before taking on any new paid or unpaid appointment within two years of leaving ministerial office or crown service.
- In the United States, public procurement officials are prohibited from accepting compensation from a contractor for one year following their government employment, if they served in certain decision-making roles with respect to a contract awarded to that contractor. They are also required to disclose any contacts regarding non-federal employment by a bidder on an active procurement, and either reject such offers of employment or disqualify themselves from further participation in the procurement.

When considering the length of cooling-off periods, core factors to take into account include whether the time lengths are fair, proportionate and reasonable considering the seriousness of the potential offence. Tailoring the duration of restrictions is also necessary depending on the type of problem area and level of seniority. For example, a ban on lobbying may be appropriate for a specific length of time, but restrictions on the use of insider information should be for life, or until the sensitive information is public.

Source: OECD (forthcoming), *Integrity Review of the State of Mexico*, OECD Public Governance Reviews, OECD Publishing, Paris.

Independence promotes objectivity and impartiality. Legal statutes grant independence, but it can also emerge from nation-wide institutional strength or the implementation of best practices. Both schemes imply advantages and challenges. The election between both options depends on several conditions, for example, the need to demonstrate independence, the dynamism of the public policy at the national level and the institutional strength of the country, among the most relevant.

Independent regulators can range from ministerial to autonomous bodies. Factors such as the governing body of the regulator, the fundraising scheme, the accountability obligations and the evaluation of performance also help in limiting the risk of regulatory capture, as they can facilitate independence (see Box 2.1 for country examples). OECD has developed reports with a special focus on independence, such as *Being an Independent Regulator*, which highlights how independence works in practice (OECD, 2016^[71]) and *Creating a Culture of Independence. Practical Guidance against Undue Influence*, which emphasises how to build transparency and accountability, financial independence and leadership (OECD, 2017^[72]). See Box 2.3 to learn about OECD countries approaches relative to this principle. A potential audit by ASF may analyse and compare institutional performance according to different degrees of technical or fundraising independence in Mexico (autonomous, decentralised, deconcentrated and ministry directorate). These reports could contribute to the economy dimension of performance audits while assessing reduction of corruption risks.

In Mexico, legal independence has been a solution to advance trust. In 2013, IFT and the Federal Commission for Economic Competition (*Comisión Federal de Competencia Económica, COFECE*) were established as autonomous bodies to enhance effectiveness in the achievement of policy objectives and avoid undue influence. These organisations substituted former public bodies which depended directly from SCT and the Ministry of Economy, respectively.

Box 2.3. Preventing Undue Influence and Maintaining Trust: Country examples

Government's expectations and regulators' responses in Australia

The Statement of Expectations of the Australian Government (SEAG) outlines the role and responsibilities of the Australian Competition and Consumer Commission (ACCC), as well as its relationship with the government, and issues on transparency, accountability, and operations. The statement is part of the practices for good corporate governance in agencies and for reducing regulatory burdens for business and the community. The SEAG states that ACCC must act independently and objectively in the performance of its functions and the exercise of its powers. The ACCC, in turn, provides a Statement of Intent (Sol) outlining how it proposes to meet these expectations.

The Australian Energy Regulator has a similar document for the Council of Australian Governments Energy Council outlining expectations over compliance and implementing a work programme that supports the objectives set out in the national energy legislation. The Sol sets out the work programme for regulating energy networks and markets, and the benchmarks to measure performance. It also sets

out how the regulator aims to achieve the principles of accountability, transparency, efficient regulation and effective engagement with stakeholders and other energy markets.

Regular dialogue with operators and consumers in Italy

The Authority for Electric Energy, Gas and the Hydric System (*Autorità per l'Energia Elettrica il Gas e il Sistema Idrico*, AEEGSI) has a permanent observatory for energy, water and heating regulation to facilitate the dialogue with representatives of national associations and report its activities. The observatory's functions are:

- Increasing stakeholder engagement in the decision-making processes.
- Facilitating the acquisition of data and information that contribute to the preparation of RIA and *ex post* evaluation of policies.
- Promoting the preparation of consultation documents.
- Receiving suggestions for evaluating the outcome of commitments after their implementation by regulated entities.

Source: OECD (2016^[71]), *Being an Independent Regulator*, The Governance of Regulators, <http://dx.doi.org/10.1787/9789264255401-en>.

Decision-making and government body structure for independent regulators

The design of the governing body and the decision-making powers of regulators influence their effectiveness in achieving policy objectives, the delivery of regulatory policy and institutional integrity. The main designs of the governing body are:

- Board model with oversight, strategic guidance and operational policy.
- Commission model advising on regulatory decisions.
- Single-member model gathering all regulatory decisions.

Under specific conditions multi-member models reduce the risk of regulatory capture and strengthen the decision-making process in comparison with the single-member model. The former also keeps the institutional memory when the replacement is staggered and is more effective to set aside the regulator from political processes. Therefore, member replacements in the board are less costly and less likely to modify the work of the regulator completely.

The decision-making body can be elected through public contest or by direct appointment from an authority. If the appointment is carried out fairly, transparently and inclusively, public contest promotes trust while the single-member model can be more responsive to industry changes. Therefore, the single authority model requires more transparency in the selection criteria and the decision-making process.

ASF could plan specific or cross-sectional assessments to identify if the current design of governing bodies of regulators have impact on the achievement of their objectives, the reduction of risk of regulatory capture and flexibility of the institutions to face current challenges. Box 2.4 illustrates examples of the organisation of regulators' bodies in Mexico and France.

Box 2.4. Decision-making and government body structure for economic regulators: Country examples

Mexico's Federal Institute of Telecommunications

The IFT has a board of seven commissioners: the President and six members. IFT has to follow a constitutionally-defined process for appointing commissioners. First, the candidates must prove their experience and technical training, relevant for the sector. The candidates' applications are analysed by an evaluation committee, which is comprised of the heads of the Central Bank of Mexico, the National Institute for the Evaluation of Education (*Instituto Nacional para la Evaluación para la Educación*), and the National Statistics and Geography Institute (*Instituto Nacional de Estadística y Geografía*, INEGI). These are also autonomous bodies from the Government of Mexico.

The committee applies a technical exam that is prepared by at least two universities. The Committee proposes between three and five candidates to the President of the Republic, who nominates one of the candidates to the Senate, who has to be endorsed by at least two-thirds of the vote. If the Senate does not approve the candidate, the President has to select another one from the Committee's proposal and repeat the process. The process would be repeated until a candidate is approved or until there is just one candidate left.

According to the Constitution, the appointment in IFT is for a fixed period and the removal of the commissioners can only take place under specific circumstances. Thus, the President of Mexico or Congress cannot directly remove the members of the board.

France's Energy Regulatory Commission

The French energy code provides that the Board of Commissioners of the Energy Regulatory Commission (*Commission de Régulation de l'Énergie*) comprises six members. The President of the Board is appointed by Presidential decree upon proposal by the Prime Minister (1), following public hearings and a formal opinion by the relevant parliamentary committees. Three members of the Board are also appointed by Presidential decree (one of them upon proposal by the Minister in charge of the French Overseas Territories) based on the person's knowledge and experience of non-interconnected areas (3). The Presidents of the National Assembly and the Senate appoint two additional members of the Board each (2)—one based on knowledge and qualifications in data protection and other in local energy services.

Source: OECD (2018^[73]), *Driving Performance at Ireland's Commission for Regulation of Utilities*, The Governance of Regulators. <http://dx.doi.org/10.1787/9789264190061-en>; Federal Law of Telecommunications and Broadcasting [Ley Federal de Telecomunicaciones y Radiodifusión].

In Mexico, there is a number of multi-member governing bodies in institutions such as COFECE, IFT, the National Institute for Transparency, Freedom of Information and Personal Data Protection (*Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales*, INAI), the Elections' National Institute (*Instituto Nacional Electoral*, INE), the Energy Regulatory Commission (*Comisión Reguladora de Energía*, CRE), and the National Commission of Hydrocarbons (*Comisión Nacional de Hidrocarburos*, CNH), among others. Independently from current ASF practices, if it wanted to undertake an assessment focusing on the performance of regulators, a relevant consideration to take into account is the design of the governing model. It then would be convenient to assess whether a different configuration of the governing model could have facilitated more effectiveness or efficiency in the achievement of policy objectives and in institutional performance, relative to national or sector plans. Likewise, ASF could assess to what extent the governing model of regulators is contributing to the achievement or shortcomings of sector objectives.

Accountability and transparency

Accountability and transparency practices by regulators create confidence among stakeholders. These practices help align expectations between regulators and stakeholders. The key message of the principle is that compulsory or self-imposed practices relative to accountability and transparency improve the decision-making process and hence the effectiveness and efficiency of public policy, and provide elements to lower the risk of regulatory capture.

