OECD Reviews of Regulatory Reform

Regulatory Policy in Colombia

GOING BEYOND ADMINISTRATIVE SIMPLIFICATION

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BETTER POLICIES FOR BETTER LIVES

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Foreword

The OECD Review of Regulatory Policy in Colombia is one of a series of country reports carried out under the OECD's Regulatory Reform Programme, in response to the 1997 mandate by OECD ministers.

The OECD has assessed the regulatory management policies of 24 member countries, as well as Brazil, China, Indonesia, and Russia. The reviews aim at assisting governments to improve regulatory quality – that is, to reform regulations to foster competition, innovation, economic growth, and important social objectives. The review methodology draws on the 2012 *Recommendation of the Council on Regulatory Policy and Governance*, which brings the 2005 *Guiding Principles for Regulatory Quality and Performance* up to date, and also builds on the 1995 *Recommendation of the Council of the OECD on Improving the Quality of government Regulation*.

The country reviews follow a multi-disciplinary approach and focus on the government's capacity to manage regulatory reform, on enforcement, and on the regulatory framework of specific sectors against the backdrop of the medium-term macroeconomic situation.

Taken as a whole, the reviews demonstrate that a well-structured and implemented programme of regulatory reform can make a significant contribution to better economic performance and enhanced social welfare. Economic growth, job creation, innovation, investment, and new industries are boosted by effective regulatory reform, which also helps bring lower prices and more choices for consumers. Comprehensive regulatory reforms produce results more quickly than piece-meal approaches; and they help countries adjust more quickly and easily to changing circumstances and external shocks. At the same time, a balanced reform programme must take social concerns into account. Adjustments in some sectors are painful, but experience shows that the costs can be reduced if reform is comprehensive and accompanied by appropriate support measures.

While reducing and reforming regulations are key elements of a broad programme of regulatory reform, experience also shows that in more competitive and efficient markets, new regulations and institutions may be necessary to ensure compatibility of public and private objectives. Sustained and consistent political leadership is another essential element of successful reform, and a transparent and informed public dialogue on the benefits and costs of reform is necessary for building and maintaining broad public support.

The policy options presented in the reviews may pose challenges for each country. However, the in-depth nature of the reviews and the efforts made to consult with a wide range of stakeholders reflect the emphasis placed by the OECD on ensuring that the policy options presented are relevant and attainable within the specific context and policy priorities of the country.

This review consists of ten chapters, providing an assessment and recommendations on the management of regulatory policies, institutions, and tools in the central government of Colombia, as well as a case study on the regulatory framework of the Special, Industrial, and Port District of Barranquilla, which also introduces a framework for multi-level regulatory governance.

This review of Colombia has been conducted under the supervision of the OECD Regulatory Policy Committee whose mandate is to assist both members and non-members in building and strengthening capacity for regulatory quality and regulatory reform. The Regulatory Policy Committee is supported by staff within the Regulatory Policy Division of the Public Governance and Territorial Development Directorate.

The OECD Public Governance and Territorial Development Directorate's unique emphasis on institutional design and policy implementation supports mutual learning and diffusion of best practice in different societal and market conditions. The goal is to help countries build better government systems and implement policies at both national and regional level that lead to sustainable economic and social development. The directorate's mission is to help governments at all levels design and implement strategic, evidence-based and innovative policies to strengthen public governance, respond effectively to diverse and disruptive economic, social and environmental challenges and deliver on government's commitments to citizens.

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Acronyms and abbreviations

ACCC	Colombian Association of Capital Cities (*Asociación Colombiana de Ciudades Capitales*)
ADERASA	Association of Water Regulatory Bodies of the Americas (*Asociación de Entes Reguladores de Agua Potable y Saneamiento de las Américas*)
AMBQ	Metropolitan Area of Barranquilla (*Área Metropolitana de Barranquilla*)
AMV	Stock Market Self-regulator (*Autorregulador del Mercado de Valores*)
AUNAP	National Fishing and Aquaculture Authority
CAATEL	Andean Committee of Telecommunication Authorities (*Comité Andino de Autoridades de Telecomunicaciones*)
CAE	Business Support Centres (*Centros de Atención Empresarial*)
CEC	Commission for Evaluation and Control (France)
CITEL	Inter-American Telecommunication Commission (*Comisión Interamericana de Comunicaciones*)
CLAD	Latin American Centre for Development Administration *(Centro Latinoamericano de Administración para el Desarrollo)*
COFEMER	Mexico's Federal Commission for Regulatory Improvement (*Comisión Federal de Mejora Regulatoria*)
CONFIS	Superior Council on Fiscal Policy (*Consejo Superior de Política Fiscal*)
CONPES	National Council on Economic and Social Policy (*Consejo Nacional de Política Económica y Social*)
COP	Colombian pesos
CRA	Water and Sanitation Regulatory Commission (*Comisión de Regulación de Agua Potable y Saneamiento Básico*)
CRC	Communications Regulatory Commission (*Comisión de Regulación de Comunicaciones*)

CREG	Energy and Gas Regulatory Commission (*Comisión de Regulación de Energía y Gas*)
DAFP	Administrative Department of the Public Function (*Departamento Administrativo de la Función Pública*)
DAMAB	Technical Administrative Department of the Environment, Barranquilla (*Departamento Técnico-Administrativo del Medio Ambiente, Barranquilla*)
DIAN	Direction of Taxes and National Customs (*Dirección de Impuestos y Aduanas Nacionales*)
DNP	National Planning Department (*Departamento Nacional de Planeación*)
EDUBAR	Urban Development Enterprise of Barranquilla
ESIN	Normative Impact Study (*Estudio de Impacto Normativo*)
EU	European Union
FDI	Foreign Direct Investment
FINDETER	Bank for Development (*Financiera del Desarrollo*)
FTA	Free trade agreements
GDP	Gross Domestic Product
GEL	Government online (*Gobierno en línea*)
GIC	Governor in Council (Canada)
GOC	Government of Colombia
GRAT	Group on Rationalisation and Automatisation of Formalities (*Grupo de Racionalización y Automatización de Trámites*)
IADB	Inter-American Development Bank
ICA	Colombian Agricultural Institute (*Instituto Colombiano Agropecuario*)
ICT	Information and Communication Technologies
INDUMIL	Military Industry
INVIMA	National Institute for Drugs and Foods Supervision (*Instituto Nacional de Vigilancia de Medicamentos y Alimentos*)
IVC	Inspection, Surveillance and Control System (*Sistema de Inspección, Vigilancia y Control*)
Latin-REG	Latin American Network on Regulatory Improvement and Competitiveness

LOOT	Organic Law on Territorial Organisation (Ley Orgánica de Ordenamiento Territorial)
MCIT	Ministry of Trade, Industry, and Tourism *(Ministerio de Comercio, Industria y Turismo*)
MINTIC	Ministry for ICT (*Ministerio de Tecnologías de la Información y las Comunicaciones*)
NGO	Non-governmental organisations
OACI	International Civil Aviation Organization (*Organización Internacional de la Aviación Civil*)
PC	Productivity Commission (Australia)
PCA	Parliamentary Control of the Administration (Switzerland)
PEERT	Procedure to Elaborate and Issue Technical Regulations (*Procedimiento de Elaboración y Expedición de Reglamentos Técnicos*)
PMR	OECD Product Market Regulation indicator
PRAP	Programme to Renew the Public Administration (*Programa de Renovación de la Administración Pública*)
PRRTE	Programme for Rationalisation of Business Regulations and Formalities (*Programa de Racionalización de Regulaciones y Trámites Empresariales*)
PVD	Digital life plan (*Plan Vive Digital*)
REGULATEL	Latin American Forum of Regulatory Bodies on Telecommunications (*Foro Latinoamericano de Entes Reguladores de Telecomunicaciones*)
RFTS	Federal Registry of Formalities and Services
RIA	Regulatory Impact Analysis
RIS	Regulatory Impact Statement
RUE	Single Registry of Enterprises (*Registro Único de Empresas*)
SCM	Standard Cost Model
SGG	Secretariat General of Government
SIA	Statutory Instruments Act (Canada)
SIC	*Superintendencia* of Industry and Commerce (*Superintendencia de Industria y Comercio*)

SJ	Legal Secretariat of the Presidency (*Secretaría Jurídica de la Presidencia*)
SMEs	Small and medium-sized enterprises
SNR	*Superintendencia* for Notaries and Registration (*Superintendencia de Notariado y Registro*)
SUI	Unique Information System (*Sistema Único de Información*)
SUIN	Unique system of normative information (*Sistema Único de Información Normativa*)
SUIT	Single system of formality information (*Sistema Único de Información de Trámites*)
TB	Treasury Board
TQM	Total quality management
VUCE	One-stop shop for foreign trade (*Ventanilla Única de Comercio Exterior*)
VUR	One-stop shop for property registration (*Ventanilla Única de Registro*)
WTO	World Trade Organization

Executive summary

Colombia is a unitary constitutional republic, composed of 32 departments (*departamentos*), as well as municipalities, special districts, and one capital-district (*Distrito-Capital*) in Bogota.

The Political Constitution of 1991 brought a change in the function of the State, which left its interventionist role as exclusive service provider and opened up the possibility of private sector participation in the economy. The Colombian State is now in charge of issuing public policies and regulations, and is responsible mainly for supervision and control. This move was accompanied by the creation of regulatory commissions (*comisiones de regulación*), which contributed to establish more predictable, coherent, and transparent regulatory frameworks.

Several administrative reforms have accompanied this process with the aim to have a more professional, transparent and citizen-oriented public administration. The Government of Colombia (GOC) has embarked in administrative simplification efforts, with the overarching goal of streamlining formalities that affect business and citizens (the term "formality" is used throughout the report as a literal translation for the Spanish word *trámite*).

Colombia has also made progress over the last few years in introducing a number of elements of regulatory reform, but it lacks a whole-of-government policy for regulatory quality. The GOC has moved forward in the promotion of regulatory quality requirements for the preparation and implementation of regulation, as well as on the elimination of unnecessary formalities affecting business and services to citizens. A pro-competitive policy has also become an important part of regulatory decision making.

However, this approach needs to be re-shaped and requires the adoption of a systemic approach to challenge the reasons for and the logic behind formalities and, most importantly, regulations.

Measures to promote regulatory quality are spread across in the Colombian administration and various institutions have taken the lead in these efforts, which could result in duplication. The National Planning Department (*Departamento Nacional de Planeación*, DNP) leads the discussion on regulatory reform; the Administrative Department of the Public Function (*Departamento Administrativo de la Función Pública*, DAFP) has a leadership role in the anti-formalities policy; the Ministry for ICT and Communications (*Ministerio de Tecnologías de la Información y las Comunicaciones*, MINTIC) leads the Government online strategy; the Ministry of Trade, Industry, and Tourism (*Ministerio de Comercio, Industria y Turismo*, MCIT) is responsible for the co-ordination of technical regulations and conformity assessment procedures; the Ministry of Justice and Law (*Ministerio de Justicia y del Derecho*) is the leader of legal policies; regulatory commissions are in charge of specific economic sectors, and *Superintendencias* oversee the implementation of regulation.

To date, there is no single institution responsible for promoting regulatory reform across the Colombian administration, which reflects the piecemeal approach to regulatory management. As a result, mobilisation of the whole administration is still a challenge to overcome.

Colombia has made significant efforts to improve transparency in the preparation and implementation of regulations. The communication of regulatory proposals is generally sound, as some institutions such as regulatory commissions prepare regulatory agendas.

There is a legal requirement to consult in the preparation of regulations, which applies to all institutions with regulatory powers, but its implementation has been difficult. Methods for conducting consultation vary across the administration and it is not clear how effective it is, given that participation tends to be limited. Specific requirements on consultation for the whole administration could be improved, taking into consideration existing good practices.

When preparing new regulations, the administration focuses predominantly on the review of legal quality. However, the GOC has recently shown an interest in introducing Regulatory Impact Analysis (RIA) to improve the quality of new regulations. Strong political support is needed to ensure the tool is widely used within the public administration. To date, a few Colombian institutions have some initial experiences with RIA, but these still need to be consolidated. Specific elements of a RIA system are still to be developed in Colombia, such as establishing clear criteria, procedures, and thresholds.

In Colombia there is a single point of information on formalities. In fact, formalities can only be required to citizens if they are registered in the Single System of Formality Information (*Sistema Único de Información de Trámites*, SUIT).

The GOC does not make systematic use of regulatory reviews. Given that there is no *ex ante* regulatory assessment system in place as a requirement for the whole public administration, there is a risk of regulatory inflation and a need to systematise and streamline the stock of regulations.

Concerning administrative simplification initiatives, the GOC has been successful in advancing one-stop shops to streamline specific business procedures and in setting up participatory mechanisms. However, simplification initiatives should focus on high-impact procedures and applied to regulations, not just formalities.

In Colombia, regulatory functions are separate from the enforcement and supervisory functions related to promoting compliance. The *Superintendencias* are primarily responsible for this and have reported that the level of compliance with regulation is generally good. There are, however, gaps in carrying out enforcement roles, including the limited use of risk-based approaches to inspections and enforcement.

The GOC has had limited experience in conducting *ex post* evaluations of laws and regulations. Regulatory commissions are required to conduct an *ex post* evaluation on the dynamic and sustainability of their respective sectors every three years. A more systematic approach to *ex post* evaluation would help to identify any necessary amendments to make regulations more efficient, up-to-date, and effective.

Concerning multi-level regulatory governance, even though the attributions of departments, districts, and municipalities are residual, there are fields in which their powers can impact economic activity. Hence, it is important that territorial entities apply better regulation policies and practices.

There is a need to establish a multi-level dialogue platform to discuss national priorities and agree on policy agendas. Likewise, there is wide scope for the central government to facilitate the development and implementation of regulatory policies at the sub-national level.

Chapter 1

Assessment and recommendations

Economic context and drivers for regulatory reform

Colombia is a unitary constitutional republic, composed of 32 departments (*departamentos*), as well as municipalities, special districts, and one Capital-District (*Distrito-Capital*) in Bogota. The Government of Colombia (GOC) functions within the framework of a presidential representative democratic republic as established in the Constitution of 1991. In accordance with the principle of separation of powers, government is divided into three branches: executive, legislative, and judicial.

The Political Constitution of 1991 is the highest legal instrument in the country. Its promulgation brought a change in the function of the State, which left its interventionist role as exclusive service provider and opened up the possibility of private sector participation in the economy, increasing competition. The Colombian State is now in charge of issuing public policies and regulations, being responsible mainly for supervision and control. This move was accompanied by the creation of regulatory commissions, which contributed to establish more predictable, coherent, and transparent regulatory frameworks where private participation is encouraged.

Several administrative reforms have accompanied this process with the aim to have a more professional, transparent and citizen-oriented public administration. The GOC has embarked in administrative simplification efforts, with the overarching goal of streamlining formalities that affect business and citizens. The GOC has also created regulatory commissions for utilities sectors and has separated out the supervisory function through the establishment of *Superintendencias*. It has also introduced principles and tools to improve the quality of regulations, which have focused mainly on legislative technique.

Public governance context for regulatory reform

Regulatory reform is closely linked to constitutional principles and various normative acts that have shaped the way the public administration deals with laws and regulations from their design and conception to their implementation and review. In this sense, positioning regulatory reform beyond the assurance of legal quality still has some way to go, despite the fact that the GOC is proactively promoting the elimination of restrictions to competition and barriers in product markets.

Regulatory management corresponds to a traditionally strong executive. The Colombian administration is structured around sectors, which facilitates co-ordination and coherence, but the executive remains a key player in defining the tasks the various institutions are responsible for, as well as for nominating the head of most public entities.

Regulatory reform developments and the main findings of the report

Strategy and policies for regulatory reform

Colombia has made progress over the last few years in introducing a number of elements of regulatory reform, but it lacks a whole-of-government policy for regulatory quality. The GOC has moved forward in the promotion of regulatory quality requirements for the preparation and implementation of regulation, as well as on the elimination of unnecessary formalities affecting business and services to citizens. A pro-competitive policy has also become an important part of regulatory decision making. Law 1340 of 2009 establishes mandatory consultation of the SIC on proposed regulations that could have an impact on competition, but its concept is non-binding.

However, after several years in place, this approach needs to be re-shaped, in order to go deeper into the legal background of procedures. It also requires the adoption of a systemic approach to challenge the reasons for and the logic behind formalities and, most importantly, regulations.

A number of initiatives have been launched to make the administration more transparent and accountable vis-à-vis citizens. The GOC has promoted information sharing through the use of ICT mechanisms that encourage dialogue between authorities and a wide range of stakeholders.

Institutional capacities for regulatory reform

Measures to promote regulatory quality are spread across in the Colombian administration and various institutions have taken the lead in these efforts, which could result in duplication and divert resources from key activities. The DNP leads the discussion on regulatory reform; the DAFP has a leadership role in the anti-formalities policy; the MINTIC leads the Government online strategy; the MCIT is responsible for the co-ordination of technical regulations and conformity assessment procedures; the Ministry of Justice and Law is the leader of legal policies; regulatory commissions are in charge of specific economic sectors, and *Superintendencias* oversee the implementation of regulation.

To date, there is no single institution responsible for promoting regulatory reform across the Colombian administration, which reflects the piecemeal approach to regulatory management. Institutions in charge of regulating operate under a top-down approach to decision making that characterises the Colombian presidential system, rather than to a co-ordinating, single institution with a coherent approach towards regulatory quality. As a result, mobilisation of the whole administration is incomplete and the strong political support for regulatory reform needs to be translated into a more effective way of ensuring that quality principles are observed.

None of the institutions mentioned previously has a clear mandate to perform the functions associated to a regulatory oversight body. It is critical to reflect on possibilities that could lead to the selection of the best option for such an institution.

Improved transparency through consultation and communication mechanisms

Colombia has made significant efforts to improve transparency in the preparation and implementation of regulations. The communication of regulatory proposals is generally sound, as some institutions such as regulatory commissions prepare regulatory agendas and inform the public about major regulatory decisions, even if sometimes the

information is incomplete. Decree 2696 of 2004 regulates the procedures to be followed for general acts issued by regulatory commissions. According to this decree, all information regarding normative agendas must be published yearly.

There is a legal requirement to consult in the preparation of regulations (contained in Law 1437 of 2011), which applies to all institutions with regulatory powers, but its implementation has been difficult. For example, Decree 2696 of 2004 established that administrative acts of general application issued by regulatory commissions must be preceded by a citizen participation process to allow for input from stakeholders. However, methods for conducting consultation vary across the administration and it is not clear how effective it is, given that participation tends to be limited.

There is room for improvement in terms of regulatory consultation and communication in Colombia. Specific requirements for the whole administration could be improved, taking into consideration existing good practices. More information about the process of producing regulations and communicating results is essential to encourage public participation. Clear deadlines for consultation periods could avoid consultation become a pure formality. Employing various techniques for consultation could assist with developing a more effective way of gathering information.

The development of new regulations

There are no comprehensive standards within Colombia for how to prepare regulations. Some good practices do exist in the regulatory process and these have been encouraged over the last few years. The development of recent guidelines on the preparation of new regulations could help advance standards for preparing norms and improve them over time.

During the process of preparing new regulations, the administration focuses predominantly on the review of legal quality. When preparing laws, for instance, a careful review of the constitutionality of the proposed laws is conducted to avoid future issues with the Constitutional Court. Reviews of legal quality are also conducted in relation to secondary regulation.

The GOC has recently shown an interest in introducing RIA to improve the quality of new regulations. Strong political support is needed to ensure the tool is widely used within the public administration, and it should be compulsory for regulatory institutions. To date, a few Colombian institutions have some initial experiences with RIA, but this does not extend to undertaking a sound cost-benefit analysis, and the supporting documents do not always feed into the decision-making process. Other elements of a RIA system are still to be developed in Colombia, such as establishing clear criteria, procedures, and thresholds for RIA and the selection of the methodological approach for impact assessment. The preparation of guidelines and supporting materials, which is yet to get underway, would assist with disseminating knowledge of RIA and improve the likelihood of regulators implementing it. Capacity-building and training are at the initial stages.

The management and rationalisation of existing regulation

In Colombia there is a single point of information on formalities. In fact, formalities can only be required to citizens if they are registered in the SUIT. Ministries and agencies are mandated by law to provide basic information on formalities through this system.

The GOC does not make systematic use of regulatory reviews. Despite the existence of the SUIT, there is no single database containing the full regulatory stock, information about the progress of legislative and regulatory proposals, and listing proposed amendments. The experience in developing SUIT, as well as those of sectoral inventories of regulation, could be leveraged to take stock of the complete inventory of laws and regulations in effect. A single database containing the regulatory stock does not necessarily have to be integrated into the SUIT, but would certainly complement the information on formalities provided by SUIT. Given that there is no *ex ante* regulatory assessment system in place as a requirement for the whole public administration, there is a risk of regulatory inflation and a need to systematise and streamline the stock of regulations.

Concerning administrative simplification initiatives, the GOC has been successful in advancing one-stop shops to streamline specific business procedures (i.e., starting-up a business, registering property, engaging in foreign trade operations) and in setting up participatory mechanisms, such as the Competitive Regulation programme. However, simplification initiatives should focus on high-impact procedures and should be applied to regulations, not just formalities.

Compliance, enforcement, and appeals

In Colombia, regulatory functions are separate from the enforcement and supervisory functions related to promoting compliance. The *Superintendencias* are primarily responsible for this role and they report that the level of compliance with regulation in Colombia is generally good. There are, however, gaps in carrying out enforcement roles, including the limited use of risk-based approaches to inspections and enforcement.

Compliance and enforcement should be complemented by access to an appeals system that enables citizens and businesses to challenge regulatory decisions. In Colombia, the first instance to challenge a regulatory decision, under certain circumstances, is direct revocation by those that issued the regulation. There are other mechanisms that give more opportunities to citizens and businesses to lodge a lawsuit, such as the State Council (for resolutions taken by regulatory commissions) and the Constitutional Court.

Ex post *regulatory evaluation*

The GOC has had limited experience in conducting *ex post* evaluations of laws and regulations. According to Decree 2696 of 2004, regulatory commissions are required to conduct an *ex post* evaluation on the dynamic and sustainability of their respective sectors every three years. Other institutions assess particular tools or programmes as the need arises. A more systematic approach to *ex post* evaluation would identify any necessary amendments to make regulations more efficient, up-to-date, and effective.

Multi-level regulatory governance

Even though the attributions of departments, districts, and municipalities are residual and limited by law, there are fields in which their powers can impact economic activity (i.e., by regulating land use, supervising and controlling activities concerning construction). Hence, it is important that territorial entities apply better regulation policies and practices. In general, they have been successful in advancing simplification initiatives to improve *Doing Business* rankings. However, sub-national governments do not apply comprehensive regulatory policies to the different stages of the regulatory governance cycle.

There is a need to establish a multi-level dialogue platform to discuss national priorities and agree on policy agendas. Likewise, there is wide scope for the central government to facilitate the development and implementation of regulatory policies at the sub-national level, in conjunction with increased political commitment from the territorial entities.

Key recommendations

Chapter 3. Regulatory reform and policies in a national context

- The GOC should, as a key priority, develop and issue a formal regulatory policy, which is explicit, binding, and consistent across the whole-of-government, establishing the procedures, institutions, and tools that will be used to pursue high-quality regulation.
- An explicit regulatory policy should clearly recognise that regulating is not the only feasible solution to a public policy problem and must establish procedures to determine when it is in the public interest to regulate.
- Following the conclusion reached by the National Development Plan 2010-14, regulatory policy should move beyond the administrative simplification of formalities to concentrate on the quality of regulation.

Chapter 4. Institutions to promote regulatory reform in Colombia

- The GOC should establish an institutional mechanism at the centre of government to promote regulatory quality, namely an oversight body in charge of regulatory reform.
- The current regulatory structure of Colombia requires an advisory mechanism at the highest political level to promote and advocate regulatory quality.
- Autonomy and accountability mechanisms should be strengthened for regulatory commissions and *Superintendencias* to facilitate better performance and efficiency.
- The GOC should strive to improve co-ordination mechanisms between ministries, regulatory commissions and *Superintendencias* by ensuring they systematically discuss at early stages of the regulatory process and participate in the preparation of new regulations and the interpretation of existing ones.

Chapter 5. Colombia's administrative capacities for making new regulations

- The GOC should develop a common and compulsory set of standards and administrative requirements to prepare regulations of the highest quality and evidence-based.
- Develop and implement mandatory standards on the use of public consultation as a means to involve citizens, business and civil society in the regulatory process and obtain better policy outcomes.

- The GOC should integrate the systematic use of RIA in the policy-making process.

Chapter 6. The management and rationalisation of existing regulations in Colombia

- The GOC should undertake a comprehensive and across-the-board review of the stock of regulations, starting by creating a centralised registry of laws and regulations.
- The GOC should focus on high impact regulations to provide momentum to a long-term simplification programme. Making use of qualitative methods and measuring regulatory burdens against which achievements and savings can be assessed are complementary approaches to move forward in this direction. Citizens, business and civil society should participate in this effort and the experience of Competitive Regulation might be leveraged for this purpose.
- The GOC would advance regulatory certainty and responsiveness by adopting specific tools to increase discipline in the management of formalities.

Chapter 7. Compliance, enforcement and appeals in Colombia

- Regulatory bodies should promote the use of risk-based approaches to increase compliance, target regulations, and focus their resources.
- The GOC should improve judicial review processes of regulatory decision making through increasing specialisation of judges.
- Undertake an assessment of the current judicial review channels for regulatory decisions and identify areas for reform.

Chapter 8. Ex post *regulatory evaluation in Colombia*

- The GOC should promote the systematic use of *ex post* evaluation of regulations, regulatory reform programmes and institutions to make regulation more efficient and effective.

Chapter 9. Multi-level regulatory governance in Colombia

- When developing a national regulatory policy, the GOC should make explicit the roles that territorial entities should play to deliver better regulation, as well as the support that the central government will provide.
- The central government should work with the territorial entities to develop a permanent and institutionalised multi-level dialogue platform. The multi-level dialogue should facilitate political buy-in and a consistent approach at sub-national and national levels, which are necessary to pursue policies to advance productivity and growth.

Chapter 10. Regulatory reform in Barranquilla

- The Government of Barranquilla should develop a clear and simple regulatory policy that goes beyond simplification by formally establishing the process by which regulation is designed, a co-ordinating unit in charge of regulatory policies, and the tools that will be implemented to ensure compliance with regulatory quality criteria, as well as the role that stakeholders should play to strengthen regulatory management practices

- Based on already existing good practices, the Government of Barranquilla should promote a more systematic process to prepare new regulations and review existing ones, in order to increase their quality. The use of consultation and RIA should be an integral part of that process.
- The Government of Barranquilla should provide momentum to its simplification initiatives by extending the transactional capacities of its web-based tools.
- The Government of Barranquilla should devote efforts and resources to improving enforcement and compliance levels with regulation.

Chapter 2

The macroeconomic context in Colombia

This chapter summarises the OECD Economic Survey of Colombia. It sets out the macroeconomic context for the review, including recent macroeconomic trends, the contribution of regulatory reform to economic performance, and the remaining challenges for the Colombian economy, notably in terms of boosting labour productivity, adjusting to the commodity boom, and reducing income inequality. Prudent macroeconomic management has helped Colombia weather the recent financial crisis remarkably well, but the remaining challenges call for structural reform in both product and labour markets. Colombia's regulatory simplification efforts have led to significant improvements in the quality of the business environment and a more solid foundation for private sector development. This chapter argues that these efforts need now to translate into initiatives to improve regulatory quality more generally.

Colombia is Latin America's fourth largest economy, as measured by 2011 GDP. It is a middle-income economy, with GDP per capita (PPP) estimated at USD 10 103 for 2011 (OECD, 2013). The country covers an area of 1 142 000 km² (the fourth largest in South America). Its population was estimated at 46.9 million in 2011, 75% of which was urban, with a demographic growth rate averaging 1.2%.

Table 2.1. The Colombian economy in perspective

2011 or latest available data

Category /indicator	Measurement units	Colombia	LAC Average	OECD countries				Colombian ranking		
				Min	Mean	Median	Max	World	OECD	LAC
Surface area	1 000 km²	1 142	601	3	1 063	188	9 985	26	5	5
Pop.	1 000	46 927	17 493	319	36 623	10 823	311 592	28	10	3
Labour force	1 000	22 136	9 353	188	17 748	5 280	157 493	30	11	3
GDP										
At current FX-rate	USD bn	332	172	14	1 356	499	15 094	32	21	4
At PPP, current USD	USD bn	474	225	11	1 281	366	15 094	26	15	4
External trade	USD bn	124	74	15	790	449	4 770	51	31	6
GDP per capita										
At current FX-rate	USD	7 067	8 601	10 064	40 387	40 598	115 039	88	35	18
At PPP, current USD	USD	10 103	11 196	15 340	34 973	34 736	88 787	85	35	17
HDI		0.710	0.731	0.699	0.871	0.885	0.943	87	34	22

Note: External trade is the sum of exports and imports, USD.
HDI (Human Development Index) is an index measured on a scale from 0 = lowest to 1 = highest possible value.
LAC (Latin America and Caribbean) as per the World Bank, except for seven countries for which there are no recent data (Aruba, Cayman Islands, Curacao, St. Martin, Turcks and Caicos, Virgin Islands).

Source: World Development Indicators (World Bank), UNDP-UN.

Charting Colombia's economic growth

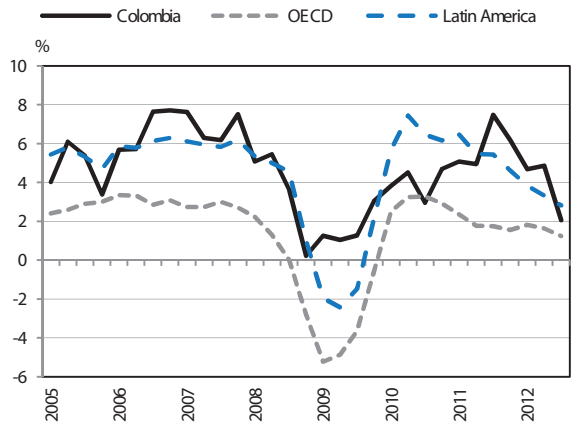
During much of the 20th century the Colombian economy was characterised by the application of industrial policy. There were a series of mergers and acquisitions and the formation of conglomerates was encouraged, within the context of protection of domestic industry and markets. This had a generally positive impact on Colombia's industrial growth, which rose by 830% between 1929 and 1957 and growth continued into the late 1970s, when the limitations of this import substitution model began to become apparent.

The modern era in Colombia's economy began in the early 1990s, when an ambitious policy of economic liberalisation was undertaken. A series of new laws were enacted, as well as a new Constitution (1991). The new initiatives included the liberalisation of imports (removal of quantitative restrictions and import licences, and tariff reductions) and the foreign exchange market, deregulation of foreign investment, fiscal decentralisation, financial, tax and labour reforms, reforms of the pension system and of the health sector, and privatisation and concessioning of public enterprises. The result was a period of significant economic growth in the country.

In 1998-99, however, Colombia's economy experienced an acute economic and financial crisis. This had its roots in the sharp growth in domestic demand which began in 1992 and was fed by heavy inflows of foreign private capital attracted by the economic deregulation programme (WTO, 2006). Real GDP fell by 4.2%, but beginning in 2003 economic growth resumed. Between 2003 and 2007 real GDP grew at an average annual rate of 5.9%, peaking in 2007 at 7.5%. In 2008 there was again a sharp slowdown, in the wake of the international financial crisis. The real increase in GDP was only 2.5%, or five percentage points below that of the previous year.

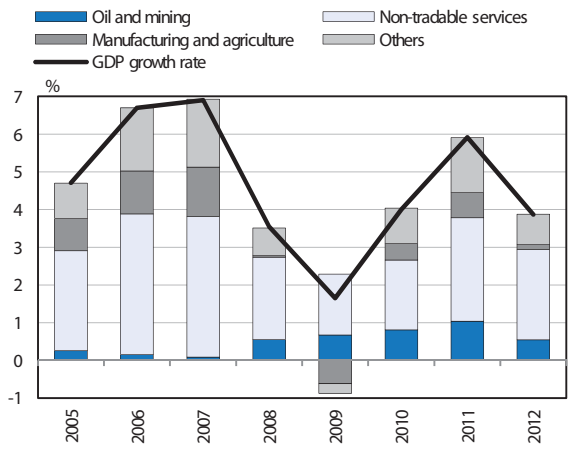
After a sharp deceleration in 2009, output growth recovered rapidly to reach 5.9% in 2011. Growth was underpinned by the booming mining sector, with commodity exports and investment boosted by the sharp rise in commodity prices. The mining sector grew by more than 14% in real terms in 2011. The non-tradable sectors have also been buoyant, particularly transport, financial services and construction. In contrast, manufacturing and agriculture have lagged behind, pointing to a three-speed economy, with mining pulling ahead, non-tradables faring well and non-mining tradable sectors suffering.

Figure 2.1. Real GDP growth



Source: OECD (2013), Banco de la República, DANE and ECLAC, http://dx.doi.org/10.1787/888932764325.

Figure 2.2. Real GDP growth by sector



Source: OECD (2013), Banco de la República, DANE and ECLAC, http://dx.doi.org/10.1787/888932764325.

Employment in the formal and informal sectors

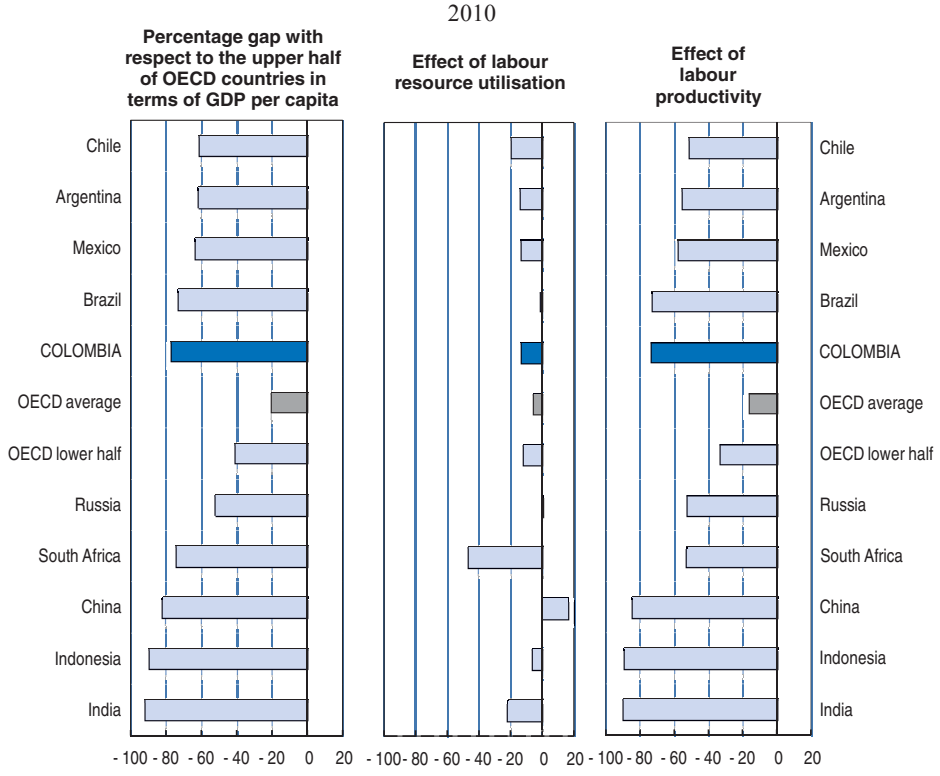
Driven by solid economic growth, total employment has increased by almost 15% over the past three years. More than 2.5 million jobs have been created, in particular in non-tradable service sectors (retail trade, hotels and restaurants as well as finance, insurance and real estate). However, at 10.8% in 2011, the unemployment rate was well above the OECD average. In addition, the majority of those working are employed in informal and low-productivity activities, and a third of the employed declare being under-employed. Women and the young are particularly exposed to the risk of unemployment, and the less qualified account for most of the informal workers. Labour costs are high in the formal sector, pushing people with low productivity into the informal sector or into unemployment.

Low labour productivity

Colombia is an upper middle income country, but its income per capita is 70% below the OECD average and below many other emerging markets. Low labour productivity explains most of the gap (Figure 2.3), although it accelerated during the mid-2000s (Figure 2.4), largely reflecting factors such as improved security. The large informal sector has particularly low productivity, and bringing this activity into the formal sector is therefore key to raising aggregate productivity. Raising productivity will require: reducing informality via labour and product market as well as tax reforms, increasing the quantity and quality of education, developing transport infrastructure, and improving access to finance. Progress towards an enhanced public safety situation and less corruption is also important in this respect.