Across OECD countries, the establishment of transparency and accountability obligations for line ministries and regulators are rather a standard practice (Casullo, Durand and Cavassini, 2019^[74]), (OECD, 2018^[9]), (OECD, n.d.^[75]). Notwithstanding, independent regulators should go beyond basic requirements of accountability and transparency. As regulators gain independence, they should also increase their accountability and transparency to strengthen trust. Entities supervising the accountability of regulators can be found in the executive and in Congress, but other stakeholders and the public are gaining relevance.

Regulators are frequently supervised by different entities according to their functions and powers. For instance, the executive may focus on policy objectives, co-ordination with ministries and budget execution; while Congress may put more attention on policy objectives and budget execution and line ministries may concentrate on specific policy objectives. Notwithstanding, accountability to other stakeholders such as the public is also relevant as it can increase observability and reduce the risk of regulatory capture. Regulators should assess the accessibility, format and quality of information they provide to different actors as a means to facilitate supervision and reduce the risk of regulatory capture. Publishing information is not enough to comply with this principle, as stakeholders need to understand and use the information. Therefore, regulators should publish information in friendly formats and open channels to guide users.

In perspective, transparency advances accountability to the public through the value of the information published. Thus, regulators should publish all possible information about their operations, including budget execution, industry statistics, annual working plans, meetings with stakeholders and their summaries, goals and objectives achieved. In (OECD, 2017^[10]), OECD made recommendations to audit the National Transparency System's (SNA) strategy to strengthen transparency in Mexico, just like ASF is already auditing the financial management of the Executive Secretariat of the National Anticorruption System (*Secretaría Ejecutiva del Sistema Nacional Anticorrupción*, SESNA). (ASF, 2018^[76])

Public institutions are subject to accountability and transparency obligations and an assessment performed by ASF could identify the best practices among regulators and highlight opportunity areas. Moreover, these practices can be assessed from the stakeholder perspective. This means that an assessment conducted by ASF could not only consider the accomplishment of the practice, but analyse how accountability and transparency facilitate public scrutiny and reduce the risk of regulatory capture. Box 2.5 illustrates accountability and transparency practices of the Office of Rail and Road in the United Kingdom.

Box 2.5. Accountability and transparency in the United Kingdom Office of Rail and Road

Formally, the Office of Rail and Road of the United Kingdom (ORR) was only accountable to Parliament. While the Minister appoints members of the Board, they are not accountable to him/her. Therefore, the Minister is unable to direct the regulator or to overrule regulatory decisions.

Along with the ORR's formal accountability to Parliament, there are several measures in place. First, the ORR publishes an annual business plan, which describes its strategic objectives and measures to assess them. The business plan identifies medium and long-term outcomes from strategic objectives. It identifies activities from the working programme that are expected to contribute to the achievement of long-term outcomes.

Along with the business plan, the ORR is required to publish an annual report, which is audited by the United Kingdom National Audit Office (NAO). The Annual Report summarises the key activities and events of the reporting year against the objectives set out in the business plan. This practice provides substantial performance information in a format that is easy to understand and assess.

While the ORR has an internal requirement to publish all major decisions, there are also statutory and legal requirements to publish specific decisions, and explain its pronouncements. The ORR must maintain a public register of all decisions relating to licences, access agreements, exemptions, consents and enforcement actions. It also publishes details of all improvement and prohibition enforcement notices and prosecutions.

Moreover, the ORR is required to participate in hearings answering questions or providing evidence to Parliamentary Committees. The Transport Select Committees and the Public Accounts Committee scrutinise the ORR's performance in their roles of overseeing government policy and performance.

Source: OECD (2016^[77]), Governance of Regulators' Practices: Accountability, Transparency and Co-ordination, <http://dx.doi.org/10.1787/9789264255388-en>.

Stakeholder engagement

Stakeholder engagement allows public institutions to interact with different actors, including regulated entities. The relevance of engaging with stakeholders relies on the fact that regulators learn from the industry how it works; from the public they learn the potential effects of regulations; and from public entities they learn how to address common challenges and shared responsibilities.

Engagement with stakeholders is also a mechanism to produce quality regulation as they can provide feedback about specific problems and proposals to tackle them. Through engagement activities, regulators can improve the relationship with stakeholders, as they can provide opinions about potential problems and the effects of regulations, as well as anticipate future modifications, reducing implementation costs and uncertainty.

Most regulators have active contact with regulated firms and other actors, but this does not necessarily imply they have a stakeholder engagement policy. A policy on stakeholder engagement includes objectives, a planned agenda, and an assessment of discussions and comments received, as well as providing feedback and evidence of the impact of the comments in the draft regulatory instrument, among others. Box 2.6 illustrates the United States' practices on stakeholder engagement. For ASF, performance audits could be developed to analyse whether stakeholder engagement constitutes a source of inputs to draft quality regulations, identify risks derived from draft regulations or obtain information.

Box 2.6. Stakeholder engagement in the United States

US public notice and comment

The Administrative Procedure Act (APA) requires all US government agencies to provide public notice and seek comment prior to issuing new subordinate regulations or revising existing ones. The purpose of allowing public comments is to provide the agency with information that will improve its knowledge of the subject and allow the public to challenge factual assumptions, analyses and tentative conclusions underlying the proposed rule.

Agencies are required to publish a Notice of Proposed Rulemaking (NPRM) in the [Federal Register](#). The NPRM comprises the draft regulatory text, a summary of the issues, actions under consideration and the rationale for the rule. It also contains supplementary information, including a discussion of the merits of the proposed solution, important data and other information used to develop actions. Before starting the consultation process based on the NPRM, agencies may publish an Advance Notice of Proposed Rulemaking (ANPRM). In the ANPRM, an agency describes the intended rule and requests the public to submit comments. Between 2011 and 2013, 6% of proposed rules had ANPRMs.

Stakeholders can comment on ANPRMs and NPRMs. In general, the comment period ranges between 30 and 60 days and all interested persons can participate. Many agencies use several options for submitting comments, including mail, private courier, email, and electronic submissions on the website [Regulations.gov](#). In addition, an agency may hold public hearings during the comment period, where people can make statements and submit data. Sometimes, webcasts and interactive Internet sessions are used to provide information to the public.

The web portal [Regulations.gov](#) provides access to all available materials—stakeholders can provide electronic comments through the portal. The web portal holds for more than 5 million documents published, and nearly 4 million visitors have submitted about half a million comments every year.

Public comments frequently motivate modifications in the proposed rules. Following the consultation process according to the NPRM, regulations are published in the [Federal Register](#), and are effective between 30 and 60 days after the publication date. The final rule includes a summary of significant issues raised by stakeholders, an explanation of how the agency addressed those comments, the objectives and rationale for regulation and relevant data.

Source: OECD (2016^[78]), Pilot database on stakeholder engagement practices in regulatory policy, www.oecd.org/gov/regulatorypolicy/pilot-database-on-stakeholder-engagement-practices.htm.

Funding

Financial resources allow regulators to achieve goals according to objectives. The source of funding can contribute to strengthen independence in the decision-making process and the implementation of regulations.

Funding for regulators should be sufficient to achieve the expected goals in the required timeline. It does not otherwise mean that regulators should be granted with substantial budgets. More than that, there must be a balance between budget and goals and the key is planning. Sources of funding and access to resources are also a relevant issue for independence.

An assessment of the funding scheme can be of relevance if ASF wanted to analyse how financial resources provide and promote independent and technical decision making of regulators.⁵ ASF could evaluate whether the funding scheme of regulators allows having a steady and stable source of financial

and human resources to conduct regulatory activities. Box 2.7 provides an international example of regulators' funding, specifically the Office of Rail and Road of the United Kingdom.

Box 2.7. Funding in the United Kingdom's Office of Rail and Road

In the United Kingdom, the rail industry and the Department of Transport fund the Office of Rail and Road. It receives funding from the rail industry through license fees and safety levies. It also collects a grant from the Department of Transport from road activities.

The economic regulation funding comes from the Network Rail's licence fee and it recovers costs from other networks not owned by Network Rail. The health and safety activities are funded through a safety levy, based on the turnover of each railway service provider. There are no cross-subsidies between these funding streams. Table 2.1 illustrates the levy scheme implemented by the Office of Rail and Road, according to the turnover of the firm.

Table 2.1. Rail's Health and Safety Regulation levy scheme

Company turnover	Railway Safety Levy
< GBP 1 million	GBP 0
GBP 1 - 5 million	GBP 1 000
GBP 5 - 10 million	GBP 5 000
Over GBP 10 million	Apportioned according to relevant turnover. As a guide for budgetary purposes, levy payments have in the past been around 0.1% of reported relevant turnover

For the 2018-19 period, the ORR received GBP 30.3 million from the rail industry, which represented around 93% of total income:

- 51% corresponding to health and safety regulation
- 42% from economic regulation
- 7% corresponding to direct funding from the Department of Transport.

By November 2018, the ORR had 316 employees and the expenditure on staff was GBP 19.8 million (GBP 1.8 million per month approximately), this represented around 65% of the annual budget.

The ORR, following transparency practices, sends an annual report with detailed financial indicators to the Parliament and publishes it on its website—although there is no obligation to do it.

Source: ORR (2018^[79]), Business Plan 2018-19, UK Government, London. https://orr.gov.uk/_data/assets/pdf_file/0006/27465/orr-business-plan-2018-19.pdf

Performance assessment

Regulators are encouraged to conduct performance evaluation according to the underlying policy objectives they pursue. If the regulator does not evaluate its work and actions, it will never know whether the effects of its intervention are in line with objectives and the return on invested resources.

Performance evaluation allows regulators to strengthen the activities or actions that contribute the most to their goals and modify those with suboptimal effects. Due to the relevance of performance evaluation, it is important to conduct these exercises periodically. The frequency depends on the relevance of the policy and the type of evaluation. For instance, an evaluation of performance indicators regarding outcomes can be launched on a yearly basis, as they may need "simple" statistical analysis. On the other hand, the actual impact or effects of regulatory decisions require complex analyses and advanced tools. Finally, the

publication of results is as important as performance evaluation activities. It advances accountability and transparency.

ASF could conduct a series of performance audits to identify whether regulators in Mexico evaluate their own performance properly and if these are a true source to improve public interventions. The main objective of performance assessment is to improve the policy-making process and raise the expectations about results. In this respect, INTOSAI published a white paper on Key National Indicators that can be of interest of ASF while audit performance (INTOSAI, n.d.^[80]). Box 2.10 presents performance evaluation practices of the Italian Regulatory Authority for Electricity, Gas and Water (AEEGSI).

Box 2.8. AEEGSI's Performance Indicators & Assessment Framework

The Italian Regulatory Authority for Electricity, Gas and Water (AEEGSI) tracks both service quality (outcomes) and the efficiency and effectiveness of the regulatory process (inputs and outputs). The aim is to improve the regulator's performance and the quality of the services provided to consumers.

Outcomes

The AEEGSI defines outcome indicators to design incentive-based regulation and monitor the evolution of the regulated sectors. For instance, AEEGSI has been able to progressively increase the quality of supply through incentives and penalties paid to and by distributors by measuring the average duration of interruptions of electricity supply (yearly minutes of lost supply per consumer).

The AEEGSI conducts an annual review to monitor the evolution of the energy retail markets and eventually adjust regulatory provisions to foster competition and enhance consumer protection. The annual review uses, for instance, the HHI index (Herfindahl-Hirschman Index) to measure competition; the ratio between complaints and served customers to capture the quality of the interaction with energy suppliers; the share of consumers changing their supplier (i.e. switching rate) to track the sector's maturity (consumers' awareness and trust, suppliers' proactivity and the regulatory environment). By assigning a standard cost per unit of energy not supplied, it is also possible to evaluate the direct impact on the final users through a cost-benefit analysis on the consumer side, considering incentives paid to distributors and avoided interruptions.

Inputs and outputs

The AEEGSI links the Strategic and Operational planning process to its objectives, which are assessed in terms of inputs and outputs.

For each objective, inputs are mainly determined by the costs of the employed workforce. On an annual basis, each Department defines the working hours and the relative annual costs an objective has required.

During the regulatory process, each deliverable may be considered an output to be associated to an objective. In order to distinguish contributions from different units, production processes have been broken down and intermediate outputs are also considered, as long as they could be identified as final products of specific phases of a process or sub-process.

Considering the peculiarity of the regulation and the rapidly evolving regulated sectors, a quantitative estimation of output has been centred on the complexity inherent to their realisation. This feature is analysed summing indicators to be assigned in a dedicated IT information system, related to four parameters:

- **Problem-solving:** it is measured with reference to the necessary professional skills, the discretion applied to solving the case, as well as the ordinary or innovative feature of the case in question.
- **Effort:** the intensity of the commitment sustained to bring the output to fruition, such as the quantitative dimension of the activities to be carried out, the severity of the approached internal procedure, and the intensity of the interactions with other stakeholders.
- **Co-ordination among units:** the need to make use of contribution of other organisational units and from which it is possible to infer a customer-supplier relationship.
- **Time compression:** the need to achieve output in a shorter time due to exogenous and unforeseen or foreseeable causes, such as the need to modify the current planning of activities.

Performance assessment is carried out analysing, for each objective, the evolution of input and output indicators through the regulatory period considered in the Strategic and Operational Plans and their correlations to evaluate the overall efficiency and identify potential improvements.

Source: OECD (2018^[73]), *Driving Performance at Ireland's Commission for Regulation of Utilities*, The Governance of Regulators, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264190061-en>.

OECD has conducted several reviews across member and non-member countries to evaluate performance of regulators according to the OECD *Best Practice Principles for the Governance of Regulators*. The methodology used by OECD is the Performance Assessment Framework for Economic Regulators (PAFER). These reviews highlight good practices for each of the above principles and identify opportunity areas for which it provides key recommendations to improve performance. Mexican regulators have also been assessed by OECD. Some relevant examples include the following:⁶

- Driving Performance at Ireland's Environmental Protection Agency (OECD, 2020^[81]).
- A series of reviews about regulator's performance in Peru in telecommunications (OECD, 2019^[82]), energy and mining (OECD, 2019^[83]) and transport (OECD, 2020^[84]).
- A series of reviews about energy regulators in Mexico (OECD, 2017^[85]). These reviews included the Regulatory Energy Commission (*Comisión Reguladora de Energía*) (OECD, 2017^[86]), the National Hydrocarbons Commission (*Comisión Nacional de Hidrocarburos*) (OECD, 2017^[87]) and the Agency of Safety, Energy and Environment of Mexico (*Agencia de Seguridad, Energía y Ambiente*) (OECD, 2017^[88]).

The relevance of these evaluations relies in the identification of capabilities and practices provided by the institutional design and the current regulatory framework to achieve outcomes according to the purpose of the regulators. It is important to notice that opportunity areas and recommendations frequently fall under regulators' responsibility, but others require institutional changes beyond the scope of the regulator competences.

Other reports about Mexican regulators addressed institutional performance and design. The report *Regulatory Governance of the Rail Sector in Mexico* (OECD, 2020^[89]) analysed the institutional design of the Regulatory Agency of Rail Transport (*Agencia Reguladora del Transporte Ferroviario, ARTF*) and provides a glance of the rail sector performance in the last years.

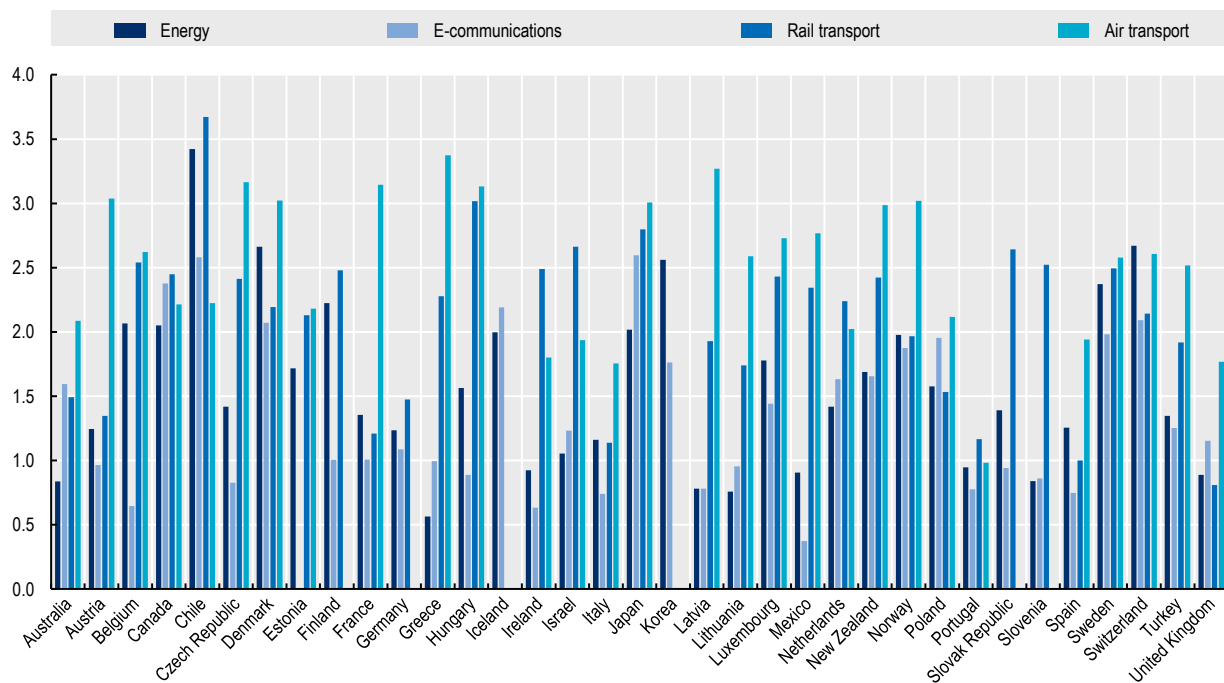
ASF could take advantage of these reports to plan performance audit exercises assessing whether practices aimed to improve performance of Mexican regulators have had significant impacts on their effectiveness, efficiency or economy, in line with national or sector plans.