Figure 2.3. The sources of real income differences

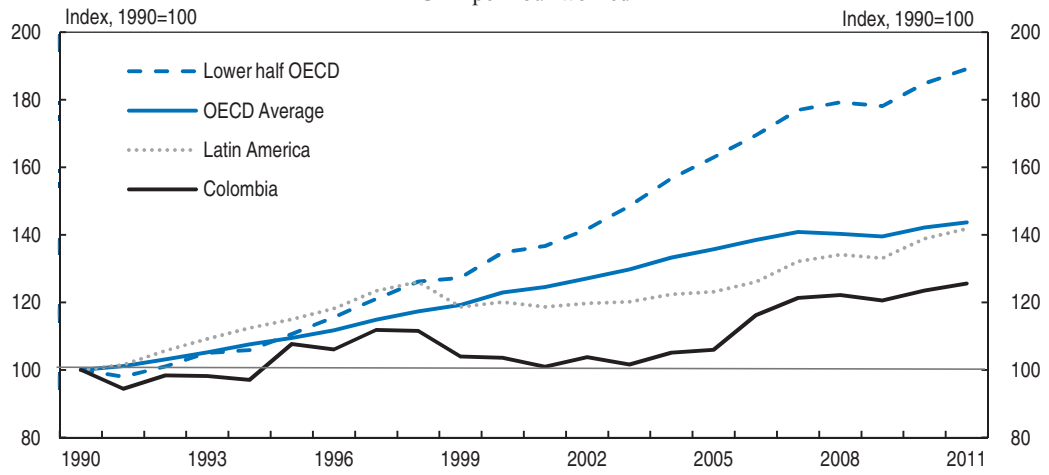
2010



Source: Adapted from OECD (2010), *Economic Policy Reforms: Going for Growth*, OECD Publishing, doi: 10.1787/growth-2010-en; and DANE (Colombia's National Statistics Bureau) for Colombia.

Figure 2.4. Progress in labour productivity has been slow

GDP per hour worked



Note: Lower half OECD represents the ten OECD member countries with the lowest GDP per capita in 1990. These are Chile, Czech Republic, Estonia, Hungary, Korea, Mexico, Poland, Slovak Republic, Slovenia and Turkey. Chile and Mexico are also part of the Latin America group, along with Argentina, Brazil and Colombia. Data for 2011 are estimates for all countries except Colombia.

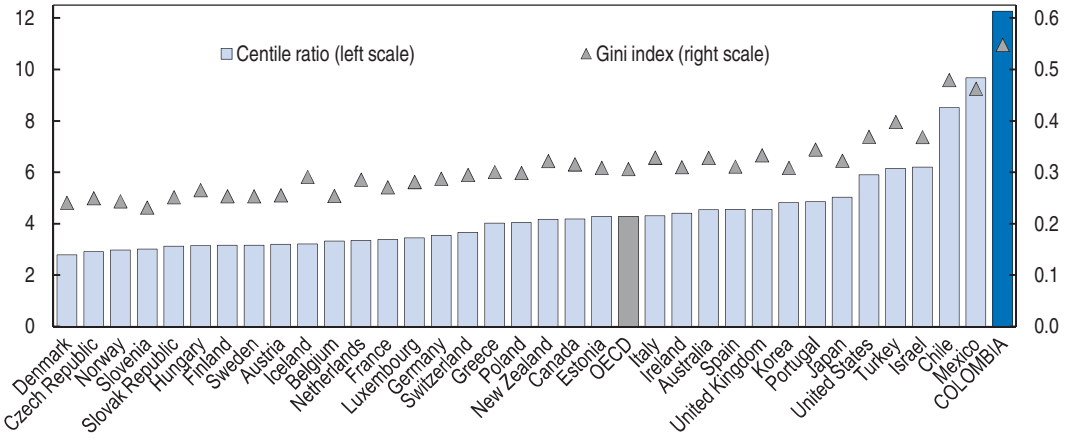
Source: The Conference Board Total Economy Database, DANE.

Income inequality

Improving the country's well-being also requires reducing income inequality. Economic growth has contributed to a decline in absolute poverty and, to a lesser extent, in income inequality since the mid-2000s. However, income inequality in Colombia far exceeds levels in OECD countries and is more than twice the OECD average (Figure 2.5). Poverty also remains very high, partly reflecting long-standing internal conflicts and a massive displacement of people (3.7 million people over the period 1997-2011).

Figure 2.5. The divide between the rich and the poor is pronounced

Household equalised disposable income: Gap between the 10th and the 90th centile and Gini index in the late 2000s



Note: Data for France and Ireland refer to the mid-2000s instead of the late 2000s. Data for Colombia are for 2011.

Source: OECD Income Distribution and Poverty, OECD Social Expenditure Statistics (database), DANE for Colombia. http://dx.doi.org/10.1787/888932764306.

Liberalising trade

Colombia has liberalised trade over the past decade and this could boost the productivity and competitiveness of non-commodity exports. In particular, tariffs on industrial inputs and capital goods have been cut (USTR, 2011) and the average weighted tariff fell from 12% in 2006 to 8% in 2010. In addition, a temporary reduction for some items brought the average tariff to 6% in August 2011. Nevertheless, average tariffs remain well above the OECD average of about 3%. Colombia has concluded several free-trade agreements, which reduce effective tariffs. It could take further advantage of the opportunities of trade by actively seeking tariff reductions and by making temporary cuts permanent. Lowering the tariffs on agricultural products, which are high by regional standards, could also reduce the price of basic consumption goods and thus contribute to alleviating absolute poverty.

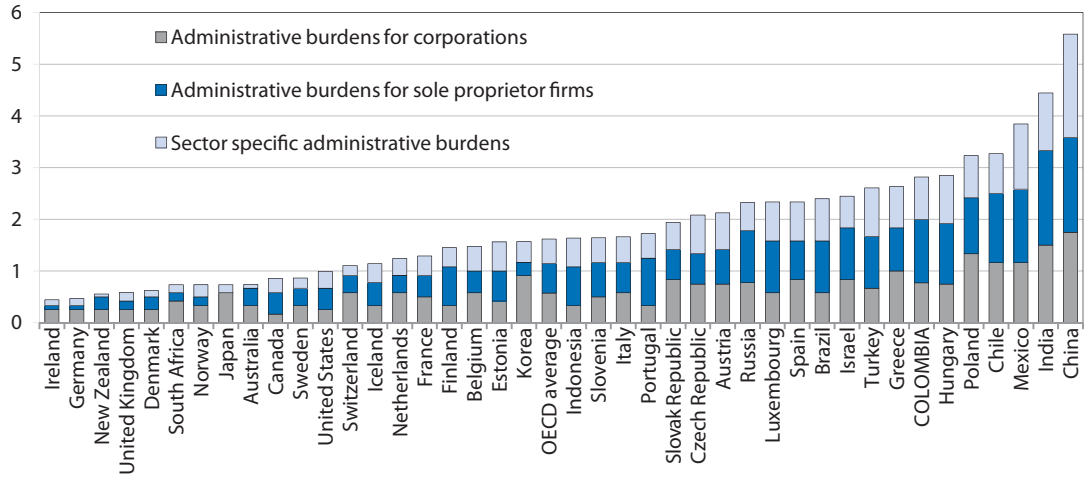
Weak competition in product markets

Colombia ranks very well in terms of its business environment relative to other Latin American countries (World Bank, 2012). However, productivity growth is hindered by weak competitive pressure in product markets. These may be related to rules of conduct imposed by regulators, entry barriers, and targeted preferential treatment. In the past, politicians have extended favourable tariff and tax treatment and export incentives to sectors and regions with large voter bases, powerful business groups or strong political connections (Eslava and Meléndez, 2009). The industrial sectors that benefitted most from these privileges over the period 1998-2006 include food products, apparel and textiles, and the flower industry. Because of this, overall productivity is hindered by excessive concentration in certain sectors. For instance, concentration in the mobile phone sector is one of the highest in the world, with an adverse impact on service prices, calling for measures to increase the competition among mobile operators (Jullien et al., 2010).

Improving the regulatory framework for entrepreneurship

Further efforts to decrease administrative burdens on start-ups would facilitate business formalisation. Analysis of the OECD Product Market Regulation (PMR) indicator shows that barriers to entrepreneurship remain relatively low in comparison to other emerging economies and some OECD economies, and the regulatory and administrative opacity and the legal barriers to competition do not seem to affect entrepreneurship. In contrast, administrative burdens for sole proprietor firms and, to a lesser extent for some sectors, as well as for start-ups, are relatively high in comparison to OECD economies (Figure 2.6). Despite recent improvements in international rankings, such as business start-ups (World Bank, 2012), some constraints to entrepreneurship remain. There are many institutions involved in the process to start a business, including the Tax Office, the Registry of Commerce, the Family Compensation Fund (*Caja de Compensación Familiar*), the National Learning Service (*Servicio Nacional de Aprendizaje*, SENA), and notaries. Similarly, the number of procedures and the cost as a proportion of per capita income are close to twice those in the OECD average. Efforts to improve the efficiency and reduce red tape for start-ups could be more ambitious.

Figure 2.6. Administrative burdens on start-ups



Note: The scale of the indicator is from least to most restrictive (from 0 to 6). The chart includes OECD countries and selected emerging economies. 2012 data for Colombia and 2008 data for other countries.

Source: Product Market Regulation Database, www.oecd.org/economy/pmr, accessed 8 March 2013, http://dx.doi.org/10.1787/888932765522.

Strong economic outlook but Colombia's challenges require ambitious structural reforms

Prudent macroeconomic management has helped Colombia weather the recent financial crisis remarkably well. Several ambitious structural reforms are now under preparation, including on taxes, labour, pensions, and the health care sector. These reforms, together with the improved security situation, the ongoing peace process, rising mining activity and strong commodity prices, are underpinning strong growth.

Colombia's short-term growth prospects remain strong by OECD and Latin American standards. Enhanced macroeconomic policy settings, the benefits of a commodity boom and better security conditions have yielded strong economic growth since the early 2000s. To ensure sustainable and inclusive growth over the medium-term, the Colombian authorities are faced with three key challenges: adjusting to the commodity boom, boosting productivity growth, and reducing income inequality.

Addressing these challenges calls for structural reforms, although political economy and legal considerations may make it difficult to implement some of them. Policies should focus on boosting competitiveness and productivity, while facilitating the adaptability of the economy in both product and labour markets.

The contribution of regulatory reform to Colombia's economic performance

Regulatory reform is an important part of a government's toolkit for improving economic performance and meeting public policy goals. Over the past several decades Colombia has pursued a range of structural and institutional reforms. The emphasis has shifted over the years, reflecting the priorities of different administrations and the perceived needs of the economy. In the 1980s and early 1990s much of the focus was on macroeconomic management. As progress was made in laying a firm foundation of macroeconomic stability, the focus shifted to other areas (World Bank, 2013).

The government focused on policies and institutions seen as central to enhancing productivity and growth and boosting the country's competitiveness. As part of this, it set in motion reforms aimed at improving the regulatory framework and the rules underpinning private sector activity.

As Colombia has improved its business regulatory environment, results have shown in the World Bank's *Doing Business* indicators — including those on starting a business and paying taxes. Until 2008 the focus was largely on reducing transactions costs, such as by simplifying business start-up procedures or tax administration. These types of administrative simplification reforms have continued since 2008 and the government is proactively promoting competitiveness and the elimination of restrictions to competition and barriers in product markets.

The focus of reforms has now started to shift towards strengthening regulatory institutions and processes, but Colombia has not yet made sufficient progress in adopting a whole-of-government approach to regulatory quality.

Colombia's regulatory reform efforts have led to significant improvements in the quality of the business environment and a more solid foundation for private sector development. This now needs to translate into efforts to improve regulatory quality more generally. Nevertheless, Colombia's experience demonstrates the importance of sustaining reform efforts over time and adjusting them to the changing needs of the economy.

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Chapter 3

Regulatory reform and policies in a national context

Chapter 3 describes the administrative and legal environment for regulatory reform in Colombia, including an explanation of the hierarchy of regulations. It explains the core principles and legal instruments that set the policies the Government of Colombia pursues to improve its regulatory quality. In addition, the chapter analyses recent and current regulatory reform initiatives such as the policy for the simplification of formalities, government online, competition advocacy, and regulation inside government. Furthermore, the chapter describes current initiatives of international regulatory co-operation in which Colombia participates. Finally, it provides recommendations for Colombia to develop a formal and explicit regulatory policy.

The administrative and legal environment for regulatory reform in Colombia

Improving the quality of regulation and its impact on economic performance is key to Colombia maximising the benefits of a solid macroeconomic environment, improving conditions for business activity, and boosting investment and innovation. Despite the fact that the country does not have an explicit and integrated whole-of-government regulatory policy, there have been a number of initiatives to improve regulatory quality. In particular, much has been done in relation to the improvement of the legal quality of regulations. In addition, administrative simplification initiatives have been steadily pursued in the last decade, mainly driven by an interest to improve business competitiveness and promote entrepreneurship.

As defined by its Constitution, Colombia is a "social State of law" (*Estado social de derecho*), organised as a unitary republic and composed of different sub-national entities. Both the central government and the departments have three branches of government: the executive, the legislative, and the judiciary. Colombia's central government is composed of the President, who is both Head of State and Head of Government, ministers, and the directors of Administrative Departments. Regulation is prepared at the national level through laws, decrees, resolutions, and circulars. At the sub-national level, regulation is issued by Departments through ordinances (*ordenanzas*) and by municipalities through agreements (*acuerdos*). The hierarchy of laws and regulations is illustrated in Table 3.1.

The Superior Councils of the Administration manage the policy-setting and implementation activities of the national executive branch. These Councils – essentially the government's Cabinet Committees – are not analogous in their make-up to cabinet committees in OECD countries; in Colombia their membership extends beyond ministers to include directors of key Administrative Departments, a hybrid of an OECD-country ministry and state agency. The role of these Councils is to support the President and the government in formulating and implementing policy. The most important Superior Councils are the Council of Ministers (the Cabinet), the National Council on Economic and Social Policy (*Consejo Nacional de Política Económica y Social,* CONPES), the Superior Council on Foreign Trade (*Consejo Superior de Comercio Exterior)* and the Superior Council on Fiscal Policy (*Consejo Superior de Política Fiscal*, *CONFIS*).

There is no single or unified procedure for the preparation of regulations that is commonly applicable to the whole Colombian administration, even if some institutions, such as regulatory commissions, have managed to establish procedures that have been improved over time. In the last few years, some institutions have also introduced specific requirements, such as the need to consult with affected parties or initial efforts to conduct impact assessments, to ensure that quality controls, improvements and transparent mechanisms are used in the design and preparation of regulations.

Thus, public and generally applied standard procedures to prepare regulations within the Colombian administration do not exist, but most institutions follow customary practices. Regulatory proposals are initiated in the institution concerned and competent for the issue to be solved. All institutions have a legal department that follows up the preparation of the proposal and ensures it meets legal requirements. Co-ordination among

other institutions in a given sector is promoted, as well as consultation with affected stakeholders, even though specific consultation procedures differ. With the exemption of the competition authority, the *Superintendencia* of Industry and Commerce (*Superintendencia de Industria y Comercio*, SIC), no other institution makes comments on regulatory proposals in a compulsory way, and even this attribution might be at discretion of other institutions, depending on whether they send their proposal to the competition authority for review.

Table 3.1. The hierarchy of regulations in Colombia

1. Political Constitution	
2. International Treaties	
3. Laws: Political Constitution of Colombia, Chapter III	• Organic laws: Political Constitution, Art. 151 • Statutory laws: Political Constitution, Art. 152 • Framework laws: Political Constitution, No. 19, Art. 150 • Laws of attributions: Political Constitution, No. 10, Art. 150 • Laws to convene a referendum: Political Constitution, Art. 103 • Approving laws: Political Constitution, Art. 93, Art. 150 (No. 14, 16) • Ordinary Laws: Those promulgated by the Congress based on competences allocated in Chapter III of the Constitution
4. Decrees	• Law decrees (issued by extraordinary faculties by the executive): Political Constitution, No. 10, Art. 150 • Legislative decrees (issued in state of emergency): Political Constitution, Art. 212 • Statutory decrees • Regulatory decrees: Political Constitution, Number 11, Art. 189 • Framework decrees (those that develop framework laws) • Executive decrees (residual competence): Political Constitution, Part 4, Art. 115 • Compiling decrees
5. Resolutions: Political Constitution, No. 11, Art. 189	
6. Circulars: Colombian Technical Norm NTC 3234 documentation, elaboration of circulars	
7. Department Ordinances	
8. Municipal agreements	

Source: Information provided by DNP (National Planning Department).

Institutions with regulatory powers can also issue concepts (*conceptos*), which do not have the force of law, but might be used to interpret laws and regulations. Concepts are important documents that might be required in case of misunderstanding or to improve the implementation of regulations. Even though they are not legally binding, concepts complement the regulatory production in case of implementation gaps.

The Political Constitution of 1991 is the highest legal instrument in the country. Its promulgation marked a change in the role of the State in regulating economic activities. The State abandoned its interventionist role as the sole service provider and it opened up the economy to private sector participation, thereby increasing domestic competition. The role of the Colombian State now focuses on developing public policies and regulations, and it is primarily responsible for supervision and control. This move was accompanied

by the creation of regulatory agencies, called *Comisiones de Regulación*, which contributed to the establishment of more predictable, coherent, and transparent regulatory frameworks where private participation in economic activities is encouraged.

The current public administration in Colombia, at the national level, is composed of 24 sectors (see Table 3.2), which include 204 national entities. In addition, there are 3 617 territorial entities at all levels of government.

Table 3.2. Sectors of the public administration in Colombia

Presidency of the Republic	Social inclusion and reconciliation	Interior
Justice and law	Finance and public credit	Agriculture and rural development
Health and social protection	Labour	Mining and energy
Trade, industry, and tourism	Education	Environment and sustainable development
Housing, cities, and territory	Information and communications technology	Culture
Sports and leisure	Planning	Public function
Statistics	Science, technology, and innovation	Foreign affairs
Defence	Transport	Strategic intelligence

Source: DNP (2011), *Manual de Oferta Institucional del Gobierno Nacional hacia las Entidades Territoriales – MOI 2011*, Bogota.