OECD develops governance indicators to capture institutional arrangements of economic regulators in sectors such as energy, e-communications, rail transport, air transport and water (OECD, n.d.^[75]). Coverage extends to all OECD countries apart from the United States,⁷ as well as selected non-OECD

countries. Indicators of the governance of regulators are structured around three pillars: independence, accountability and scope of action (Casullo, Durand and Cavassini, 2019^[74]). The independence component reflects the extent by which a regulator operates independently from political power and regulated entities; the accountability component addresses regulators' accountability to different stakeholders, including government, parliament or congress, the regulated industry and the public; the scope of action component provides information about the activities performed by regulators. Figure 2.1 illustrates average indicators for transparency, accountability and scope of action for sector regulators in OECD countries. According to the index, Mexican regulators for e-communications and energy are more transparent, accountable and have wider scope of action in comparison to transport regulators. This finding in fact is a trend for OECD countries, as regulators for communications and energy are more effective than those for rail and air transport. It means that the Federal Institute of Telecommunications, the Regulatory Energy Commission, the National Hydrocarbons Commission and the Agency for Safety, Energy and Environment in Mexico have the strongest practices among Mexican regulators. A common fact among these regulators is that they were recently reformed with more independence and institutional powers. A general audit assessment, aiming to identify the potential reasons for these findings, could be of interest for ASF. These indicators could provide a framework to audit whether more advanced transparency practices by IFT and energy regulators have effects on policy achievements or corruption reduction, in comparison to other regulators.

Figure 2.1. Governance indicators for sector regulators

Country average for transparency, accountability and scope of action



Note: The score ranges from zero to six, from more effective to less effective.

Source: OECD (2018^[90]), Governance of Sector Indicators Database 2018, OECD, <http://www.oecd.org/gov/regulatory-policy/governance-indicators.htm>.

These indicators provide insights to ASF on priorities when assessing performance and institutional design of regulators in Mexico.

ASF's experience auditing the performance of regulators and their governance

Chapter 2 underlines different approaches to assess or audit regulatory policy elements and institutions. Auditing the governance of regulators and their performance is another important stream.⁸ Just like in the case of regulatory policy, ASF does not have an integrated plan to audit the governance of Mexican regulators and their performance according to objectives. However, it has carried out audits that touch upon specific elements of the governance of regulators, their objectives and performance—some of these reports will be discussed further in the following sections. For example, ASF has particularly assessed the internal control systems of ministries and regulatory institutions, as part of its financial compliance audits. These audits review the processes, activities and policies that facilitate the accomplishment of institutional objectives. Therefore, they can be a source of information to audit the performance of regulators and assess the achievement of their objectives according to the OECD Best Practice Principles.

These efforts represent a good starting point for ASF to not only increase the number of audits focusing on regulators' performance, but to broaden the scope of the analyses and the systematic planning of these reports in a multi-annual work programme.

ASF has conducted performance audits assessing the accomplishment of goals and objectives of public institutions and regulators. In 2019-20, ASF carried out performance audits and public policy assessments focusing on the governance of regulators and inter-institutional policy objectives. For example; *"Performance of CONAMER in the governance and regulatory impact"*, *"Evaluation of the National Water Policy"* and *"Evaluation of the Aid Policy to SMEs"*.

These performance audits and assessments are important but also challenging as evaluating water and support policies to SMEs involves several institutions and regulators. As assessments should consider duties, responsibilities and effective co-ordination among institutions and actors, identifying outcomes and impacts to develop recommendations will be challenging. In these cases, ASF could pay attention to co-ordination efforts and analyse outcomes and impacts rather than outputs.

For CONAMER, the challenge is evaluating performance based on the implementation of regulatory policy, rather than assessing practices described by rules or guidelines—which is a good practice according to OECD standards. For this purpose, ASF could analyse real examples of consultation processes and their effects on draft regulations, RIA cases and regulators' experiences, *ex post* evaluations of regulations and their usefulness, outcomes of simplification plans beyond records and government estimates. These examples and recommendations could guide audit performance for other regulators.

A selection of reports from last year is illustrated in Table 2.2. The table provides the objective of the audit and a selection of the main findings by ASF.

Table 2.2. Institutional performance audits conducted by ASF

Year	Title	Institution	Objective	Findings
2019	Regulation and supervision of Hydrocarbons in charge of CRE	Energy Regulatory Commission (CRE)	Overseeing the performance of the terms of the regulation and supervision of transportation, storage, distribution, compression, liquefaction, regasification, and sale to the public, in order to promote the efficient development of the energy industry, competition, generate certainty that encourages investment and protect the interests of users. (ASF, 2019 ^[91])	CRE promoted competition through the delivery of permits and promotes the expansion of the system of natural gas pipelines. However, regulation lacked planning, which created uncertainty and inspection policy was limited and not effective.
2019	Performance of CFE transporting and supplying natural gas	Federal Commission of Electricity (CFE)	Verifying the accomplishment of objectives and goals by the Federal Commission of Electricity in terms of transport and supply of natural gas (ASF, 2019 ^[91]).	Weakness in the governance of SENER and CRE due to lack of planning regarding the expansion of gas pipelines. Therefore, the implementation of the strategy was not efficient, effective and economic. Between 1997 and 2017, CFE did not have enough regulation to bid pipeline transport services for natural gas. Lack of planning, regulation and supervision rendered CFE incapable of ensuring the supply of natural gas to electric centrals.
2013	Competition and free concurrence	Competition Commission of Mexico	Scrutinising the accomplishment of competition policy through prevention and elimination of monopolies and monopoly practices (ASF, 2013 ^[92]).	The commission did not conduct studies about economic sectors, identifying potential risks for competition or deregulation proposals
2019	Regulation and supervision of electricity in charge of CRE	Energy Regulatory Commission (CRE)	Audit performance of CRE regarding regulation and supervision (ASF, 2019 ^[93]).	Cost inefficiencies recognised by CRE were about 31.2% of the average price of electricity. CRE did not accomplish the coverage plan goal regarding inspection of regulated entities for the year. Inspections conducted found that 43.5% of regulated entities breached the commitments. However, CRE did not present information demonstrating sanctions.
2019	Performance of the salt exporter firm	Salt Exporter (ESS)	Inspecting the accomplishments in generating profitability, economic efficiency and state benefits through production, transport and commercialisation of marine salt and its products (ASF, 2019 ^[94]).	Inefficiencies in financial management, accounting, operations, administrative, control mechanisms and accountability, which exposed the firm to low performance and an increase of fraud and corruption risks.

Source: (ASF, 2013^[92]), (ASF, 2019^[91]), (ASF, 2019^[95]), (ASF, 2019^[93]), (ASF, 2019^[94]).

These reports are examples of ASF audits regarding regulators performance. The objectives stated in these audits reflect the interest of ASF in assessing outcomes of public policies and the final opinions are useful feedback to institutions in charge of the policies and other stakeholders, such as Congress, the federal executive and citizens.

The audit report “Performance of CFE transporting and supplying natural gas” highlights weaknesses in governance from SENER and CFE due to the lack of planning and diagnostics for the expansion of pipelines,

and deficiency in regulations to conduct public bids for gas transport (ASF, 2019^[91]). The report links these findings with operation issues in costs and transport, and issues the recommendation to draft a diagnostic. However, ASF could go deeper into the audit process and highlight the underlying reasons of this lack of co-ordination. By identifying these issues, the recommendations could be institutionalised and solve other potential conflicts between SENER and CRE. Likewise, in line with the legality principle and the rules governing ASF, it could recommend not only the fulfillment of the omissions, but the implementation of solutions, in this case, to address lack of co-ordination by identifying the underlying reasons.

In the same line, the report *“Regulation and supervision of Hydrocarbons in charge of CRE”* identified lack of diagnostics, regulation instruments, co-ordination issues among administrative areas, lack of a system to evaluate and monitor performance indicators, among others (ASF, 2019^[91]). Recommendations focused on fulfilling the omissions identified.

The work by ASF relative to performance audit in the Competition Commission analysed the following elements:

- elaboration of guidelines
- elaboration of studies
- attention of requests to clear mergers
- investigations to eliminate monopolies
- investigations to eliminate monopoly practices
- inspections conducted
- accomplishment of administrative procedures
- fines and sanctions.

The report, however, neither carried out an individual analysis about the quality of investigations nor the potential impacts of the decisions taken by the Commission, which is crucial to determine the value-for-money perspective. Moreover, the report based its conclusions and recommendations on the analysis of outputs rather than outcomes (see Box 2.9).

Box 2.9. Audit to the Competition Commission of Mexico

The objective of the audit process in 2013 was to determine the achievements of competition policy, after the Constitutional reform, by which the Competition Commission became an autonomous body. In particular, the audit assessed the efficiency in preventing monopolies and monopoly practices and the effectiveness of inspections conducted by the Commission to gather evidence of competition infringements. Finally, the audit evaluated the cost efficiency of public intervention.

The main findings from the audit report included:

- The Commission did not conduct studies about economic sectors, identifying potential risks for competition or deregulation proposals.
- A summary of the number of investigations conducted by the Commission, the opinions about mergers of firms and sanctions involved.

Taking these findings as reference, ASF concluded that the Commission accomplished its mandate in eliminating monopolies and monopoly practices, but the lack of studies limited its capacity to determine if families were reducing their household expenditure in markets with competition issues. The main recommendation from ASF was the elaboration of a plan to carry out studies and diagnostics to identify competition risks, as well as the definition of its activities within internal documents.

Source: (ASF, 2013^[92]), Comisión Federal de Competencia Económica, Auditoría Superior de la Federación, http://www.asf.gob.mx/Trans/Informes/IR2013i/Documentos/Auditorias/2013_0276_a.pdf (accessed on 1 June 2020).

In 2012, ASF published a performance audit report scrutinising the achievement of regulatory policy objectives (ASF, 2013^[26]). ASF concluded that the Federal Commission for Regulatory Improvement (*Comisión Federal de Mejora Regulatoria*, now CONAMER) succeeded in achieving the objectives of promoting regulatory improvement and reducing compliance costs faced by citizens and firms. The audit stressed the analysis of the policy and policy objectives, not necessarily performance indicators.

Among other areas, the report reviewed the process to scrutinise draft regulations filed by public entities. This perspective was more oriented to the assessment of outcomes, but it was only for one activity of CONAMER, which is the reduction of administrative burdens. However, opinions and external assessments from stakeholders concerning CONAMER's work were not considered.⁹ In the assessment of institutional performance, opinions from stakeholders are crucial, as they are the main beneficiaries of policies and therefore can provide information about perceptions, what is working and what is not working.

These reports are evidence of ASF's efforts to scrutinise institutional achievement. ASF could expand this line of work and include economic and social regulators' audits in its annual agenda (*Programa Anual de Auditorías para la Fiscalización Superior*, PAAF) as a standard practice.

ASF could assess institutional performance according to strategic and outcome indicators, less focused on output indicators. In the examples described above, the audits were based, at least partially, on the number of activities performed (outputs), rather than the actual impacts derived from the interventions (outcomes). The methodology used by ASF does not necessarily include a systematic approach including stakeholder views, which are useful complements to other methodologies. NAO's approach in the United Kingdom, for example, includes a series of interviews with relevant stakeholders (see Box 2.11

Objectives described in performance audits are clear. However, these could be widened or the ASF's approach may include several branches or levels. For instance, the report "*Performance of CFE transporting and supplying natural gas*" had the objective of verifying the accomplishment of objectives and goals by the Federal Commission of Electricity in terms of transport and supply of natural gas. The report analyses the following elements:

- Governance in terms of planning and strategic planning of network expansion for gas pipelines and power stations.
- Transport contracts for natural gas.
- Operation performance regarding the regulatory process of projects.
- Economy regarding tariffs paid for natural gas transport services.

The report succeed in presenting several opportunity areas and omissions by CFE, which led to a series of conclusions and recommendations. However, ASF could have gone deeper in the analysis in order to provide more targeted and long term recommendations to solve underlying issues. For instance, it could have analysed the governance element or the regulatory process of projects. In this regard, a narrower objective or methodology can be useful to go deeper into the analysis. ASF could identify one or two guiding questions to perform the audit. It does not mean that ASF could cut all audit objectives, but it could prioritise which projects are relevant enough to conduct audits focusing on the mandate of the regulator and which deserve a more focused analysis.

International experience from SAIs auditing performance of regulators can be illustrative. The Australian National Audit Office (ANAO) and the National Audit Office of the United Kingdom (NAO) stand out as references.

In previous years, ANAO published reports about the effectiveness of specific interventions or activities performed by regulators or public institutions:

- In 2017, ANAO published a report to assess the effectiveness of the Department of Communications and the Arts in managing the contract of selected telephone universal service obligations. The main questions of the audit report were whether the contract supported achievement of policy objectives and provided value for money, whether the department effectively

managed the contract for telephone universal service obligations and if performance reporting and monitoring arrangements provided transparent information on how contract services are achieving the stated policy objectives (ANAO, 2017^[96]).

- In 2006, ANAO assessed whether the Australian Pesticides and Veterinary Medicines Authority (APVMA) was performing its key regulatory functions effectively (ANAO, 2006^[97]).

The experience of ANAO in assessing performance of regulators suggests that auditing institutions, such as ASF, could focus on both economic and social or risk regulators. The work of ANAO also underlines that auditing performance can analyse overall performance or specific activities or duties. The specific scope can be set according to priorities, timing and financial resources, among others. In Mexico, ASF could take advantage of ANAO's experience in conducting thorough performance audits of regulators regarding their entire mandates or specific activities. The decision could be made according to budget constraints, time and relevance or urgency.

Another good practice of ANAO is the publication of its reports in the official website. It presents the reports and their main findings in a brief summary, communicating the main messages of each document and provides access to the full report. An easy access to key information about performance audits is critical to promote transparency and, in consequence, reduce the risk of regulatory capture or the pursuit of objectives different from those granted to the regulator.

The approach of the National Audit Office of the United Kingdom (NAO) assessing performance goes beyond economic regulators, as it scrutinises a wider scope of public institutions. These institutions may include, but not exclusively, economic regulators or departments. According to NAO, *"Public bodies, taxpayers and users need to be able to find out how well public money is being spent, especially when budgets have been cut and government spending needs to deliver more for less. To be able to assess the success of policies, programmes and major projects, government must build performance and value for money measures into design, and ensure that decisions are based on these measures"*. (NAO, n.d.^[37])

In supporting evaluation tasks, NAO publishes guidelines and reports such as:

- *The Performance Measurement by Regulators* (NAO, 2016^[41]) is a guide to improve performance auditing and reporting by public institutions, including regulators. It addresses the challenges of institutional evaluation, gathers existing material on the subject and presents the experience of NAO and examples of good practices by regulators. (See Box 2.10).
- *Evaluation in government* (NAO, 2013^[98]) is a report focused on impact and cost-effectiveness evaluation regarding government spending, taxation and regulatory interventions across 17 departments and bodies. The main questions addressed in the report are: 1) What does existing evidence addresses relative to impact and cost-effectiveness evaluations?; 2) What is the quality of the evaluation evidence?; 3) How well does this evidence support strategic resource allocation, policy development and policy implementation?; and 4) How much does the government spend in producing this evaluation evidence?
- *The Review of government evaluations: A report for NAO* (Gibbons and McNally, n.d.^[99]) presents a quality assessment for 35 UK government evaluations in different policy areas. This report does not focus on performance of regulators *per se*, but on the quality of public policy evaluations performed by public institutions. The relevance of this report is that it constitutes an example of an external performance audit carried out by an independent institution out of the government's structure.
- *Taking Measure of Government Performance* (NAO, 2010^[100]) is a report that examines whether systems control and track key objectives and indicators linked to performance auditing and reduce the risk of error in reporting data. However, the document highlights that key indicators should capture the most relevant outcomes for the government and identify if these are attributable to its intervention.

Box 2.10. Performance measurement of regulators by the National Audit Office of the United Kingdom

In 2016, NAO published guidelines to support public officials and regulators in assessing institutional performance (NAO, 2016^[41]). The document recognises the complexity of this task, as intended outcomes sometimes are delivered by third parties. Besides, there is a number of external factors affecting the achievement of objectives outside of the control of regulators.

The document sets out criteria for developing performance measurement frameworks and indicators and provides examples of existing good practices among regulators. The document also outlines insights about how regulators report and use performance information. An important part of the report focuses on the hierarchy of objectives and their impact on the accomplishment of the entity's mission.