An important administrative reform has taken place in order to make the State more efficient and transparent. It was introduced in 2002 as part of the strategy of the National Development Plan, called "The Programme to Renew the Public Administration (PRAP): Towards a Communitarian State" (*Programa de Renovación de la Administración Pública: Hacia un Estado Comunitario*),[1] which aims at the construction of an efficient, small, and ordered State. It was led by the DNP. The President was given extraordinary powers and introduced an administrative reform[2] that modernised the executive branch through the review of its functions, the removal of duplication in roles and responsibilities, and the introduction of performance management tools to improve the productivity of the public administration. The government introduced performance indicators to evaluate delivery of allocated responsibilities and to ensure citizens participation in the evaluation on how the public administration was executing its duties.

The DNP subsequently incorporated in the PRAP an institutional reform of regulation and control of business activities. The proposal's Conceptual Framework identified the incorporation of high quality regulation as an incentive to private investment, and the need to promote public participation and access to information to reduce asymmetries. The Conceptual Framework made specific recommendations to improve regulatory governance and normative processes, including: ensuring the separation between public policies and regulations, increasing accountability, ensuring autonomy of sectoral institutions, promoting public debate on the role of regulation, etc. The results of this administrative reform were mixed, as there were related improvements in terms of transparency and consultation, but it fell short in making deeper administrative changes and strengthening regulatory quality. The reform, however, paved the way for a discussion on the role of regulation and how to make it more effective and efficient.

The current government, through the 2010-14 National Development Plan – "Prosperity for All" – in the chapter on Sustainable Development and Competitiveness, recognises that regulation is a tool of government intervention that helps establish the environment, institutions and rights necessary to maximise social welfare, correct market

failures, and protect citizen rights. The Plan also defines the role of regulation in promoting a business environment that fosters entrepreneurship without imposing unnecessary burdens on businesses. The Plan created the Programme for Rationalisation of Business Regulations and Formalities (*Programa de Racionalización de Regulaciones y Trámites Empresariales*, PRRTE).

In an effort to move towards a more comprehensive approach of regulatory quality that can eliminate entry barriers and unjustified transaction costs, the Government of Colombia (GOC) has included new objectives in the National Development Plan (*Plan Nacional de Desarrollo*) that go beyond purely administrative simplification exercises and instead encourage the following activities:

- Extending the existing policy for the simplification of formalities to regulations, so that the latter are revised in line with regulatory quality criteria;
- Prioritising rationalisation over automatisation (i.e., allowing online management), so that regulations and their justification are reviewed, before the formalities derived from them are automatised.
- Reviewing horizontal economic regulation, including sectoral and regional regulation under a comprehensive approach, instead of undertaking reviews in isolation.

Regulatory policies and core principles

Regulatory policy defines "the process by which government, when identifying a policy objective, decides whether to use regulation as a policy instrument, and proceeds to draft and adopt a regulation through evidence-based decision making." (OECD, 2012) Regulatory policy is integral to a formal, reliable process to link policy goals and policy actions with regulation.

Box 3.1. **The 2012 OECD Recommendation of the Council on Regulatory Policy and Governance**

The 2012 *OECD Recommendation of the Council on Regulatory Policy and Governance* provides governments with clear and timely guidance on the principles, mechanisms and institutions required to improve the design, enforcement and review of their regulatory framework to the highest standards; it advises governments on the effective use of regulation to achieve better social, environmental and economic outcomes; and it calls for a "whole-of-government" approach to regulatory reform, with emphasis on the importance of consultation, co-ordination, communication, and co-operation to address the challenges posed by the inter-connectedness of sectors and economies.

Source: OECD (2012), "Recommendation of the Council on Regulatory Policy and Governance", www.oecd.org/gov/regulatory-policy/2012recommendation.htm, accessed 10 November 2012.

An effective regulatory policy has three basic components that are mutually reinforcing: it should be adopted at the highest political levels; contain explicit and measurable regulatory quality standards; and provide for continued regulatory management capacity (OECD, 2002). In Colombia a regulatory policy with such features does not yet exist, but there are core elements that have been introduced over the last few years, aiming at improving the quality of regulation that is produced and implemented in

the country. These regulatory policies have mainly concentrated on aspects concerning the legal quality of normative acts and the introduction of core transparency mechanisms. They have also focused on administrative simplification efforts.

Important elements of initial regulatory reform policies already in place are contained in the following existing legal documents:

- *The Political Constitution of Colombia* (1991) establishes the competence of the executive to review and enact laws, ensure their enforcement, and exert a regulatory function, through the issuing of decrees, resolutions and orders. It contains important principles to ensure public participation, co-ordination among institutions, and enforcement issues in the regulatory process.
- *Law 190 of 1995* established regulations to promote integrity in the public administration and define rules against administrative corruption.
- *Law Decree 2150 of 1995* eliminated and streamlined unnecessary regulations, administrative formalities or requirements imposed by the public administration.
- *Law 489 of 1998* establishes the principles and basic rules of the public administration. It contains provisions for co-ordination mechanisms within the public administration.
- *Law 962 of 2005* introduced guidelines about the rationalisation of administrative formalities implemented by public and private institutions that provide a service or exert public functions.
- *Decree 1345 of 2010* contains detailed *Guidelines to Elaborate Normative Texts, Draft Decrees and Resolutions*.
- *Law 1437 of 2011* (Code of Administrative Procedure and Contentious Administrative) aims at protecting and guaranteeing the rights and freedoms of individuals, the public interest, compliance with the Constitution by public authorities, the efficient and democratic operation of the administration, and the enforcement of duties by the state and private entities.
- *Law 1475 of 2011* established regulations to strengthen the preventive, investigative and sanction mechanisms against corruption and to improve the effectiveness of control in the public administration.
- *Decree 0019 of 2012* established guidelines on streamlining or eliminating unnecessary administrative formalities imposed by the public administration.

Recent and current regulatory reform initiatives

In spite of the lack of a "whole-of-government" regulatory reform policy, Colombia has made efforts to improve the quality of its regulation through a series of initiatives, particularly in the area of administrative simplification. The main policies relating to regulatory reform focus on administrative simplification efforts, competition policy, and the use of ICT to promote regulatory transparency and quality.

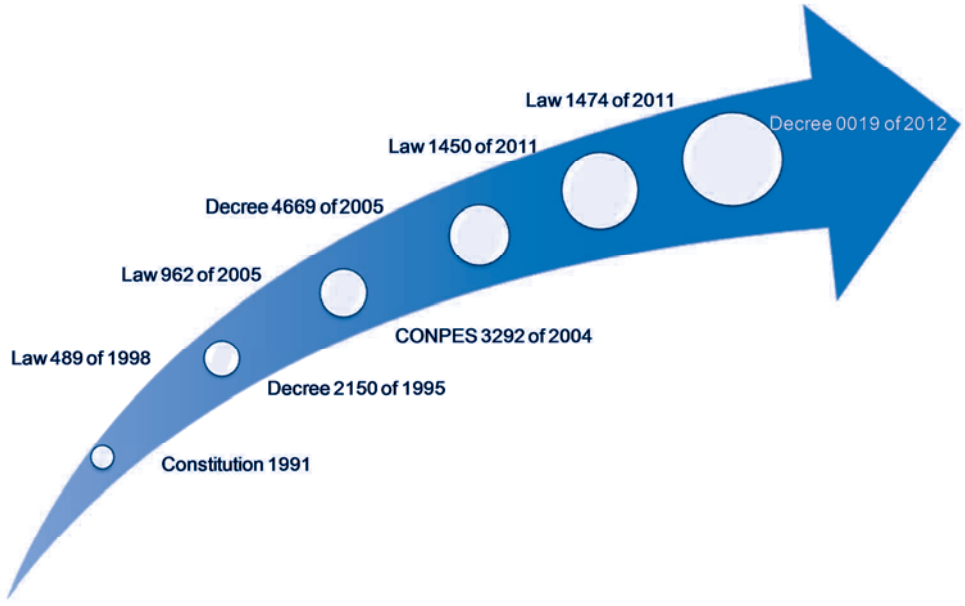
Policy for the simplification of formalities

The GOC has undertaken three rounds of simplification efforts targeted at formalities (Figure 3.1). The first one started in 1995, when Decree 2150 was issued to eliminate and amend unnecessary regulations, procedures, and formalities applied by the public administration. This effort was strengthened in 1998 with Law 489, which established the elimination and simplification of formalities as a permanent objective of the public administration. One more instrument issued in 2000, Decree 266, established rules to eliminate and amend regulations, formalities, and procedures.

The second round started in 2005 with the publication of Law 962, which was enacted to facilitate interactions between citizens and businesses, on the one side, and the public administration, on the other side, following principles of rationalisation, standardisation, and automatisation of formalities and public services. According to this law, all public entities are required to publish the formalities and services that they manage in a centralised registry called SUIT, which is co-ordinated by the DAFP. Also in 2005, Decree 4669 established that public entities must present DAFP with a RIA for its consideration if they want to establish or modify a formality. According to this decree, the RIA must:

- Describe the formality and its legal justification.
- Propose the design of the process of the formality.
- Describe the benefits for the public entity and for users.
- Indicate the unavailability of alternatives implying less cost and more efficiency, as well as the budgetary impact for the public entity.
- Provide the documented implementation costs for the regulated entities and the administrative and budgetary resources required for it.

Figure 3.1. Legal background of the policy for the simplification of formalities



Source: Information provided by DAFP.

Decree 4669 also established the Group on rationalisation and automatisation of formalities (*Grupo de Racionalización y Automatización de Trámites*, GRAT) as a consultation body, as well as of sectoral committees on the rationalisation of formalities.

The last round was launched in 2012, with the publication of Decree 0019, also known as the Anti-formalities Decree (*Decreto Antitrámites*). This decree was issued under an extraordinary mandate granted to the executive by the Congress of the Republic under Law 1474 of 2011. Decree 0019 is binding and its objective is to eliminate or amend unnecessary formalities, procedures, and regulations in the public administration, as well as to establish the principle of good faith, in order to facilitate the interactions of businesses and individuals with public authorities, contribute to the efficiency and effectiveness of such interactions, develop the constitutional principles that regulate them, and prevent the application of unnecessary burdens.

The decree establishes the principles of the policy for rationalisation of formalities, which are the following:

- Rationalising, through simplification, standardisation, elimination, optimisation, and automatisation, formalities and administrative procedures, and improving citizen participation and transparency in administrative acts, with the corresponding legal safeguards.
- Facilitating access to information and the completion of formalities and administrative procedures via electronic means, creating conditions to trust such means.
- Contributing to the internal management of public entities that fulfil an administrative function, increasing efficiency and effectiveness through the use of ICTs.

The GOC established its policy for the simplification of formalities in order to address issues such as unnecessary procedures, formalities and rules hindering the administration's efficiency, effectiveness, and transparency; the need to create trust in the interactions between the administration and citizens; preventing corruption and fulfilling the National Development Plan's goals concerning this problem; facilitating the performance of public servants and advancing competitiveness; and building a modern, citizen-friendly State.

Besides mandating the elimination, automatisation, and amendment of specific formalities, Decree 0019 establishes the following:

- The principle of good faith will be presumed in all acts of citizens and public entities.
- Formats used by public entities are free of charge and should be available electronically. A format can only be required if it has been uploaded in the Web portal of the Colombian State.
- A public entity is forbidden to require administrative acts, statements, certificates, or documents that it already possesses.[3]
- Public entities and private ones delegated with administrative functions should establish systems for electronic payments.
- A formality can only be required if it is registered in the SUIT.

Decree 0019 was supported by a wide consultation that lasted over six months among businessmen, unions, public entities and citizens in general, through direct meetings and electronically, using a Web application called the "Cristal ballot" (*Urna de Cristal*), which allowed online submission of suggestions and comments concerning those formalities that were considered burdensome and irritating.

Government online (Gobierno en línea, GEL)

Decree 1151 of 2008 mandates the adoption of the Manual for the implementation of the government online strategy, which establishes that each public entity must create a Government online committee to fulfil the following functions:

- Defining the mechanisms to comply with regulations concerning GEL, such as Law 962 of 2005, Law 1150 of 2007, Decree 066 and 1151 of 2008, among others.
- Assisting the different groups organised within each entity and concerning client service, rationalisation and simplification of formalities, quality, and internal control.
- Identifying regulatory barriers to allow the completion of formalities and the supply of services online and promote their elimination.

Decree 1151 of 2008 also mandates the administration to establish virtual mechanisms to allow active citizen participation in the discussion of issues concerning the management of public entities, policies, plans, programmes and legislative topics. In addition, it states that public entities must promote such participation and publish results from consultations.

The GEL strategy focuses on contributing to a more efficient, transparent, and participative state, through the reaping of ICTs. It has facilitated transparency and citizen participation in the regulatory process, by developing channels for public consultation via the use of ICTs. It has also facilitated interactions between citizens and the public administration by setting up electronic mechanisms to comply with formalities and access public services. In fact, GEL is a key component of the "paperless policy" established by the GOC. The MINTIC is responsible for defining the necessary policies and standards for implementation.

In terms of facilitating interactions, Law 527 of 1999 regulates access and use of data messages, electronic trade, and digital signatures. It granted the same status to data messages as to paper documents. In addition, Law 962 of 2005 raised the legal requirement to offer, via electronic means, information about public entities, free official formats, formalities and procedures, as well as electronic submission of complaints, petitions, and official replies to citizen applications. This law also established the prohibition to create new formalities without the authorisation of the DAFP. In fact, it states that any regulatory requisite needs to be published in the SUIT (www.gobiernoenlinea.gov.co) to be binding.

In order to facilitate access to ICTs, the GOC has established the Digital life plan (*Plan Vive Digital*, PVD). This strategy includes a comprehensive plan on how to integrate the use of digital technologies in all areas of activity in the lives of Colombians and has the following goals for 2014:

- Increasing the municipalities connected to broad band via optic fibber by 350%. This means an increase from 200 to 700 municipalities.

- Connecting 50% of small and medium-sized enterprises (SMEs) and 50% of households to the Internet.
- Increasing Internet connections by 400%, from 2.2 million to 8.8 million.
- Digital life lies on the assumption that increased use of the Internet will foster growth in ICT employment, promote economic growth, and reduce poverty.

The project Crystal Ballot (*Urna de Cristal*) is a government ICT tool to improve citizen´s control and participation. Citizens can have access to results, progress and initiatives of the government; they can make proposals and express concerns to government institutions; and they can interact and learn from government management. The most popular questions made by citizens are the subject of a TV programme, called Agreements for Prosperity, in the official TV channel.

Competition advocacy

Law 1340 of 2009 establishes in its Article 7 that the SIC can issue an *ex ante* opinion on draft regulations that may have an impact on free market competition. However, in order for SIC to carry out this function effectively, regulatory authorities must inform when they plan to issue regulations, which does not always happen. Furthermore, there are several exceptions to the application of SIC's review, such as those concerning entities and state bodies subject to a special regime.

The opinion issued by the SIC is non-binding, but it is expected that if the regulator does not follow SIC's opinion, it will have to justify its decision. In January 2013, MCIT submitted a consultation before the State Council (*Consejo de Estado*) in order to determine what would be the effects on a draft rule, if the regulator does not comply with the competition advocacy review. As of May 2013, the State Council has not issued its decision on this matter.

The mandate of the SIC to review draft regulations was strengthened by Decree 2897 of 2010. It establishes criteria to assess the competitive effect of a regulatory proposal, in line with the OECD *2009 Recommendation on Competition Assessment*. This OECD document provides advice for governments to identify existing or proposed public policies that unduly restrict competition and to revise them by adopting more pro-competitive alternatives. A ruling in favour of the SIC would strengthen the institutional mechanisms to conduct these reviews.

In order to remind all public entities that they should obtain its opinion when issuing regulations, the SIC produced the Booklet on conducting competition advocacy: Reviewing draft regulatory projects (*Cartilla para el ejercicio de la abogacía de la competencia: Revisión de proyectos de regulación estatal*) and a check list so that public entities can assess if they need to consult SIC. The booklet explains SIC's mandate to review draft regulations and the principles behind such reviews.

Policies dealing with regulation inside government

The Colombian State recently adopted a model for total quality in public management, derived of Law 872 of 2003 and Decree 4110 of 2004, which establishes the technical norm for quality in public management NTCGP-1000:2004. These efforts have helped deregulate and simplify procedures following the principle of administrative effectiveness.

Additional high-impact strategies have been developed, such as the recognition by the National Government of good practices to eliminate internal formalities and procedures and the development of annual plans for administrative efficiency, according to the terms of Presidential Directive 04 of 2012.

Likewise, DAFP along with the High Presidential Advisor for Good Government and Administrative Efficiency and the MINTIC led an initiative called "Challenge for administrative efficiency", which aims at identifying internal procedures and formalities hindering value added and the administration's capacity to perform efficiently. The initiative collected 977 proposals by public servants and government suppliers, which will be evaluated on the basis of impact, cost-benefit balance, ease of implementation, and degree of innovation.

International regulatory co-operation

Colombia is participating in several international mechanisms, which among other issues address regulatory co-operation. Colombia is a founding member of the Latin American Network on Regulatory Improvement and Competitiveness (Latin-REG), which is a permanent space for dialogue and exchange of experiences and good regulatory practices. The Statement of Nuevo Leon, signed on 28 October 2011, established this alliance with the participation of Brazil, Colombia, Costa Rica, Mexico, and Peru.

Likewise, in the framework of the Pacific Alliance (*Alianza del Pacífico*), the governments of Colombia, Chile, Mexico, and Peru[4] established the need to promote co-operation and the exchange of good regulatory practices and tools to advance productivity, competitiveness, and economic development. The Paranal Statement, signed on 6 June 2012, formalised this commitment.

In addition to the previous multi-lateral mechanisms, Colombia participates in fora such as the International Civil Aviation Organization (OACI), the Inter-American Telecommunication Commission (CITEL), the Latin American Forum of Regulatory Bodies on Telecommunications (REGULATEL), the Andean Committee of Telecommunication Authorities (CAATEL), the Association of Water Regulatory Bodies of the Americas (ADERASA), the Latin American Centre for Development Administration (CLAD), and the Open Government Partnership, among others.

Colombia has also engaged in bilateral regulatory co-operation. In the framework of the Free Trade Agreement with Canada, this country provided support to study and review the procedures followed by Colombia's MCIT to issue technical regulation. In the framework of this co-operation, MCIT already completed its first RIA in December 2012. This RIA incorporated cost-benefit analysis and MCIT has established an internal policy to require that all new projects for technical norms be accompanied by a RIA, starting on 1 January 2013.

The MCIT is also leading the project of technical assistance to trade provided by the European Union (EU). MCIT financed a training programme on RIA provided by Mexico's Federal Commission for Regulatory Improvement (COFEMER) via this co-operation with the EU.

Finally, Colombia has implemented 11 free trade agreements (FTA) with 44 countries.[5] Some of these FTA have involved side agreements on specific fields, such as the Action Plan Related to Labour Rights, in the context of the FTA with the United States. By 2014, it is expected that the country will have implemented FTA with 49 countries (Government of Colombia, 2013).[6]

Assessment and recommendations

The GOC should, as a key priority, develop and issue a formal regulatory policy, which is explicit, binding, and consistent across the whole-of-government, establishing the procedures, institutions, and tools that will be used to pursue high-quality regulation.

The lack of a formal and uniform regulatory policy at the central level has resulted in ministries and administrative departments pursuing their own regulatory improvement initiatives in isolation, without structured guidance and criteria to follow. This has created inconsistencies and a "bits and pieces" approach, rather than a whole-of-government perspective.[7]

The objective of a formal regulatory policy is to create a regulatory improvement culture across the government. Establishing this policy requires political commitment at the highest level, which is key for mobilising the public administration into pursuing regulatory quality goals. Since Colombia has a strong presidential system, the possibilities to engage at the highest political level are considerable, which should facilitate the introduction of this policy.

A formal regulatory policy should be explicit concerning the procedures to address public policy issues, including deciding whether regulation is the best alternative, and designing regulations based on evidence. Some initial attempts in these fields can be observed, but regulatory interventions remain rather linked to legal procedures. In many cases, regulation is considered the only possible option, as regulators need to justify their interventions based on the assumption that they can only act through legal norms.

A formal regulatory policy should designate an oversight body and, perhaps, some other co-ordinating instrument (i.e., cabinet-led mechanism, such as a council of ministers) to bring the responsibility for the overall regulatory process under one central body. This particular institutional arrangement is missing in Colombia, which contributes to inconsistency and uncoordinated efforts. All institutions, particularly those entrusted with regulatory powers, such as ministries, regulatory commissions, and *Superintendencias* should follow the main guidance of a formal regulatory policy and adopt a continuous policy cycle for regulatory decision making, from identifying policy objectives to regulatory design and evaluation.

Furthermore, a formal regulatory policy should establish the necessary tools to ensure regulatory improvement. OECD best practice indicates that the main tools, among others, are public consultation, the consideration of alternatives to regulation, *ex ante* impact assessment, administrative simplification, and *ex post* evaluation. Hence, a regulatory policy should address the development, implementation, evaluation, and review of regulations.

The form a regulatory policy can take varies, going from a primary law to an administrative act. Given the context in Colombia, in which legislative reforms may take a long time to be debated and approved, it would be feasible, in the first instance, to establish a regulatory policy via a CONPES document.[8] However, in the longer-term, it

would be better to raise the status of the policy to a primary law and embed it into the legislative framework. The current co-operation initiatives undertaken with countries like Canada and Mexico could be leveraged to exchange good practices in the development of a unified regulatory policy. In Mexico, for example, the policy on better regulation is contained in the Federal Law of Administrative Procedure, whose main elements are the establishment of COFEMER as the oversight body, the responsibilities of line ministries and regulators as part of the regulatory improvement policy, and the use of tools for regulatory quality. Canada's regulatory policy is contained in a Cabinet Directive which outlines regulatory process requirements and the steps for regulatory analysis (see Box 3.2 on the Canadian experience).

Box 3.2. **The Cabinet Directive on Streamlining Regulation (Canada)**

The *Cabinet Directive on Streamlining Regulation* came into effect on April 2007. It replaced the *Government of Canada Regulatory Policy* (1999), and introduced several key improvements, including a more comprehensive management approach with specific requirements for the development, implementation, evaluation, and review of regulations.

The *Directive* establishes that when regulating, the federal government will:

- Protect and advance the public interest in health, safety and security, the quality of the environment, and the social and economic well-being of Canadians, as expressed by parliament in legislation;
- Promote a fair and competitive market economy that encourages entrepreneurship, investment, and innovation;
- Make decisions based on evidence and the best available knowledge and science in Canada and worldwide, while recognising that the application of precaution may be necessary when there is an absence of full scientific certainty and a risk of serious or irreversible harm;
- Create accessible, understandable, and responsive regulation through inclusiveness, transparency, accountability, and public scrutiny;
- Advance the efficiency and effectiveness of regulation by ascertaining that the benefits of regulation justify the costs, by focusing human and financial resources where they can do the most good, and by demonstrating tangible results for Canadians; and
- Require timeliness, policy coherence, and minimal duplication throughout the regulatory process by consulting, co-ordinating, and co-operating across the federal government, with other governments in Canada and abroad, and with businesses and Canadians.

Source: Treasury Board of Canada Secretariat (2007), *Cabinet Directive on Streamlining Regulation*, www.tbs-sct.gc.ca/tbs-sct/organization-organisation/ras-sar-eng.asp, accessed 10 September 2012.

An explicit regulatory policy should clearly recognise that regulating is not the only feasible solution to a public policy problem and must establish procedures to determine when it is in the public interest to regulate.

Public intervention is not always the best solution to a public policy problem and, even when it is, regulating is not the only feasible response. A broad spectrum of instruments is available to pursue public policy objectives, such as laws (statutes and regulations), economic instruments (i.e., market-based instruments, taxes, fees, user charges, etc.), self-regulation, standards and other forms of voluntary actions, information and education campaigns, and collaborative approaches.

The GOC, when developing its regulatory policy, should provide guidelines on determining when public intervention is necessary and when regulation is the best alternative. Governments may intervene to change the behaviour of companies and/or individuals to address market failures or to achieve environmental or social objectives that would otherwise not be achieved. In some cases, the private sector can find alternative solutions to market failures and, hence, government intervention is not always the best solution. Law 142 of 1994, for example, already establishes some general principles to be considered by ministries, regulatory commissions, and *Superintendencias*, to determine when to regulate, such as avoiding anti-competitive behaviour and ensuring the quality of public services. This is a good start, but these principles and others need to be developed with a whole-of-government approach in mind in a formal regulatory policy instrument. In fact, Colombia currently lacks such a clear approach, and regulatory institutions follow rather customary procedures, which in some cases are a good starting point, but require intensive development of analytical capacities, better data collection to base decisions on evidence, and ensuring public participation along the process. Diversity on those procedures, if not properly qualified, may also conduct to unpredictability and confusion.

A methodology to assess the different alternatives in terms of costs and benefits is also a good practice included in the regulatory policies of OECD countries. In Canada, for example, the document *Assessing, Selecting, and Implementing Instruments for Government Action* provides an analytical framework for selecting instruments, which includes: *i)* Identifying and defining the problem, *ii)* setting public policy objectives, *iii)* identifying potential intervention points, *iv)* identifying actors/institutions having an effect on objectives, *v)* considering and selecting instruments, *vi)* setting performance indicators, and *vii)* implementing (see Box 3.3 for more information on this document). This kind of guidance is critical, particularly when there is no previous experience on the systematic assessment of alternatives to regulation and when regulating has been the first reaction to address public policy problems.

Box 3.3. **The guide on assessing, selecting, and implementing instruments for government action (Canada)**

The guide on Assessing, selecting, and implementing instruments for government action builds on the principles established by the Cabinet Directive on Streamlining Regulation and conveys six key messages:

- Instrument choice should be considered early in the policy development process.
- The government cannot deal with every situation. Its involvement must be assessed in light of its responsibilities, its resources, and the likely effectiveness of its involvement relative to that of a variety of actors such as other governments, the private sector, non-governmental organisations, and the voluntary sector.
- A broad range of instruments exists, allowing the government to choose the type and degree of intervention, if any.
- A mix of instruments has been found to be effective in achieving successful outcomes.
- The effectiveness of an instrument in promoting conforming behaviour needs to be considered early in the policy development process.
- A statute or regulation should be chosen only after the full range of possible instruments has been considered.

Source: Treasury Board of Canada Secretariat (2007), *Assessing, selecting, and implementing instruments for government action*, www.tbs-sct.gc.ca/rtrap-parfa/asses-eval/asses-evaltb-eng.asp, accessed 10.09.12.

Following the conclusion reached by the National Development Plan 2010-14, regulatory policy should move beyond the administrative simplification of formalities to concentrate on the quality of regulation.

Specific tools for regulatory improvement do not substitute for a formal regulatory policy with a comprehensive set of regulatory management tools. Although the simplification of formalities has improved Colombia's ranking in the *Doing Business* report, it does not equate to systematic controls of either the flow or the stock of regulations. It is not clear that even those formalities that have been simplified and the regulations from which they came would meet a public interest test. Hence, the regulatory burdens, and their negative effects on entrepreneurship and innovation, may still remain, even when they have been streamlined.

A comprehensive regulatory policy would ultimately impact on formalities. Complicated formalities are a consequence of the accumulated burdens of regulation and hence, the latter are the source of the problem. In other words, controlling formalities, while meritorious, does not necessarily lead to rationalisation of the regulatory framework for business activities. While Decree 0019 led to important achievements in terms of simplifying procedures and establishing guidelines to control the flow and design of new formalities, the GOC should strive to develop a comprehensive policy that goes beyond the simplification of formalities and addresses both, the stock and flow of regulations. Comments received during the fact-finding mission also suggest the need to increase the communication and socialisation of Decree 0019, so that the principles it establishes are advanced consistently.

Once again, a broader understanding of regulatory policy needs to be embedded in the strategic directions that the centre of government provides to the different public entities. Simplification was a good start, but it is clearly time to move ahead.

Notes

1. Presidential Directive No. 10 of 2002.
2. Law 790 of 2002.
3. The decree establishes that, starting in January 2013, public entities should have the mechanisms to share documents between them and hence, no document shall be required when it already exists in the files of the public administration.
4. Costa Rica and Panama participated as observers.
5. Argentina, Bolivia, Brazil, Canada, Chile, Ecuador, El Salvador, Guatemala, Honduras, Liechtenstein, Mexico, Paraguay, Peru, Switzerland, Uruguay, the United States, Venezuela, and the European Union.
6. Colombia has signed FTA with Iceland, Norway, Costa Rica, and Korea, but they are still to be ratified. Furthermore, Colombia is currently negotiating FTA with Israel, Japan, Panama, and Turkey.
7. For example, in terms of *ex ante* regulatory assessment, the SIC, the Legal Secretariat of the Presidency (*Secretaría Jurídica de la Presidencia, SJ*), and the MCIT have their own methodologies and, even though the objectives of their assessments are not exactly the same, an integrated approach could bring together the economic, legal, and social impact analyses for a comprehensive control of the flow of regulations.
8. The National Council on Economic and Social Policy (Consejo Nacional de Política Económica y Social, CONPES) is the higher authority for government planning and it is an advisory body to the government on economic and social development. CONPES reviews and approves documents on public policies. It is led by the President and its permanent members consist of the Vice-President, all the ministers, the heads of the Administrative Department of the Presidency, the DNP, and the Administrative Department on Science, Technology, and Innovation.

Annex 3.A1.

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

The Recommendation advises governments to:

1. Commit at the highest political level to an explicit whole-of-government policy for regulatory quality. The policy should have clear objectives and frameworks for implementation to ensure that, if regulation is used, the economic, social and environmental benefits justify the costs, the distributional effects are considered, and the net benefits are maximised.
2. Adhere to principles of open government, including transparency and participation in the regulatory process to ensure that regulation serves the public interest and is informed by the legitimate needs of those interested in and affected by regulation. This includes providing meaningful opportunities (including online) for the public to contribute to the process of preparing draft regulatory proposals and to the quality of the supporting analysis. Governments should ensure that regulations are comprehensible and clear and that parties can easily understand their rights and obligations.
3. Establish mechanisms and institutions to actively provide oversight of regulatory policy, procedures and goals, support and implement regulatory policy, and thereby foster regulatory quality.
4. Integrate Regulatory Impact Assessment (RIA) into the early stages of the policy process for the formulation of new regulatory proposals. Clearly identify policy goals, and evaluate if regulation is necessary and how it can be most effective and efficient in achieving those goals. Consider means other than regulation and identify the tradeoffs of the different approaches analysed to identify the best approach.
5. Conduct systematic programme reviews of the stock of significant regulation against clearly defined policy goals, including consideration of costs and benefits, to ensure that regulations remain up to date, cost justified, cost effective and consistent, and deliver the intended policy objectives.
6. Regularly publish reports on the performance of regulatory policy and reform programmes and the public authorities applying the regulations. Such reports should also include information on how regulatory tools such as RIA, public consultation practices and reviews of existing regulations are functioning in practice.

7. Develop a consistent policy covering the role and functions of regulatory agencies in order to provide greater confidence that regulatory decisions are made on an objective, impartial and consistent basis, without conflict of interest, bias or improper influence.
8. Ensure the effectiveness of systems for the review of the legality and procedural fairness of regulations and of decisions made by bodies empowered to issue regulatory sanctions. Ensure that citizens and businesses have access to these systems of review at reasonable cost and receive decisions in a timely manner.
9. As appropriate apply risk assessment, risk management, and risk communication strategies to the design and implementation of regulations to ensure that regulation is targeted and effective. Regulators should assess how regulations will be given effect and should design responsive implementation and enforcement strategies.
10. Where appropriate promote regulatory coherence through co-ordination mechanisms between the supranational, the national and sub-national levels of government. Identify cross-cutting regulatory issues at all levels of government, to promote coherence between regulatory approaches and avoid duplication or conflict of regulations.
11. Foster the development of regulatory management capacity and performance at sub-national levels of government.
12. In developing regulatory measures, give consideration to all relevant international standards and frameworks for co-operation in the same field and, where appropriate, their likely effects on parties outside the jurisdiction.

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Chapter 4

Institutions to promote regulatory reform in Colombia

Chapter 4 describes the organisation of the government in three branches, executive, legislative and judicial, as well as their role in promoting regulatory improvement. It provides a detailed analysis of the organisation and governance of regulatory agencies, namely ministries and regulatory commissions, and supervisory bodies, called Superintendencias*, as well as their synergies and the co-ordination challenges in the functioning of these different entities. Finally, the chapter provides recommendations to strengthen the institutional set up for regulatory reform, upgrade co-ordination mechanisms, and advance accountability and autonomy of regulatory bodies.*

Institutions and mechanisms to promote regulatory reform

The 2012 *OECD Recommendation of the Council on Regulatory Policy and Governance* (OECD, 2012b) advises governments to "establish mechanisms and institutions to actively provide oversight of regulatory policy procedures and goals, support and implement regulatory policy, and thereby foster regulatory quality." Details of this recommendation are described in Annex 4.A1.

As noted above, Colombia does not have a single institution in charge of regulatory quality and an accompanying specific oversight role. Various institutions are in charge of different policies related to advancing the quality of regulations, but there is room for improvement in terms of co-ordination and coherence of such efforts. The lack of a single, coherent regulatory policy might also explain the current institutional arrangements, which in turn explains the lack of a comprehensive approach to regulatory governance in the country.

Executive

Within the executive branch, various institutions are in charge of the different projects and strategies to improve the quality of regulations. They intervene in the promotion of certain tools and at different stages of the regulatory cycle. Some of them are clearly located at the centre of government, but they lack an explicit mandate to promote regulatory quality with a whole-of-government perspective. The most relevant ones are:

- The President´s Office (*Oficina de la Presidencia*). It is the central government's nerve-centre for overseeing and co-ordinating the implementation of the President's agenda. Its mandate focuses on monitoring the formulation and execution of policy priorities set in the National Development Plan. It works closely with the DNP, ministers, and their teams to develop and implement multi-sector, horizontal policy initiatives to advance the presidential priorities.
  - The High Presidential Advisor for Good Government and Administrative Efficiency and High Presidential Advisor for Public and Private Management (*Alta Consejería para el Buen Gobierno y la Eficiencia Administrativa* and *Alta Consejería para la Gestión Pública y Privada*). They advise the President on the implementation of public-private policies and the promotion of good governance. They co-ordinate, together with the DNP, the strengthening of monitoring indicators of the National Development Plan. They are also in charge of supporting activities related to administrative simplification efforts.
  - The Legal Secretariat of the Presidency (*Secretaría Jurídica de la Presidencia*, SJ). It is in charge of ensuring legal coherence and certainty in the draft laws sent to Congress and for draft decrees.

- The National Planning Department (*Departamento Nacional de Planeación*, DNP). The DNP approves procedures and guidelines for the design, monitoring and evaluation of all programme and project content included in the National Development Plan. Similarly, the Department co-ordinates all government agencies to ensure the proper enforcement and implementation of the content of policies, programmes and projects contained in the Plan. The DNP thus serves as the government's technical advisor on the design, implementation, and assessment of the National Development Plan It also participates in the co-ordination of the PRRTE. Its Director is appointed by the President and holds a cabinet-level position.
- Administrative Department of the Public Function (*Departamento Administrativo de la Función Pública*, DAFP). DAFP is the institution responsible for the implementation of the Anti-Formalities Policy (*Política Anti-trámites*) at all levels of government. It is attached to the President´s Office.
- Ministries (*Ministerios*). Ministries in Colombia are head of sectors. They are responsible for putting forward national public policies in their area of competence.
  - In particular, the MCIT is responsible for the co-ordination of total quality management policies, as well as the improvement of technical regulations and conformity assessment procedures.
  - The MINTIC co-ordinates and supports the implementation of Government online (*Gobierno en Línea*), the programme that integrates ICT mechanisms into the administrative simplification processes.
  - The Ministry of Justice and Law (*Ministerio de Justicia y del Derecho*) created, as a result of the State reform contained in Law 1444 of 2011, a specific division called "Direction of Law Development and Legal System", which proposes guidelines to implement the policy to provide legal certainty (Decree 2897 of 2011).
- Regulatory Commissions (*Comisiones de Regulación*). They are defined in the Colombian administration as special administrative units, e.g. autonomous entities with administrative, technical, and financial independence. A detailed analysis of regulatory commissions is presented in the next section (Organisation and governance of regulatory agencies and supervisory bodies).
- *Superintendencias*. They are responsible for functions of control and supervision. They oversee the implementation of regulation in sectors and might supervise ministries, regulatory commissions, and local authorities. A detailed analysis of *Superintendencias* is presented in the next section.
  - The Competition Authority, the SIC, deserves special mention for its role in advocating for pro-competitive reforms through its role in reviewing draft regulations to assess their potential impact on competition.

All of these actors participate in regulatory management and co-ordination. The President´s Office is the main co-ordinator of regulatory proposals and provides legal quality control of draft laws and decree proposals. In a first stage, the regulatory initiative falls on a ministry, which is the head of a given sector and ensures legal quality control before draft proposals are sent to the President´s Office. The ministry has to take into consideration the standards set out in Decree 1345 of 2010, which establish the main

guidelines on legal form for draft decrees and resolutions. In a second stage, the President´s Office has a quality control role, as it reviews again the legal quality of the document, but it also ensures co-ordination of the process.