Another part discusses challenges for measuring regulators' influence over their intended outcomes. It outlines potential steps to improve the regulators' knowledge about how to influence outcomes and how they can assess the risks linked to the achievement of their regulatory objectives and measure their performance in mitigating these risks. In particular, the section provides guidance to distinguish among inputs, outputs and outcomes, and explains them in the context of the regulatory process. Finally, it presents a value for money perspective at incorporating concepts of efficiency, economy and effectiveness and linking activities, outcomes and objectives.

NAO also published the document *Performance measurement: Good practice criteria and maturity model* (NAO, 2016^[101]), which provides good practice criteria set out in the report *Performance Measurement by Regulators*. It also provides a maturity model applied in previous reports on performance frameworks and board reporting.

Source: NAO (2016^[101]), *Performance Measurement: Good practice criteria and maturity model*, National Audit Office (NAO), <https://www.nao.org.uk/report/performance-measurement-by-regulators/> (accessed on 20 May 2020).

NAO has led reports directly assessing the performance of regulators in the United Kingdom but also, how regulators measure and report their own performance. Regarding performance auditing, a representative set of reports include the following:

- In 2018, NAO examined whether the Office for Standards in Education, Children's Services and Skills' (Ofsted) approach to inspecting schools provides value for money. In particular, NAO assessed the performance and impact of Ofsted. (NAO, 2018^[102])
- In 2020, a report examined whether the British Business Bank has improved access to finance for SMEs and is prepared to respond to future challenges (NAO, 2020^[103]). The report analysed the logic for public intervention through the bank, its objectives, performance monitoring and success criteria. Afterwards, NAO compared the Bank's performance against its own objectives and the impacts. Finally, the document analysed the governance arrangements, costs and preparedness to address future challenges. The methodology of NAO to assess the performance of the bank is briefly presented in Box 2.11. It considered qualitative evidence such as in-depth interviews with relevant officials from stakeholder institutions and case studies.

Concerning evaluation of self-assessment performance, NAO published a report for economic regulators:

- In 2019, NAO assessed how the Water Services Regulation Authority (Ofwat), the Office of Gas and Electricity Markets (Ofgem), the Office of Communications (Ofcom) and the Financial Conduct Authority (FCA) measured and reported their performance in protecting the interests of consumers. However, the report did not evaluate the regulatory performance of each regulator nor focused on their statutory objectives. Part of the justification in assessing the work for protecting consumers relies on the GBP 855 million of running cost for regulators during 2017-18 (NAO, 2019^[104]). (See Box 2.12).

Box 2.11. The British Business Bank and access to finance for SMEs

In 2014, the government launched the British Business Bank (bank) to deal with weaknesses in the United Kingdom SME finance market. The bank's mission was set *"to help drive economic growth by making finance markets work better for smaller businesses enabling them to prosper and grow"*. Considering this mission, a performance audit was part of NAO's annual audit plan for 2020. The study covered:

- Background and rationale for the bank creation, its objectives, monitoring and success criteria.
- Bank's performance in achieving its objectives and impact evaluation.
- Governance arrangements, growth, costs and preparedness to address future challenges.

In general, NAO found positive signs when comparing bank's performance and metrics, showing that SMEs were growing as a result of the bank activities. A subset of the main findings from the audit report indicated that:

- The Bank represented a more coherent response by the Department for Business, Energy & Industrial Strategy for SME access to finance compared with past government interventions.
- The Bank undertook good-quality evaluations to assess its products, but some initiatives required a long-term impact assessment.
- The Bank exceeded its initial targets within the context of a benign economic environment.
- The Bank had a cost-effectiveness general assessment but less information was available about its individual activities.
- The Bank had to strengthen its governance and operational procedures to address inherent demands of its rapid growth.
- The Bank worked with the government to analyse potential sources of support in future economic downturns.

The recommendations of the report were directed towards the bank, the department and Her Majesty's (HM) Treasury:

- An agreed view on priorities for the Bank.
- What they need the bank to achieve in the context of government support for business.
- The success criteria for the Bank, so that any decision about the accomplishment of the mission can be informed with robust evidence.

A set of recommendations for the bank included the following:

- The bank cost analysis should demonstrate the cost-effectiveness of individual activities to allow comparisons of operating expenditure with other organisations.
- The bank should publish information allowing Parliament and other stakeholders to observe the amounts of money going to SMEs and the Bank's own activities, including its policy work and general administration.

Source: NAO (2020^[103]), *British Business Bank*, National Audit Office (NAO), <https://www.nao.org.uk/wp-content/uploads/2020/01/British-Business-Bank.pdf> (accessed on 20 May 2020).

Box 2.12. Regulating to protect consumers in utilities, communications and financial services markets

Ofwat, Ofgem, Ofcom and the FCA

In 2019, NAO published a report aimed to identify how the Water Services Regulation Authority (Ofwat), the Office of Gas and Electricity Markets (Ofgem), the Office of Communications (Ofcom) and the Financial Conduct Authority (FCA) measure and report their performance in protecting the interests of consumers. The report aimed to determine:

- Whether the regulators: 1) have good insight about the key issues that consumers face; 2) define which are their goals; and 3) the barriers they face.
- Whether regulators properly measure their own performance, understand the extent to which they are able to influence consumer outcomes and use that evidence to improve their own effectiveness.
- Whether the regulators publish their performance in a way that is useful for Parliament and other stakeholders.

The report found that consumers of regulated services face significant difficulties, from rising bills to the impact of service failures. Regulators had good insight into consumer's concerns and issues, but they were not specific enough and targeted in setting out the outcomes they want to achieve for consumers, and what information they need to evaluate and report for their overall performance.

Main findings of the report

Consumers' concerns and interests	Measuring and improving performance	Reporting of consumers outcomes
Each regulator has good insight into key consumer issues according to their own research and consultation with stakeholders.	Regulators monitor data on consumers' experiences and outcomes but do not routinely use this information to assess their own performance.	Regulators' public reporting does not provide an overall assessment of how they are protecting consumers' interests.
The issues faced by consumers are: <ul style="list-style-type: none"> • affordability and debt • accessing appropriate deal or service • service failures or quality service. 	None of the regulators has developed an overall understanding of its influence over consumer outcomes.	Consumer representatives find regulators' publications useful.
Regulators have not been specific enough in defining the overall outcomes they want to achieve for consumers.	The regulators are working to improve how to measure their performance.	It is a challenging task to articulate their impact on the performance of each sector
Regulators find it difficult to manage the trade-offs they face between competing objectives in protecting consumers.		Regulators have no reporting standards.

Some of the main recommendations for regulators are:

- Linking high level intended consumer outcomes with practical consumers' interests.
- Modelling and measuring regulatory influence and impact through collaborative work.
- Working in consultation process with government and other stakeholders.
- Setting common expectations and standards for evaluating regulatory decisions and interventions.

Source: NAO (2019^[104]), *Regulating to protect consumers in utilities, communications and financial services markets*, National Audit Office (NAO), <https://www.nao.org.uk/wp-content/uploads/2019/03/Regulating-to-protect-consumers-in-utilities-communications-and-financial-service-markets.pdf> (accessed on 21 May 2020).

NAO's work concerning institutional performance highlights relevant practices for audit institutions such as ASF. First, NAO promotes self-assessment by regulators and encourages the use of specific support instruments. Following this strategy, NAO shares through its website a series of documents to guide organisations for self-assessment and decision-making (NAO, n.d.^[105]). Such documents include examples of good practices, case studies, checklists, questions and templates. In its webpage, NAO groups together a list of reports with innovative analyses and methodologies. The reports, labelled as *Audit Insights*, are methodological summaries, not assessments *per se*. Regulators such as the IFT or institutions such as COFECE are already carrying out self-assessments, however, this is not a standard practice across Mexican institutions. Therefore, ASF could promote self-assessment and publish methodologies, experiences or experiments relative to different types of evaluations.

NAO also publishes technical documents to guide institutional performance. For instance, documents directed to boards to improve organisational performance. Moreover, several NAO reports to Parliament analyse the extent to which financial information is available to key decision makers and have beneficial effects on organisational performance (NAO, n.d.^[106]). This is another source of potential work for ASF: assessing the impact of transparency of financial information in performance. (See Box 2.13).

NAO sometimes takes advantage of external experts to conduct performance audits. An example of this is the *Review of Government Evaluations: A report for the NAO* (Gibbons and McNally, n.d.^[99]), which was assigned to experts of the London School of Economics and Surrey University, as part of a wider strategy on the use of cost-effectiveness in government. The relevance of external assessments is that auditors can rely on experts and knowledge outside the institution. Besides, an external performance audit managed by audit institutions reduces the risk of collusion between public entities in charge of public policies and evaluators. ASF could conduct external assessments to strengthen specific audit reports, depending on methodologies and according to budget.

Box 2.13. Non-Departmental Public Bodies Performance Reporting to Departments

In 2011, NAO published a survey about performance reporting arrangements between 41 Non-Departmental Public Bodies (NDPB) and their 12 sponsor departments. One of the motivations to conduct this survey was the fact that ministers of departments sponsoring NDPB were ultimately accountable to Parliament for their efficiency and effectiveness—although NDPB operate at arm's length from central government.

The report addressed the performance frameworks of the NDPB, institutional performance and value for money, monitoring performance and institutional arrangements between NDPB and departments.

NAO, in elaborating this report, reviewed NDPB documents, interviewed NDPB and department officials and conducted quantitative data analysis.

The key areas for attention highlighted by the report included:

- Increasing the focus on performance frameworks, as opposed to measures of process.
- Reducing the level of rotation of indicators.
- Improving the links between performance and resources.
- Better use of targets and objectives to drive performance improvement.
- A clear focus on data quality.

Source: NAO (2010^[107]), *Non-Departmental Public Bodies Performance Reporting to Departments*, National Audit Office (NAO), https://www.nao.org.uk/wp-content/uploads/2010/05/NDBP_Performance_Reporting.pdf (accessed on 25 May 2020).

Proposals for action

Assessing the institutional design of regulators could be part of ASF's performance audit plans.

ASF has included governance elements in some performance audits, assessing decision-making processes, institutional co-ordination and planning. These efforts are relevant and ASF could consider undertaking specific audits on this area, focusing on determining whether institutional design and arrangements have impacts on processes and outcomes.

A cross-sectional evaluation regarding institutional arrangements and their impacts on the achievement of objectives can be useful to derive lessons for designing institutions and upgrading results from public policy implementation. The OECD *Best Practice Principles for the Governance of Regulators* handbook provides useful guidance on what elements are important in designing regulatory institutions.

It is important to take into account the underlying reasons highlighted by the economic literature to promote the best practice principles. For instance, transparency and accountability is a relevant practice promoted by OECD, but a compliance perspective should be complemented by an effectiveness assessment to facilitate public scrutiny. The governing body of the regulator can be assessed according to its capacity to promote flexibility in the achievement of objectives, but also in its contribution to reduce the risk of regulatory capture. The source and schemes of financial resources can be assessed according to the effectiveness of the regulator in promoting independent and technical work. The self-assessment of regulators could also be the subject of an audit; ASF could evaluate if self-assessment is a tool leading to improvements in performance and policy interventions.

OECD governance indicators could provide a framework for ASF to prioritise auditing regarding transparency and accountability across Mexican regulators.

OECD indicators covering transparency, accountability and scope of action measures indicate that energy and telecom regulators are more effective in adopting these practices, than transport regulators, for example. ASF could assess through an audit performance, if these findings are a consequence of legal, factual independence or other institutional arrangements. Furthermore, ASF could audit if the transparency measures have led to more effective decision making of the regulator or whether these are effective scrutiny tools.

ASF could also conduct audits to identify if practices implemented by regulators have impacts in performance and make recommendations about their execution.

ASF could conduct performance audits of regulators according to the adoption of OECD best practice principles. These elements can provide information about the institutional strength of regulators

OECD best practice principles of regulators constitute a framework to improve institutional performance and reduce the risk of undue influence. However, ASF should not only follow a compliance approach auditing these principles among regulators, but could also analyse performance. Transparency, accountability and the governance of regulators require an assessment of their effectiveness and their contribution to the achievement of objectives. For instance, transparency requires real and easy access to useful information in friendly formats. The fulfilment of the obligation to disclose information is not enough to constitute a real scrutiny tool.

ASF could revise the analyses of performance audits, moving from a product perspective to an outcome approach.

ASF conducts performance audits highlighting several omissions and lack of compliance by regulators. Most of the reports analysed also included impacts on outcomes, but these may not be necessarily the

core of the audit. ASF could enhance the analysis and the impact of their recommendations focusing on outcomes. For the same reason, several recommendations made by ASF in its reports focused on the fulfilment of omissions and let behind the underlying reasons to achieve policy goals.

ASF could prioritise performance audit objectives, targeting specific roles or regulators' objectives as a baseline to rationalise resources and maintain a wider scope only for those regulators which can be considered as priorities. By doing this, ASF can go deeper in the analysis of the governance and performance of regulators.

Performance audit objectives extracted from a set of reports indicate that they were clearly identified. However, these objectives or the scope in the approach conducted by ASF were wide, considering several elements of analysis, including governance and operation elements, among others. These audits succeeded at identifying the main omissions of regulators, but they could also provide recommendations to address the underlying reasons behind suboptimal performance. Audit exercises require time and resources, therefore a prioritisation of audits and targets has the potential to release resources that can be used in cases where thorough assessments are needed. These resources can add to deeper analyses identifying the underlying reasons for omissions and leading to long-term recommendations.

Notes

¹ A natural monopoly condition implies that only one firm should be established to address the demand for a specific market product, as it guarantees the lowest cost in comparison to the competitive scheme.

² A normative approach of regulation analyses when and how regulation should occur, while a positive approach explains the underlying reasons to regulate.

³ Risk is defined as the probability of the event multiplied by the extent of the damage. Therefore, in the example of pollution by mining companies, regulation should aim at either reducing the probability of firms polluting by prohibiting specific activities and applying fines if they do it, and if there is some level of “inevitable” pollution, minimise the damage by requiring them to store and treat waste with technology. Of course, the alternative of zero pollution is to prohibit the activity altogether, but this would bring about deep economic consequences.

⁴ Stakeholder engagement refers to any actor which can be a person, institution, organisation, citizen, group of interest, firm or group of firms with interest in the regulatory proposal under assessment.

⁵ Such an assessment could complement audits already carried out by ASF's Special Audit on Financial Compliance, namely on the collection, administration, exercise and application of resources approved by Congress, as well as on their management and financial record.

⁶ Although the PAFER was developed for economic regulators, with some adaptations they can also be applied to social or risk regulators.

⁷ There is no data for the United States.

⁸ Regulators can not only be scrutinised in their performance to achieve institutional objectives and their mandates, but also on their application of regulatory quality tools such as RIA, public consultation and ex post assessment, with independence from national oversight bodies such as CONAMER—as many regulators operate at arms’ length from the central power.

⁹ In this case, the term “Stakeholder” refers to any actor, which can be a person, institution, organisation, citizen, group of interest, firm or group of firms with interest in CONAMER’s work, including the scrutiny of draft regulations and the simplification of administrative burdens, such as government entities, business, consumer groups, and civil society organisations, among others.

Annex 2.A. Review of the academic literature on the underlying reasons to assess and audit the performance of regulators

The main institutional issues identified by the economic literature and the experience accumulated by OECD when assessing regulators are presented in the next section. These findings can provide insights to ASF when auditing performance of regulators and identify sources that may impact positively in the achievement of regulators' objectives.

Regulators and supervisors

The institutional relations between regulators and their supervisors, meaning Congress or the Federal Executive, have been addressed in the academic and empirical literature. First, in the pursuit of individual interests, there are risks and incentives of undue influencing such entities. Any regulator, in fact, could be subject to undue influence, also known as regulatory capture, from three sources: government agencies, regulated entities and the public. The economic literature has highlighted the most relevant issues in this relationship to avoid biases in the pursuit of institutional objectives.

Institutional arrangements between supervisory authorities (called “principals” in economic theory) and regulators (“agents”) may negatively affect the achievement of policy objectives. In principle, due to asymmetric information, Congress or the Federal Executive may find challenges in selecting the best candidate to manage regulators, as they cannot directly assess their abilities and capacities—this situation refers to adverse selection. Once the head of the institution is selected, another source of potential conflict is moral hazard. In this situation, the problem is the behaviour of the governing body or the head of the agency. For example, the level of effort exerted in the pursuit of policy objectives and the adherence to the ethics code are not observed, which may affect expected outcomes (Laffont and Martimort, 2002^[108]). Therefore, institutional arrangements should be established to minimise the risks created by adverse selection and moral hazard. Congress or the Federal Executive, as principals, should establish institutional design to avoid the risk of hiring unexperienced candidates with poor technical skills to lead the institution, as well as preventing inefficient decisions.

This relation between regulators and supervisors can be of interest to ASF, as it could start a series of audits analysing whether performance of regulators is linked to their institutional arrangements. For instance, ASF could identify if selection criteria of governing bodies of regulators could influence the achievement of objectives, transparency measures, use of resources and accountability obligations. Additionally, ASF could develop performance audits to identify whether control measures such as transparency, accountability and compliance audits have an impact on the achievement of objectives. In this respect, in (OECD, 2017^[109]), OECD made proposals to audit National Transparency System's strategy to strengthen transparency.