In the case of secondary regulation, each ministry has some discretion to implement regulations needed to develop public policies. The ministry becomes the main quality control filter in this process and it is responsible for ensuring co-ordination among the institutions that belong to the sector. In fact, ministries have legal departments that support in this task.

In this process, for both primary and secondary regulations, there are consultation mechanisms that can be promoted to improve the quality of the regulatory proposal. One consists of a consultative mechanism organised by the State Council, but its recommendations are non-binding. Another is the consultation process within a specific sector, led by legal advisory offices of the various institutions or through Inter-sectoral Commissions or Consultative Committees created for particular issues.

Legislative

The legislative in Colombia is divided into two chambers: the Senate and the Chamber of Representatives, which operate through constitutional and legal standing commissions. The legislative is responsible for adopting laws, which can be divided into various types:

- *Ordinary or common laws*. According to the Constitution, ordinary laws should serve the following functions:
  - Interpreting, reforming, or abolishing other laws.
  - Issuing codes applicable to different fields and reforming them.
  - Approving the National Development Plan and public investment to be launched or continued.
  - Defining the general division of the territory, according to the Constitution.
  - Granting special attributions to Departmental Assemblies.
  - Under extraordinary circumstances, changing the residence of powers.
  - Determining the structure of the national administration.
  - Issuing rules applicable to the control and inspection functions of the government.
  - Granting authorisations to the government to establish contracts and sell national property.
  - Granting on the President, up to six months, extraordinary attributions to issue laws and regulations.
  - Establishing national rents and the administration's expenditures.
  - Establishing fiscal contributions.
  - Determining the legal currency.
  - Approving or rejecting the contracts signed by the President, due to an evident national need, but without previous authorisation.

- Granting honors on citizens who have served the country.
- Approving or rejecting the treaties signed with other States or entities of international law.
- Granting amnesties for political crimes.
- Dictating rules about appropriation, recovery, and adjudication of land.
- Dictating general rules for the government concerning public credit, foreign trade, tariffs and customs regime, activities of the financial, insurance, and stock market sectors, salaries of public servants, and education.
- Creating the technical and administrative services of Congress.
- Issuing laws on economic intervention.
- Issuing laws concerning the Central Bank and the functions of its board.
- Issuing laws to regulate public functions and public services.
- Regulating the industrial property regime, patents, trademark, and other forms of intellectual property.
- Unifying rules about transit police throughout the national territory.

- *Organic laws*. These laws establish the regulations of the Congress and each one of its Chambers, the preparation and execution of the budget, the expropriation law and the general development plan, as well as the allocation of legal competences to the territorial entities.
- *Statutory laws*. These regulate the fundamental rights and obligations of people and the appeal procedures for their protection; the administration of justice; the organisation and regime of political parties; the electoral process; institutions and mechanisms for public participation; and extraordinary measures.
- *Framework laws*. These laws regulate matters of general interest, setting principles and general norms, such as public credit, foreign trade, international exchange, collection of public resources, wages and service provision.

The legislative, with its role in adopting laws, plays a relevant role in regulatory quality (see Box 4.2 for examples in OECD countries). The Congress of Colombia establishes Commissions that may conduct *ex post* evaluation of certain laws. However, the legislative does not employ the various tools and processes that could enhance its role as a promoter of regulatory quality. For instance, the consultation process to evaluate draft laws is not as formal as that of other countries. In some cases, co-ordination with the executive is desirable, particularly when it comes to approve laws that reference formalities that have been eliminated through Decree 0019 of 2012, which establishes the anti-formalities policy of the executive. The legislative is currently working on a draft law to modify the statute of the Congress to rationalise and harmonise the adoption of laws so that regulations that are not in accordance with the new law can be easily repealed.

Even though regulatory evaluation is not a standardised and systematic practice in the executive branch, the legislative could articulate its own efforts with those of the administration. While it is true that not so many parliamentary institutions in OECD countries have formally adopted regulatory quality tools, there are good practices of

regulatory evaluation in the Swiss Federal Assembly, the Swedish *Riksdag,* the French National Assembly, and the Chilean Chamber of Deputies, among others (see Annex 4.A2).

Box 4.2. **The role of the legislative in promoting regulatory quality**

In **Germany**, the federal parliament has played an active role in supporting the emergence of the federal executive's Better Regulation and Bureaucracy Reduction initiative, not least through an initiative of the majority political groups in 2006 to establish the independent oversight and advisory body (NRCC, Normenkontrollrat). Draft bills sent to parliament now contain not only the traditional information on regulatory impacts, but also a statement by the NRCC on the expected administrative costs for business (quantified, using the Standard Cost Model). Moreover, the Bundestag and the Bundesrat can consult the NRCC in their deliberations at any time. This strengthens the consideration of the assessment of administrative burdens in the legislative process. In most recent years, the Bundestag called upon the government to consider also other regulatory costs. The so called "Regulatory Cost Model" has been proposed as a possible methodology to be applied by the NRCC in the future, on the initiative of a parliamentary committee. The parliament has also been an active participant in legislative simplification, including the spring clean of legislation, which has taken place since 2003, to repeal redundant legislation. Eleven simplification laws have been adopted to this end. A database-aided monitoring procedure has allowed, from 2009 onwards, examining the implications of amendments tabled during the parliamentary procedure on bureaucracy. The issue of bureaucracy reduction is discussed by the responsible committees. There is, however, no parliamentary committee in either house, with a remit to consider Better Regulation or simplification as an issue in its own right.

In the **United Kingdom**, the parliament has a growing role in Better Regulation policy. It has traditionally held a central role in the formal processes of enacting primary legislation and scrutinising secondary regulations, but the last decade has seen a progressive and growing implication in the quality of regulation. Its scrutiny of secondary regulations covers not only technical issues of legal drafting quality and the proper use of ministerial powers, but also policy aspects. Key committees are the Joint Committee on Statutory Instruments, the House of Lords Merits of Statutory Instruments Committee, the House of Commons Regulatory Reform Committee and the House of Lords Delegated Powers and Regulatory Reform Committee. For primary legislation, the parliament's influence is exerted not only through the process of debating, amending and enacting individual bills, but also through an influential network of parliamentary committees covering the different areas of government policy. These committees have taken a growing interest in the government's Better Regulation agenda as part of their scrutiny of government policies, paying increasing attention to the quality of impact assessments and consultation results attached to bills. As regards secondary regulations, the parliament cannot amend these but it can reject them. It has stepped up its scrutiny of these regulations through a developing network of committees, which have made it their business to cover not only technical issues of legal drafting quality and the proper use of ministerial powers, but also policy aspects. Again, it has become increasingly demanding as regards quality of impact assessments and consultation processes in support of a proposed policy. The House of Commons Regulatory Reform Committee published a report in July 2008 on the Better Regulation Executive (BRE) and the government's Better Regulation policies. Other relevant reports have been made, including the 2007 House of Lords Select Committee report on regulators.

Source: OECD (2010a), *Better Regulation in Europe: Germany 2010*, OECD Publishing, doi: 10.1787/9789264085886-en, and OECD (2010b), *Better Regulation in Europe: United Kingdom 2010*, OECD Publishing. doi: 10.1787/9789264084490-en.

Judiciary

The role of the judiciary in relation to regulatory decisions is characterised by a lack of specialised recourse mechanisms. The judiciary has a dual role in terms of regulation. First, it limits the excessive use of regulations and normative initiatives. Second, it promotes regulatory quality considerations. The judiciary also tried to fill the gaps in the implementation of regulatory frameworks. Two examples illustrate this:

- The Constitutional Court (*Corte Constitucional*)[1] has played an important role in adressing citizen´s unconstitutionality claims on laws and decrees with the force of law, issued by government. The Constitutional Court case law contributed to establishing the limits of certain laws and regulations. In addition, it has made pronouncements on the application of the contents of ordinary laws that contain specific economic regulations in various fields, in particular on issues affecting economic freedom and private initiative.
- The State Council (*Consejo de Estado*) is the highest court in the jurisdiction of the administrative contentious. It can overturn, in its sphere of competence, decrees and resolutions by the national government that are considered unconstitutional.[2] It is the only instance for citizens´ complaints against regulations issued by administrative authorities, considered as administrative acts, and the second instance for appeals presented by citizens to the administrative courts.[3] The State Council can declare nullity of regulations which infringe higher norms. This tendency has increased in the last few years, which makes the State Council an important institution for controlling regulatory institutions.

National Council on Economic and Social Policy (CONPES)

Arguably Colombia's most powerful Superior Council is CONPES, the most important policy-co-ordination institution in the government. It is the highest national planning authority and serves as the advisory body to the government on all policy related to the economic and social development of the country. It co-ordinates and guides the array of government agencies and entities responsible for the government's economic and social policy. It studies and approves documents regarding general economic and social policy development. Most importantly, it approves the final proposal of the four-year National Development Plan, the President's vision-based policy agenda for his four-year term and the blueprint for managing the implementation of the government's national development strategy and the capital investments required to give effect to it, before it is discussed at the National Congress. The Secretariat of CONPES is the DNP, discussed above.

CONPES membership (permanent, non-permanent, guests, and other attendees) is established by Presidential decree. Indeed, its mandate is similar to that of a Cabinet committee in OECD countries, but it is not subsumed hierarchically under Colombia's Council of Ministers. CONPES is chaired by the President of the Republic and its permanent members, who have the right to vote, include the Vice-President, all ministers, the Director of the Administrative Office of the Presidency, the Director of the DNP, and the Director of the Administrative Department of Science, Technology and Innovation (*Colciencias*).

Co-ordination mechanisms

Article 113 of the Political Constitution of Colombia establishes that collaboration and co-ordination among the public institutions is essential to achieve their respective goals. The formal mechanism to co-ordinate within the public administration in Colombia is set out in Law 489 of 1998, which establishes the principles and basic rules of the public administration. Article 44 of that Law states that institutions and entities that are part of a given administrative sector are linked to the minister or director of the administrative department in charge of the sector. In the first instance, ministries provide guidance on the functions and what is expected from other institutions attached to the sector. In addition, Decree 235 of 2010 calls for exchanging information among public institutions to facilitate compliance with their functions and responsibilities.

The co-ordination mechanism among different sectors in the Colombian public administration is formalised through the set-up of Inter-agency working groups, in the case of issues that fall into concurrent competences of two or more sectors or because the issue requires involvement of two or more sectors. Ministers, directors of administrative departments, heads of *Superintendencias,* and legal representatives of the institutions participating integrate the Inter-agency working groups. In the case of discussing a certain regulatory issue, Inter-agency working groups facilitate mitigation of any possible risk and avoid contradictory final regulatory proposals.

Conflicts between different sector regulators may arise due to legal uncertainties as to who has jurisdiction or differing legal interpretation between regulators. In both cases, competence conflicts might lead to have too much expertise available to deal with the issue, being a positive disagreement, or it might also reflect the lack of competence to solve the issue, which is a negative sign. If a regulator withdraws its jurisdiction, it must inform the other concurrent regulators. In case of disagreement the interested parties can bring a jurisdictional conflict claim before the State Council. In that case, the Consultation and Civil Service Court (*Sala de Consulta y Servicio Civil*) of the State Council has to settle the conflict.[4]

In case of jurisdictional conflicts between the executive and the legislative, the Constitutional Court or the State Council can settle the dispute.[5]

To comply with the legal requirement to co-ordinate, regulatory institutions can use a number of different mechanisms. These include: administrative agreements, Presidential statements, official letters among Directors, or judicial reviews. Ministries can also approach other ministries to request opinions and recommendations on particular issues through official letters.

Co-ordination mechanisms also promote public-private dialogue. A relevant example about co-ordination mechanisms between the public and the private sectors is the GRAT. This is a high-level advisory group that supports decision making of the President´s Office and identifies formalities that have a significant potential impact on businesses and citizens. It is integrated by two delegates from the following institutions: the Presidency, the Vice-Presidency, the Ministry of Interior and Justice, DAFP, DNP, and the MINTIC.

In addition, public and private dialogue has been strengthened through the National Competitiveness and Innovation System (*Sistema Nacional de Competitividad e Innovación*), established through Decree 2828 and CONPES 3439 of 2006, which includes all guidelines, programmes, policies and public and private institutions that promote competitiveness and productivity. The National Competitiveness and Innovation Commission (*Comisión Nacional de Competitividad e Innovación*), chaired by the

President of the Republic and composed of representatives from the government, private sector and academia, is the platform to discuss and define strategies and policies to improve competitiveness of product markets in Colombia. Regional Competitiveness Commissions (*Comisiones Regionales de Competitividad*) have also been established in co-operation between local governments, Chambers of Commerce, and representatives from consumers and academia. They are also responsible for promoting competitiveness by region.

Organisation and governance of regulatory agencies and supervisory bodies

In most OECD countries, economic structural reforms have prompted the establishment of independent regulatory agencies and the revision of existing regulations. The 2012 *OECD Recommendation of the Council on Regulatory Policy and Governance* (OECD, 2012b) advises governments to "develop a consistent policy covering the role and functions of regulatory agencies in order to provide greater confidence that regulatory decisions are made on an objective, impartial and consistent basis, without conflict of interest, bias or improper influence."

Box 4.3. **The development of independent regulatory agencies**

The powers held by independent regulatory agencies distinguish them from mere "administrative agencies" set up for managing part of the state administrations. Their powers allow authorities to issue opinions, set rules, monitor and inspect, enforce regulations, grant licences and permits, set prices and settle disputes. Institutional arrangements, including the legal framework and the provisions for governance, as well as a given administrative and political practice are a necessary condition for the independence of regulators. Independence needs to be balanced with accountability. Accountability for regulatory authorities, which are at arms' length from political decision makers is often obtained through a set of procedural means, including annual reports, transparency in decision making, self and external evaluation.

Regulatory authorities in OECD countries are often established in key economic sectors, with a role to foster competition and also provide for technical or prudential oversight. The goal is also to minimise the potential for conflicts of interests and stimulate long-term investment in key infrastructure sectors as well as strengthen confidence and reduce institutional risk. The design and management of such regulatory agencies present significant challenges. Key issues in this respect include considerations on how to establish institutions that are:

- Competent, accountable and independent;
- At arm's length from short-term political interference;
- Capable of resisting capture by interest groups, but still responsive to general political priorities;
- Able to exercise delegated powers, including for example the power of granting licences or imposing sanctions in specific cases;
- Capable of having decision-making procedures that take into account the particularities of the area being regulated, while at the same time maintaining transparency and accessibility for all stakeholders; and,
- Ensuring transparency and accessibility for all stakeholders.

Source: Córdova-Novion, C. and D. Hanlon (2003), "Regulatory governance: Improving the institutional basis for sectoral regulators", *OECD Journal on Budgeting*, Vol. 2/3, OECD Publishing, doi: 10.1787/budget-v2-art16-en.

In Colombia, regulatory commissions play a key role in the adoption of regulation in key economic sectors (sanitation, energy and gas, and communications). In addition, there are supervisory bodies (*superintendencias*) that are in charge of enforcement of the regulations prepared by the commissions and ministries. Hence, the regulatory and supervisory functions, which in many OECD countries are combined in one economic regulator, are separate in Colombia's system, but both institutions are linked to the responsible ministries. Both, regulatory commissions and supervisory bodies, do not operate at arm´s length of political decision making, which suggests that there is scope for increasing their accountability and autonomy.

Both, regulatory commissions and *Superintendencias*, are financed by contributions made by the agents subject to supervision.[6] The maximum contribution cannot exceed 1% of the total of functioning expenditures. Regulatory commissions and *Superintendencias* are accountable to the National Congress, where they participate in public hearings and present results of their activities.

Regulatory Commissions (Comisiones de Regulación)

Law 142 of 1994, which originally established the public service provision regime, created regulatory commissions in the communications, energy and gas, and sanitation sectors.[7] More commissions were subsequently created in other areas, such as health. According to Article 73 of this Law, regulatory commissions have to regulate service provision in monopolistic markets and promote competition and efficiencies. The laws creating the commissions also describe their functions, competences, and structure. Currently, there are only three regulatory commissions, which operate in the sectors addressed by Law 142 of 1994.

Regulatory commissions are special units with administrative, technical and financial independence, linked to their respective ministries. They are part of the executive and so decision making has to be in line with government processes and the guiding principles established by the ministry.

The internal structure of the various regulatory commissions is similar. They have a Committee of Expert Commissioners, a General Co-ordination section, composed of an Executive Co-ordination and an Administrative Co-ordination, and executive functions: regulation and competition policy, technical, and legal.

Regulatory commissions are made of the respective minister, who chairs the board along with Expert Commissioners, and the Director of the DNP.[8] The head of the *Superintendencia* of Public Services can participate in the meetings, but has no right to vote. Decisions are normally discussed in sessions where members need to be present. Virtual sessions are also possible, in which case an act has to be prepared.

The President of Colombia nominates the expert commissioners for a fixed term of four years, and they can be re-elected. They are not subject to the rules of the civil service. One of the expert commissioners plays the role of executive director in a rotative way. All of the expert commissioners should have the opportunity to be responsible of the various areas covered by the work of the regulatory commission.

Regulatory commissions are responsible for drafting law proposals of the government and advising on adoption of law decrees, defining efficiency criteria and performance indicators to evaluate the financial, technical, and administrative management of public service delivery companies, establishing quality norms for companies delivering services, and setting the methodology and tariff formulas that regulated firms should consider in calculating rates for service provision.

Superintendencias

In Colombia some ministries and regulatory commissions might have implementation and supervisory functions, but in most cases, that function is reserved to a different institution outside the regulator, some are called *Superintendencias*, while others have a different denomination.[9] *Superintendencias* might also supervise implementation of national regulations at sub-national levels of government. *Superintendencias* are entities with administrative, technical and financial autonomy, linked to the ministry of the respective sector. The most relevant supervisory bodies in Colombia are:

- *Superintendencia* of Ports and Transport (*Superintendencia de Puertos y Transportes*);
- National *Superintendencia* of Health (*Superintendencia Nacional de Salud*);
- *Superintendencia* of Industry and Commerce (*Superintendencia de Industria y Comercio,* SIC);
- *Superintendencia* for Notaries and Registration (*Superintendencia de Notariado y Registro,* SNR);
- *Superintendencia* of Societies (*Superintendencia de Sociedades*);
- *Superintendencia* of the Supportive Economy (*Superintendencia de la Economía Solidaria*);
- Financial *Superintendencia* (*Superintendencia Financiera*);
- *Superintendencia* of Surveillance and Private Security (*Superintendencia de Vigilancia y Seguridad Privada*);
- *Superintendencia* of Family Subsidies (*Superintendencia del Subsidio Familiar*);
- *Superintendencia* of Public Services (*Superintendencia de Servicios Públicos*);
- Colombian Agricultural Institute (*Instituto Colombiano Agropecuario,* ICA);
- National Institute for Drugs and Food Surveillance (*Instituto Nacional de Vigilancia de Medicamentos y Alimentos*-INVIMA).