Regulatory capture

Regulatory capture is a situation in which regulators set aside their policy objectives and the public interest to behave in favour of specific groups or individuals. Regulatory capture has three major schools of thought, according to Boehm (2007^[109]). The first is the *Interest Group Theory*, which dates back to 1971, when

George Stigler published *“The Theory of Economic Regulation”* (Stigler, 1971^[110]) and was further developed by the Chicago and Virginia schools. The basic argument is that regulation may not serve the public interest, but rather create and protect monopolistic rents. The second school promoted by de Soto (2002^[111]) and Shleifer and Vishny (1994^[112]) argues that politicians and bureaucrats issue inefficient regulation to get benefits from possible rewards (red tape). Finally, the third school, led by Jean Jacques Laffont and Jean Tirole (1991^[113]) explains regulatory capture theory as a consequence of information (or agency) asymmetries. An example used by the authors assumes Congress supervising a regulator, which sets the price and revenue of an industry. Due to the asymmetric information between the regulator and Congress, the latter finds potential for collusion between the industry and the regulator.

Regulatory capture literature explains the role of interest groups in the policy-making process. The modern notion of the concept is attributed to Stigler (1971^[110]) as a situation in which an industry can take advantage of the powers of the state to get private rents—therefore, regulatory decisions will not contribute to the policy objectives for which the regulator was created. Afterwards, regulatory capture literature recognised that political influence could also arise from several stakeholders, including small and dispersed actors such as consumers, which can have a bigger stake in political influence (Peltzman, 1976^[114]). Consequently, authors of the Chicago school such as Posner (1974^[69]), Peltzman (1976^[114]) and Becker (1983^[115]) discussed competition among interest groups to obtain state privileges.

Laffont and Tirole (1991^[113]) analysed the work by the Chicago and Virginia schools (the last represented by Tollison and Tullock) and concluded that both approaches were misleading as they had two limitations. First, they ignore the asymmetry of information between actors, which feeds the firm’s incentives to influence institutions—when there is full information, there is no space for lobbying. Second, these schools only analysed regulatory capture from the demand-side perspective (firms and consumers claiming for regulations) and set aside the supply-side, represented by institutions and therefore ignoring a potential risk: the indirect operation of industries and the public through elected officials who can influence institutions.

According to Spiller (1990^[116]), discretion in the behaviour of regulators can arise because of the unobservable nature of their actions. They can pursue objectives that are not aligned with those for which they were mandated by Congress or the executive power. This problem outlined two approaches: the first assumes that Congress instruments are powerful enough to control regulators and the second, within the bureaucratic nature of regulation (naïve capture theory), assumes that agency issues are simple enough that regulators can work independently from supervisors. Notwithstanding, Spiller concludes that such are extreme situations within an environment where politicians and interest groups compete to influence regulators.

Martimort (1999^[117]) concluded that influence by interest groups spans over the lifecycle of regulators because at early stages, when legislatures and citizens’ interests, as well as oversight are strong, the risk of regulatory capture is lower. Once the interest vanishes, and interaction between the regulator and the industry increases, the risk of regulatory capture can increase as well.

Several sources are inducing undue influence but, as Laffont and Tirole (1991^[113]) emphasise, the major issue is the organisational response to prevent collusion. The main sources of influence are:

- monetary bribes
- future employment for commissioners and staff (“revolving door” effect)
- personal relationships that provide incentives to treat kindly the industry
- pressure over agency’s management
- indirect transfers to key elected officials who can influence regulators.

Regulatory capture theory provides a relevant approach for SAls when auditing regulators as it focuses in the analysis of performance based on institutional independence. ASF could undertake a series of performance audits reviewing the relationship between regulators and stakeholders, analysing whether formal and informal communication practices and collaborative work have impacts on decision making and the achievement of objectives. Furthermore, ASF could scrutinise through performance audits whether internal institutional arrangements are designed to reduce the risk of regulatory capture and corruption by officials. For instance, analysing if path careers have impacts on revolving door effects, if appointments of governing body members impact on strategic decisions, if inspection procedures lead to risks of corruption, and if transparency is an effective instrument to reduce the risk of corruption, among others.

Free riding

Free riding is a situation in which beneficiaries of a public good (hospitals, public information or public roads) do not contribute to the maintenance or payment for these services. This problem can emerge when two or more institutions oversee specific sectors or pursue policy objectives that overlap, and one takes advantage of their shared responsibilities to minimise its activities.

Regarding free riding, there is also a relevant amount of academic and empirical work. Olson (2002^[118]) remarks that the neoclassical perspective states that free riding behaviour leads to under-provisioning of common pool resources. Coase, for example, analysed efficiency in allocating resources and obtaining results in the presence of externalities, arguing that low transaction costs and well-defined property rights, will lead to reallocation of resources. However, criticism lies precisely in the free riding problem, as there may be incentives to avoid regulation and bribe for a specific allocation of resources (Coase, 1960^[119]). Elinor Ostrom more recently underlined that institutional arrangements for common-pool resources and public goods not necessarily 'fit' only the market or the state. According to Ostrom, although one of the main goals in designing institutions is to nudge self-interest to achieve better outcomes, her empirical research argues that the core goal of public policies is designing institutions to motivate humans. Therefore, the question to ask is how polycentric institutions can help or hinder policy objectives (Ostrom, 2010^[120]). Venkatachalam, however, claims that there is a hidden failure even in those cases where community management is successful (claimed by Ostrom) and institutions require incentive-based tools (Venkatachalam, 2011^[121]).

In a recent contribution to the economic literature, Martimort and Lefebvre analysed two approaches regarding the effects on public policy stemming from group formation (Lefebvre and Martimort, 2020^[122]). Taking advantage of mechanism design and common agency approaches, they analysed the creation and competition of interest groups. From an optimistic point of view, competition leads to the right balance between interest groups (Lefebvre and Martimort, 2020^[122]).

A free riding approach can be useful if SAI are interested in auditing regulators in compliance with their duties when they have shared responsibilities in some industries. For instance, ASF could audit if energy and environmental regulators co-ordinate and achieve shared objectives. For Mexico, the energy and the environmental sector are prone to the free rider problem, as there is a specific regulator mediating both issues, the Agency of Safety, Energy and Environment of Mexico (*Agencia de Seguridad, Energía y Ambiente, ASEA*).

Co-ordination

In organisational design, it is frequent that different agencies converge at regulating industries, each with specific policy issues to tackle: protecting the environment, regulating market power, or protecting workers or consumers. An advantage of splitting powers is increasing specialisation and reducing regulatory capture risks, because observability increases and the cost of undue influence is therefore higher. At the same time, however, overlapping policy responsibilities may raise issues of over-regulation, policy conflicts, or even regulatory gaps and voids. Likewise, given that separation of powers requires co-ordination, it may also induce free riding problems, leaving unobserved functions of regulators.

Institutional arrangements could minimise co-ordination issues. In principle, these can be tackled through accountability and transparency, as supervisors can monitor whether regulatory agencies are accomplishing their activities.

Landau (1969^[123]) discusses the notion of redundancy as a negative effect and argues that, although overlapping functions are generally considered a waste of resources, redundancy could be an opportunity to ensure the adequate functioning of public policies. In this case, overlapping functions may increase observability and the cost of regulatory capture.

Freeman and Rossi, on the other hand (2012^[124]), gathered specific forms of co-ordination that agencies in the United States have adopted to achieve a well-functioning regulatory process when it is decided to split functions. These co-ordination agreements such as interagency co-ordination, joint policy-making and presidential management co-ordination, aim to increase benefits and reduce the costs of shared regulatory space.

Co-ordination of institutions is closely related to free riding. In this case, ASF could plan performance audits focusing on institutional co-ordination practices to achieve goals and objectives with efficiency, economy and effectiveness.

Recognising the challenges that regulators face when discharging their duties, the OECD developed *The Governance of Regulators* (OECD, 2014^[125]). These principles can help mitigate the risks and lessen the potential impacts generated by regulatory capture and other information-related concerns such as moral hazard, adverse selection and free riding.

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Facilitating the Implementation of the Mexican Supreme Audit Institution's Mandate

REGULATORY POLICY AND GOVERNANCE

This report aims to support Mexico's Supreme Audit Institution (Auditoría Superior de la Federación, ASF) to fulfil its mandate and systematically extend the portfolio of its performance audits to address regulatory policy and governance of regulatory bodies. It reviews OECD instruments and indicators relative to regulatory governance, the ASF experience in working in these fields, as well as the good practices of other supreme audit institutions (SAIs) from OECD countries. It also provides guidance on specific audits and initiatives that ASF could adapt as part of its efforts. By systematically extending its portfolio of audits to regulatory policy issues, ASF follows a trend and good practice that is becoming standard among SAIs.

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