Superintendencias supervise, monitor, and control the sectors in which they operate. For instance, the *Superintendencia* of Public Services is responsible for oversight and controlling compliance with the relevant laws and regulations. It can impose sanctions against infringements of these rules. It supervises contracts with private companies offering public services and establishes harmonised information and accounting systems for service provision. It also supervises the appropriate application of subsidies for the poor.

Synergies and challenges between ministries, regulatory commissions and superintendencias

A distinctive feature of the Colombian regulatory system is that while in some cases the regulation and supervision functions are concentrated in the same entity (for example, The Ministry of Labour), in most cases these two key functions are undertaken by different institutions: Ministries and regulatory commissions, on the one hand, and supervisory entities, on the other.

This particularity presents some challenges for regulatory quality management and co-ordination. The participation of *Superintendencias* in regulatory design is crucial to ensure they can afterwards be in charge of implementation and supervision. Despite the fact of not having clear, explicit co-ordination mechanisms to ensure this process takes place systematically, *Superintendencias* do participate, at early stages of the regulatory process, in discussions with ministries and regulatory commissions about the way regulation should be prepared or reviewed. *Superintendencias* might propose regulatory interventions, based on the experience they have as supervisory bodies and the gaps they identify during the enforcement.

In most cases, *Superintendencias* offer a solid contribution to the discussion, as they are in possession of key information and data to develop regulatory proposals. Ministries and regulatory commissions rely on *Superintendencias* to get a better understanding of how regulation could be or is being implemented and the challenges ahead. *Superintendencias*, therefore, are invited to discuss regulatory proposals. They participate in cases where regulatory decisions are taken by vote, even if they do not vote, particularly in meetings of the regulatory commissions.

Superintendencias' opinions are also taken into account by ministries when they regulate. In some fields, such as trade, industry and tourism, the ministry sets up working groups to discuss proposals and the *Superintendencia* of Societies or the SIC are invited to actively participate. In other areas, such as finance, the Financial *Superintendencia* participates in the preparation of technical documents and economic analysis, as well as in official and working meetings. Conflicts may arise as views might differ, but in those cases the corresponding minister, as head of sector, intervenes to solve the issue and find common agreement and align policy objectives.

It is important to note that most sectors in Colombia have specific characteristics in terms of the roles of regulators and *Superintendencias,* and the way they interact with the regulated actors in their respective sector, as well with other institutions that might support the implementation of regulations. There is no single institutional model for this arrangement and each sector presents specific features. The relationship between *Superintendecias,* on one hand, and ministries and regulatory commissions, on the other, seems to be sound in general. Very few cases have been reported where the communication channels present deficiencies.

In some sectors, *Superintendencias* supervise both, public and private institutions, such as in the case of the *Superintendencia* of Health, which ensures monitoring of the General System of Social Security, and the SIC when it comes to consumer protection, as some residual competences have been delegated to municipalities. In some other cases, *Superintendencias* are in charge of supervising that businesses comply with regulations, such as in the case of the *Superintendencia* of Societies or the Financial *Superintendencia*.

In the area of public services (water and sanitation, telecommunications, gas and electricity), Law 142 of 1994 established the roles of the various institutional actors (ministries, regulatory commissions and *Superintendencia*) in those sectors, as this law created the regulatory commissions for those utilities and the *Superintendencia* of Public Services, in charge of supervision, which is not linked to any ministry, but to the DNP. The law also envisaged the creation of Committees of Development and Social Control of Public Services (*Comités de Desarrollo y Control Social de los Servicios Públicos*

Domiciliarios) in each Colombian municipality, composed of users, subscribers and potential subscribers. These committees are the responsibility of municipalities and have not always been set up.

Box 4.4. **The need for institutional co-ordination in the drinking water and sanitation sector**

In Colombia, it is estimated that there are about 1 500 service providers for water and sanitation in urban areas and 12 000 community organisations in rural ones. Law 142 of 1994, later modified by Law 689 of 2001, granted on the *Superintendencia* of Public Services the responsibility to manage the Unique Information System (*Sistema Único de Información*, SUI), which is the official mechanism to compile and publish information on public services. Information is collected via Internet and reported monthly for services related to energy, natural gas, LP gas, sewage, and sanitation.

Despite important achievements, information collected on sewage and sanitation services is not always of good quality. While big companies providing these services have complied with their reports, small firms, municipal enterprises, co-operative public associations, and rural providers have not always done so, and the quality of the information they report might not be the best. This fact implies an obstacle to analyse performance and anticipate regulatory needs in the water and sanitation sector.

Source: Information provided by the Water and Sanitation Regulatory Commission (CRA).

Assessment and recommendations

The GOC should establish an institutional mechanism at the centre of government to promote regulatory quality, namely an oversight body in charge of regulatory reform.

International experience shows that regulatory reform has to be led by a dedicated institution, located at the centre of government with clear responsibilities assigned for this task. An oversight body for regulatory quality is essential to ensure that regulatory policy is promoted and implemented with a whole-of-government approach. Colombia currently does not have such a body, despite the fact that a few institutions try to perform some of its core functions (i.e., co-ordination and advocacy).

The specific institutional solution for setting up an oversight body is to be decided by the GOC, depending on the administrative, legal, and political context of the country. Today several institutions perform functions attributed to oversight bodies, but none of them has a clear mandate in this respect. This has prevented the adoption of a broader agenda for regulatory quality. It is therefore essential to reflect on possibilities that could lead to the selection of the best option for such an institution. It is important to think about the way the institution is established, by a clear mandate to be in charge of regulatory policy, and the roles it should have. For Colombia, such an arrangement would be beneficial in terms of allowing sharing good practices among institutions, discussing regulatory priorities and challenges, and ensuring the whole administration promotes knowledge management and capacity building on regulatory issues.

The governance challenge, the ability of the oversight body to co-ordinate the government-wide implementation of regulatory policy effectively, should be one of the main considerations in deciding which institution could play this role. Arguably, the most important and powerful institutions at the centre of government are the President's Office

and the DNP, as the leading bodies in the setting, implementation, and performance-monitoring of the whole-of-government multi-year development plans. Limited internal policy development and strategic planning capacities suggest ministries/institutions that would be unable to fulfil effectively the functions of an oversight body.

The regulatory oversight body should be tasked with a variety of roles that could be gradually expanded, as the use of tools is promoted and improved. To start with, the oversight body should contribute to the systematic improvement of the application of regulatory policy and establishing clear criteria to examine the potential for regulation, in areas where rules are likely to be necessary. This would mean that all institutions in the Colombian administration would receive guidance to better define if regulation is the best way to intervene to solve a public policy problem. The oversight body usually provides training and guidance in the use of regulatory tools and strategies for improving regulatory performance. Capacity-building efforts are essential to ensure that regulators improve their skills for regulatory management.

In terms of the use of regulatory tools, the oversight body should be entrusted with the main responsibility to move forward from mere simplification efforts to a comprehensive approach to regulatory quality. It should lead the review of the stock of regulations from a legal perspective and having a systemic approach. As for the flow of new regulations, once RIA is in place, such an institution should promote high-quality evidence-based decision making in the medium and long term. This includes the quality control function through the review of the quality of impact assessments and returning proposed rules for which impact assessments are inadequate.

Box 4.5. **Institutional design and location of the oversight body**

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

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

Source: Cordova-Novion, C. and S. Jacobzone (2011), "Strengthening the Institutional Setting for Regulatory Reform: The Experience from OECD Countries", *OECD Working Papers on Public Governance*, No. 19, OECD Publishing, doi: 10.1787/5kgglrpvcpth-en.

An additional alternative to promote regulatory quality is a cabinet-based institution, which could consist of a small committee or council of ministers to review and approve high impact regulations. This mechanism for collective oversight is particularly helpful in governments that still have to develop capacities to review and challenge regulatory proposals. Its purpose would be to make the approval of high impact regulations binding and conditional upon demonstrated compliance with regulatory policy principles, or stated and specific government policy objectives. In principle, such a mechanism would improve the accountability of ministers and officials proposing regulations and embed a whole-of-government culture for regulatory improvement in the public administration. This cabinet-based mechanism does not replace the oversight body, but works in co-ordination with it. For example, the oversight body could make recommendations to the council regarding the approval, modification, or rejection of regulations, based on RIA and public consultation, but the final decision would rest on the council. In Canada, for example, certain regulations require the authorisation of the Governor in Council (GIC), which means that a cabinet of ministers has the authority to accept or reject these regulations (see Annex 4.A3 for a more detailed description).

The oversight body, and potentially a cabinet-based mechanism, should also:

- Monitor and report on the co-ordination of regulatory reform activities across portfolios.
- Report on the performance of the regulatory management system against intended outcomes.
- Identify opportunities for system-wide improvements to regulatory policy settings and regulatory management practices.

The current regulatory structure of Colombia requires an advisory mechanism at the highest political level to promote and advocate regulatory quality.

In many OECD countries, advisory bodies for regulatory reform have greatly contributed to shape a national agenda of regulatory policy. The experience of the GRAT in the case of the anti-formalities policy in Colombia is a good example of the role that a high-level advisory body can play The example of the National Competitiveness and Innovation Commission also provides some insight on the relevance of consolidating the public-private dialogue.

It is therefore advisable that Colombia establishes a broader high-level advisory body for regulatory quality. Participation of various stakeholders, from the private sector and civil society is also fundamental to ensure the advisory body contributes to a broad discussion of regulatory quality. Because regulatory policy is at a nascent stage in Colombia, the advisory body should be established on a permanent basis, and supported by a Secretariat. In this way, it could contribute in a sustained way to the public discussions about how regulation can be improved and the key areas in which the government should concentrate for further improvements.

An advisory body could also fulfill an advocacy function for regulatory improvement. Indeed, this function is important in helping identify opportunities for reform and in supporting and arguing for the development and progress of reform initiatives. However, advocating reform publicly and engaging in external communication, calling upon stakeholders and the policy communities to advance a programme for regulatory improvement, might not be easy for a government body, as it implies criticising the system to which it belongs.

Box 4.6. **Role of advisory bodies for regulatory reform**

Advisory bodies to promote regulatory reform are a key component of the institutional set-up for regulatory quality. In OECD countries, advisory bodies present a great variation of arrangements, but they are key to advocate regulatory reform.

In the **United Kingdom**, there have been a series of advisory bodies for regulatory reform. The current body is the Regulatory Policy Committee (RPC). It provides external, independent scrutiny of new regulation. Government institutions have to prepare an impact assessment that is scrutinised by the RPC, which provides an opinion to the Reducing Regulation Committee on the quality of analysis and evidence presented in the impact analysis. This opinion then informs the decisions of ministers as to whether they proceed or not with the proposal. The RPC consists of a mix of eight independent experts with a wide range of experience and current knowledge of business, employee and consumer issues. It is supported by a secretariat of eleven civil servants. More recently, the RPC has been asked to take on a wider role to investigate and report publicly on regulatory barriers preventing innovative businesses from growing and reaching their full potential.

The establishment of the **Swedish** Better Regulation Council in 2008 was a major step for regulatory reform in Sweden. It is an independent government-appointed committee of inquiry that has advisory standing in relation to the regulator's regular preparation and decision-making organisation. The Council examines the elaboration of proposals for new and amended regulations that may have effects on the working conditions of enterprises, their competitiveness or other conditions affecting them. The Council also has to consider whether the government and administrative agencies under the government have carried out the statutory impact assessments and to evaluate whether new and amended regulations have been formulated so as to achieve their purpose in a simple way and at a relatively low administrative cost for enterprises. The Council also has to assess the quality of the impact assessments and to follow developments in the area of better regulation and provide information and advice that can promote cost-conscious and effective regulation. The Swedish Better Regulation Council consists of a Chair, a Deputy Chair, two members and four alternate members.

Source: regulatorypolicycommittee.independent.gov.uk; and www.regelradet.se/about_us/about-the-swedish-better-regulation-council/, accessed 10 December 2012.

In some OECD countries the advocacy function lies on the oversight body, but some others, such as Australia, have created independent bodies to fulfil it (see Annex 4.A4 on the Australian Productivity Commission). An independent advocacy body has the advantage of ensuring that a truly external view of business and citizen needs is captured, countering the *status quo* bias that usually prevails in bureaucracies. Furthermore, the independence of such a body shields its policy evaluation process from the politics of reform.

Autonomy and accountability mechanisms should be strengthened for regulatory commissions and **Superintendencias** *to facilitate better performance and efficiency.*

The diversity of regulatory agencies in OECD countries and around the world corresponds greatly to legal, administrative, political and economic conditions in each country.[10] The Colombian administrative system has established regulatory commissions and *Superintendencias* away from the traditional approach of ensuring they are at arm's length from ministerial and executive powers. They follow a pattern that is common in many Latin American countries: they originate in an administrative, institutional, and legal system characterised by strong ministerial power within a presidential

administration. As they are organised today, they are not exempt from political interference. As noted in the report, the president nominates the directors of the institutions; ministers and other government bodies, such as DNP, participate actively in collegial meetings; and they clearly follow ministerial policy in the sector.

There is limited evidence, at this stage, to indicate that these governance arrangements have caused interference in the decision making and performance of regulatory commissions and *Superintendencias*. Deeper understanding and further evidence of the impact of the current governance structure may be required to establish the way in which this might have affected the efficiency of regulatory decisions. In the meantime, there is scope to strengthen and improve the autonomy and accountability mechanisms of commissions and *Superintendencias*.

Reviewing the governance structure of the regulatory system could be beneficial for the purpose of making institutions more accountable and protect them from major political changes or government interference. This would improve legal certainty and provide a stronger regulatory framework. At the same time, consolidating autonomy and accountability has the benefit of avoiding confusion of roles that might occur when the regulatory authority is at the same time the sectoral policy maker and the entity that controls public enterprises that are part of the same sector.

Greater autonomy for regulatory agencies should be considered in situations where:

- There is a need for the regulatory agency to be autonomous, or even completely independent, to maintain public confidence.
- Both, the government and private entities, are regulated under the same framework and competitive neutrality is therefore required.
- The decisions of regulatory agencies can have significant economic impacts on regulated parties and there is a need to protect the agency's impartiality.

The governance structure could be strengthened by way of a revision of director and board appointments. In some OECD countries, directors are nominated and appointed with the involvement of both, the executive and the legislative. For example, the President or the Prime minister proposes a short list of candidates and either the Senate or the parliament participates in the selection process. To ensure continuity, individual members of the board have staggered terms of office. Staggering the terms of appointment can also strengthen independence by separating the term of office of regulatory commissions from the term of office of governments. Staggering of appointment may also limit the loss of corporate knowledge when members of the board depart, and avoid the regulatory uncertainty associated with complete changeover in commission membership.

Excluding ministerial and executive oversight or participation in the board reduces political interference. For instance, in countries where independent regulatory agencies exist, such as the United Kingdom and the United States, members of the board are appointed or confirmed by the legislature. Members of the board are also accountable to the legislative. There are also clear guidelines and policies on conflict of interests.[11] Whereas, in Colombia, members of the executive actively participate in the board of regulatory commissions, including the relevant minister and the director of DNP.

Accountability could also be strengthened by improving some functions and the way regulatory commissions and *Superintendencias* relate to other stakeholders within and outside the State. Despite the fact they are pushing forward the regulatory quality agenda,

in a more consistent way compared with other institutions in Colombia, they could improve their consultation processes, transparency in their decision making, and the way they communicate with the public. High quality principles should be permanently promoted by these institutions, as they are key players in the regulatory system.

The GOC should strive to improve co-ordination mechanisms between ministries, regulatory commissions and* Superintendencias *by ensuring they systematically discuss at early stages of the regulatory process and participate in the preparation of new regulations and the interpretation of existing ones.

Separating the regulatory and supervisory functions into different institutions is uncommon. There is therefore no clear evidence that this model is better than the traditional one, where both functions are concentrated in the regulatory agency. The rationale for this choice might be related to ensuring that political considerations do not affect both roles and allowing institutions to have more autonomy in the way they conduct their responsibilities.

There is, however, a risk of lack of co-ordination. The *Superintendencia* of Public Services, for instance, participate in decision meetings of regulatory commissions, but do not have the right to vote.[12] If this *Superintendencia* is responsible for implementing the regulation adopted by regulatory commissions, its position should be reflected in the possibility to vote against a regulatory decision that might not be enforceable. Even though regulatory commissions and *Superintendencias* claim to have *ad hoc* mechanisms to co-ordinate, a revision of the existing decision-making process within ministries and regulatory commissions might formalise a more prominent role for *Superintendencias*.

In the absence of a systematic analysis of possible impacts of any given intervention through RIA, co-ordination mechanisms should be introduced to ensure that *Superintendencias* participate as early as possible in the preparation and design of regulations. Given their supervisory functions, *Superintendencias* should also play a role in any new RIA process in light of their access to data that will be key to evidence-based analysis of regulatory decisions.

Furthermore, planning of the regulatory needs of any given sector, with the participation of the different entities concerned (ministry, regulatory commission, *superintendencia*, territorial entities, stakeholders, etc.), might help avoiding regulatory overlap or even contradictory rules. Such co-ordination is also due when there is a need to interpret a regulatory requirement as lack of clear responsibilities and procedures might lead to the ineffectiveness of the rules and the public policies behind them.

Finally, robust co-ordination mechanisms are needed to develop quality real time data and information about developments in any given sector, so that early warnings can be established to identify issues that may be requiring a regulatory response.

Notes

1. Article 241, No. 4 of the Political Constitution.
2. Article 237, No. 2 of the Political Constitution.
3. Articles 149 and 150 of the Code of Administrative Procedure and Contentious Administrative.
4. Article 4 of the Law 954 of 2005.
5. Political Constitution, Law 1437 of 2011 and Decree 2067 of 1991.
6. Article 85 of Law 142 of 1994. However, not all *superintendencias* are financed exclusively by these contributions. The SIC's budget, for example, comes from public resources in an important percentage.
7. For the case of the Communications Regulatory Commission (CRC), Law 1341 of 2009 replaced Law 142 of 1994. Law 1341, also known as the ICT Law, established a new legal framework for the ICT sector and strengthened the telecommunications regulator. The law expanded the jurisdiction of CRC, from regulation of communication services to regulation of information, technology, and communication services. Furthermore, Law 1369 of 2009 granted on CRC the authority to regulate postal services. Later, Law 1507 of 2012 granted CRC with the attribution to regulate markets, networks, and infrastructure for television services, as well as to protect the rights of users.
8. Three ministries are represented in the board of the Water and Sanitation Regulatory Commission (CRA): Housing, Cities and Territory; Environment and Sustainable Development; and Health and Social Protection. The number of expert commissioners is not the same in all the regulatory commissions: Four expert commissioners participate in the CRA and CREG, while three do so in the CRC.
9. For simplicity purposes, the entities that monitor, control and supervise regulation are called *Superintendencias* in this document.
10. For a detailed analysis of economic regulators and their governance features in OECD countries see Cordova-Novion, Cesar and D. Hanlon (2002).
11. See for instance the Policy on Conflict of Interest of the Independent regulator and competition authority for the United Kingdom communications industries (OFCOM) at: www.ofcom.org.uk/about/policies-and-guidelines/policy-on-conflicts-of-interest/.
12. However, SIC in general does not participate in decision meetings of regulatory commissions, despite all its regulatory, oversight, and control attributions.

Annex 4.A1.

Main features of oversight bodies to promote regulatory quality

According to the 2012 *OECD Recommendation of the Council on Regulatory Policy and Governance*, oversight of regulatory procedures and goals should be promoted through:

- A standing body charged with regulatory oversight should be established close to the centre of government, to ensure that regulation serves whole-of-government policy. The specific institutional solution must be adapted to each system of governance.
- The authority of the regulatory oversight body should be set forth in mandate, such as statute or executive order. In the performance of its technical functions of assessing and advising on the quality of impact assessments, the oversight body should be independent from political influence.
- The regulatory oversight body should be tasked with a variety of functions or tasks in order to promote high-quality evidence-based decision making. These tasks should include:
  - Quality control through the review of the quality of impact assessments and returning proposed rules for which impact assessments are inadequate;
  - Examining the potential for regulation to be more effective including promoting the consideration of regulatory measures in areas of policy where regulation is likely to be necessary;
  - Contributing to the systematic improvement of the application of regulatory policy;
  - Co-ordinating *ex post* evaluation for policy revision and for refinement of *ex ante* methods;
  - Providing training and guidance on impact assessment and strategies for improving regulatory performance.
- The performance of the oversight body, including its review of impact assessments should be periodically assessed.

Source: OECD (2012b), "Recommendation of the Council on Regulatory Policy and Governance", www.oecd.org/gov/regulatory-policy/2012recommendation.htm, accessed 10 September 2012.

Annex 4.A2.

Regulatory evaluation in parliamentary institutions of OECD countries

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

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

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

In the **Swedish parliament** (*Sveriges Riksdag*) the Parliamentary Evaluation and Research Unit is in charge of *ex post* evaluation and co-ordination. The Unit was established in 2002 and was placed under the *Riksdag* Research Service. The Unit is headed by the Committee co-ordinator of the *Riksdag* Administration and works closely to support parliamentary oversight committees in their evaluation functions and undertakes, among others, the following tasks:

- Helping the committees prepare, implement and conclude follow-up and evaluation projects, research projects, and technology assessments.
- Locating and appointing researchers and external experts to carry out projects.

- Preparing background materials for evaluation and research projects at the request of committees.
- Requesting up-to-date reports from government agencies on the operation and effects of laws.
- Contributing to the structuring, implementation and final quality control of projects.
- Contributing to the general development of the committees' evaluation and research activities.

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

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

- Evaluating the legal norms approved by the National Congress in co-ordination with the Secretary of the commission in charge. The evaluation is made based on the effectiveness and influence on society. The Department might propose corrective measures to improve the implementation of the evaluated law.
- Creating and maintaining a network of social organisations interested in participating in the evaluation process.
- Informing the Secretary-General, through the Commission of Internal Regime, Administration and Regulations, about the results of evaluation.
- Suggesting amendments to the current legislation, if needed.

Source: OECD (2012a), *Evaluating Laws and Regulations: The Case of the Chilean Chamber of Deputies*, OECD Publishing. doi: 10.1787/9789264176263-en.

Annex 4.A3.

The regulatory process in Canada

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

- Governor in Council (GIC) regulations: These regulations require the authorisation of the Governor General on the advice of the Queen's Privy Council (currently represented by the Treasury Board Ministers). This means that a cabinet of ministers has the authority to accept or reject these regulations;
- Ministerial regulations: Where an Act gives an individual minister the authority to make regulations; and
- GIC or ministerial regulations requiring Treasury Board approval: These regulations require approval from the Treasury Board (TB) when there are financial implications or when a department's enabling act requires Treasury Board recommendation to the Governor in Council.

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

- *Analysis:* Departments conduct analysis and develop the regulatory impact assessment statement (RIAS) that includes a description of the proposal, alternatives considered, a cost-benefit analysis, results of consultations with stakeholders, compliance and enforcement mechanisms. They obtain approval of the RIAS from the Regulatory Affairs Sector in the Treasury Board of Canada Secretariat (TBS-RAS).
- *Sign-off by Sponsoring Minister:* The proposed regulation package is signed off by the sponsoring minister. By signing the documents, the minister formally recommends pre-publication or exemption from pre-publication and final approval. In cases where regulations require Treasury Board recommendation to the Governor in Council, the department will send a submission to TBS.
- *Review by TBS-RAS*: TBS-RAS will review consistency with the *Cabinet Directive on Streamlining Regulation* and other government initiatives; revise supporting documents; and prepare a briefing note for consideration by TB.

- *Request to TB for pre-publication:* The first time that a regulatory proposal is seen by TB, the sponsoring minister is seeking approval for pre-publication in the Canada Gazette, Part I. Pre-publication allows for public scrutiny and comment on the proposal, generally for a period of 30 days or 75 for regulations with an impact on international trade. It is expected that the department will address public comments in a revised regulation, or provide reasons why a given concern could not be addressed.
- *TB Recommendation for GIC Approval:* TB ministers make the decision to recommend approval of the regulatory proposal by the GIC. If approved, the Governor General grants validity to the regulation by signing it; and the regulation is subsequently registered with the Registrar of Statutory Instruments. If not approved, the sponsoring department must decide either to modify the initiative and go back to the beginning of the approval process; or to abandon the initiative entirely.

Source: OECD (2013), *OECD Reviews of Regulatory Reform: Mexico: Towards a Whole-of-Government Perspective to Regulatory Improvement*, OECD Publishing.

Annex 4.A4.

The Australian Productivity Commission

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

The government directs the PC on what areas to study through the issuance of formal terms of reference, but the PC is independent in its analysis and findings. The processes of inquiry are public, allowing the opportunity for the participation of interested individuals and groups, and the inquiry reports must be tabled in parliament within 25 sitting days of the government receiving the report. The PC cannot launch its own inquiries, although it can initiate supporting research and publish the results via commission or staff research paper.

Source: OECD (2010c), *OECD Reviews of Regulatory Reform: Australia 2010: Towards a Seamless National Economy*, OECD Publishing, doi: 10.1787/9789264067189-en.

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Chapter 5

Colombia's administrative capacities for making new regulations

This chapter describes the procedures currently in place in Colombia to produce legislation and subordinate regulations and the extent to which core principles of good regulation are applied. It assesses the capacity of the Government of Colombia to produce high quality regulation and to ensure that both, processes and decisions, are transparent to the public. In doing so, the chapter illustrates the use of tools for administrative transparency and predictability, such as forward planning and plain language, the application of regulatory consultation for dialogue with stakeholders, the consideration of alternatives to regulation, and progress and potential for the implementation of Regulatory Impact Analysis. Finally, it provides recommendations to advance and improve the use of these tools.

This section reviews how current processes for making legislation and subordinate regulations support the application of core principles of good regulation. It describes and evaluates systematic capacities to generate high-quality regulation, and to ensure that both processes and decisions are transparent to the public.

Administrative transparency and predictability

Transparency of the regulatory system is essential to establishing a stable and accessible regulatory environment that promotes competition, trade, and investment, and helps insure against undue influence by special interests. Transparency reinforces the legitimacy and fairness of regulatory processes. It involves a wide range of practices, including standardised processes for making and changing regulations, consultation with interested parties, plain language in drafting, publication, and codification. Transparency thus serves to make rules easy to understand and find and contributes to the implementation and appeals processes being predictable and consistent.

Forward planning

A number of OECD countries have established mechanisms for publishing details of the regulation they plan to prepare in the future. Forward planning has proven to be useful to improve transparency, predictability and co-ordination of regulations. It fosters the participation of interested parties as early as possible in the regulatory process and it can reduce transaction costs through giving more extended notice of forthcoming regulations. International examples are shown in Box 5.1.

Box 5.1. International experiences on forward planning

In **France**, the government´s programme of work (PGT), which details the main orientations of the government, field by field, is set out every six months. This enables political will to be expressed and priorities adapted by checking that government policies are consistent. It includes the list of draft legislation that the government intends to submit to a vote in parliament, the list of draft ordinances and decrees proposed for introduction into the agenda of the Council of Ministers' meeting, and the list of matters that are to be subject of communication in the Council of Ministers (oral presentation by ministers of their actions within a field under their responsibility). The programme of work is therefore an instrument for organising legislative and regulatory activity, allowing forward planning and timely scheduling of business in the Council of State, the Council of Ministers, and the parliamentary agenda for the government's part. Since the programme of work is simply indicative, if necessary, it can be modified to take account of new requirements arising from current events. The themes included in the work programme are subject to proposals made by members of the government. These proposals are collected by the Secretariat General of Government (SGG), which puts them in a uniform format. They are all then submitted to arbitration by the Prime minister. The government´s programme of work is not made public, without necessarily being classified as confidential.

In **Sweden**, work flows from the government's political agenda, based on the coalition agreement at the start of each political term. The Prime minister's Office submits a list of upcoming bill proposals twice a year to the parliament. The annual Budget Bill also indicates the direction of reforms. It gives significant information about priorities, including new legislation for the coming years. The government also informs the *Riksdag* annually about appointed Committees of Inquiry and their work (*kommittéberättelsen*, the Committee Report). These documents are available on the government's website.

Source: OECD (2010b), OECD (2010), *Better Regulation in Europe: France 2010*, OECD Publishing. doi: 10.1787/9789264086968-en and OECD (2010e), *Better Regulation in Europe: Sweden 2010*, OECD Publishing, doi: 10.1787/9789264087828-en; and OECD (2010f), *Better Regulation in Europe: United Kingdom 2010*, OECD Publishing, doi: 10.1787/9789264084490-en.

There is no systematic forward planning of regulatory activities in Colombia. However, ministries usually establish regulatory objectives with the help of their planning units and these have to be in accordance with sectoral plans that derive from the National Development Plan. The MCIT, for instance, prepares an Annual Plan of Technical Regulations that is presented to the Inter-sectoral Commission of Quality.[1]

Regulatory commissions are required to define an annual regulatory agenda in which they have set out the projects and studies that will be conducted over the following year.[2] The commissions must consult on their regulatory agendas with the respective stakeholders before October 30 of each year, and are required to incorporate comments from other sector institutions into the final plan. Stakeholders have ten days to provide comments to the drafts. Final versions are published by 31 December of each year. Regulatory commissions also establish five year Strategic Plans.

The supervisory bodies (*Superintendencias*) establish planning programmes with support of their internal planning offices.

There is scope for institutions in Colombia to inform the public and specific stakeholders in advance about regulatory plans. The use of regulatory agendas is a practice that could be expanded to other regulators, such as ministries. Thus, regulatory plans could be established on a yearly basis and, in the case of primary legislation, this would also contribute to improve co-ordination with the legislative branch.

Communication

Another dimension of transparency is the effectiveness of communication and the accessibility of rules for regulated entities. Regulatory transparency requires that governments effectively communicate the existence and content of all regulations to the public.

In Colombia, each government entity is responsible for communicating its own regulatory decisions. While this affords some transparency, there is no systematic process of announcing new regulation or amendments to the existing regulatory framework. Once adopted, public authorities normally publish new requirements or regulations in the Official Gazette or on their websites.

Article 74 of the Political Constitution acknowledges that "all people have the right to access public documents except in cases established by law". Other laws make provision for the publication of regulations and official documents through gazettes or newsletters,[3] and the specific publication in the Official Gazette.[4] There is also an obligation to keep the public updated with accurate information, in particular when it comes to regulatory proposals or regulations related to the competence of each institution.[5] Decree 1345 of 2010[6] states that any administrative act should be communicated to the public, before it is issued, electronically or through the mail, and the institution must document that it has done so.

In most cases, Colombian institutions are clear about communicating regulatory decisions and using ICT to make them available to the public. Law 962 of 2005, which deals with the rationalisation of requirements by public institutions or private bodies that deliver services to citizens, mandates institutions to communicate all regulations by electronic means five days after official publication.

In terms of the publication of laws promulgated by the National Congress,[7] the National Printing (*Imprenta Nacional*) is responsible for the publication of the following key documents:

- The Official Gazette (*Diario Oficial*),[8] which contains:
  - a) All legal acts and constitutional amendment proposals approved in the first round,
  - b) Laws and law proposals that have been rejected by the Government,
  - c) Decrees with the power of law, decrees and executive resolutions issued by the Government and all other administrative acts of general character, issued by all institutions at the national level of the executive branch.

In this case, only primary legislation (constitutional amendments and law) is published at the drafting, prior to their final approval in the National Congress, while most of the publication is done on legal instruments *ad posteriori*, once they have been passed in the executive.

- Congress Gazette (*Gaceta del Congreso*), which contains the process that law proposals follow, as well as the debates undertaken previous to promulgation. Access to this publication is, however, limited.

The National Congress also publishes on the Senate's website (www.senado.gov.co) all law proposals that are discussed in order to communicate their content and the debates around them.

Despite these facts, there is no systematic way stakeholders could know in advance all regulatory proposals that might affect them. A single repository of draft proposals is missing in Colombia, which hinders transparency of what is being regulated. Communicating regulatory proposals to stakeholders early in the decision-making process could serve to improve public participation and advance transparency.

Box 5.2. **The experience of the United States with registries of laws and regulations used at the preparation stage**

In the **United States**, the site regulations.gov is a source for information on the development of federal regulations and other related documents issued by the U.S. government. Through this site, citizens can find, read, and comment on regulatory issues. The site contains all final regulations, notices, scientific and technical findings, guidance, adjudications, comments submitted by others, and the unified agenda and regulatory plans of institutions. The site supports the programme e-Rulemaking in the following way: after Congressional bills become laws, federal agencies are responsible for putting those laws into action through regulations. This process may include the following steps:

1. An agency initiates a rule making activity, and adds an entry to its regulatory agenda;
2. A proposed rule or other document is published in *regulations.gov;*
3. The public is given the opportunity to comment on this rule for a specified timeframe;
4. Final rules can be accessed in regulations.gov.

Rules are then published every business day by the Government Printing Office's Federal Digital System (FDsys), available at: www.gpo.gov/fdsys/.

Source: regulations.gov, "Your voice in federal decision making", accessed 10 March 2013.

In OECD countries, publication and availability of laws and regulations have been important trends in the last few years. Box 5.2 presents the example of how the United States is making use of ICT to make not only the regulatory framework available, but also to have active interaction with stakeholders.

In Colombia, there is a single point of information on formalities. As discussed further (see Chapter 6), Law 962 of 2005 established that formalities can only be introduced and citizens comply with them if they are registered in the SUIT. This law established the requirement for the government to provide basic information about formalities via electronic means. SUIT is the single legal registry of the Colombian State providing information about formalities managed at the central and sub-national levels of the public administration. It is managed and co-ordinated by the DAFP and can be consulted at www.gobiernoenlinea.gov.co.

Plain language

Governments need to ensure that regulatory goals, strategies, and requirements are clear to the public. This is essential for maintaining public confidence in the need and appropriateness of regulation, and an important element to ensure compliance. Fundamentally this requires that legal texts are clear and readily understandable, even for non-legal experts. Even though technical language may be appropriate and even necessary for some stakeholders, it is important that citizens without specific sectoral expertise can understand the basic features of regulatory proposals.

Box 5.3. **The promotion of plain language in OECD countries**

In **Germany**, the Joint Rules of Procedure provide that the language used in bills must be "correct and understandable to everyone as far as possible". Generally, bills are submitted to the relevant editorial offices to review the accuracy and comprehensibility of the language used. The federal Ministry of Justice provides support by issuing a "Manual of Legal Drafting", which is also available on the Internet. The manual focuses on concrete suggestions on content, structure and form of laws and regulations. The manual also contains technical suggestions on legal definitions, stylistic criteria, references, and other linguistic components. In 2007 and 2008, the Ministry of Justice conducted a project on "understandable legislation". It found that the comprehensibility and clarity of draft legislation could be improved significantly by involving relevant experts, lawyers and linguists at a very early stage. As a result, such multi-disciplinary linguistic counselling was institutionalised as of 2009. Training was provided to other administrations. As part of this commitment, additional posts were created and overall ten staff within the Ministry of Justice work exclusively on easily understandable legal language.

In **Portugal**, the Rules of Procedures of the Council of Ministers include an annex, which spells out requirements concerning drafting of regulations. This provides law drafters with rules on the structure and presentation of regulations, and on formal drafting requirements. In addition to a number of style rules (such as use of abbreviations, foreign language, acronyms, etc.), the text requires "clarity of language". It recommends writing "short, clear and concise sentences", using a plain language level, and avoiding vague expressions. Furthermore, in the framework of the *Legislar Melhor Programme*, the Presidency of the Council of Ministers has undertaken the preparation of a practical guide for officials and institutions involved in legal drafting. The guide will be an online database, with interactive tools, hyperlinks, model examples of draft legislation, and specific guidelines.

Source: OECD (2010c), *Better Regulation in Europe: Germany 2010*, OECD Publishing, doi: 10.1787/9789264085886-en; and OECD (2010d), *Better Regulation in Europe: Portugal 2010*, OECD Publishing, doi: 10.1787/9789264084575-en.

Decree 1345 of 2010 provides guidelines for the publication of regulations and it clearly states in its Article 14 that "draft proposals should be characterised by clarity, precision, plain language and coherence, in order to avoid ambiguity or contradictions." No institution, however, monitors the implementation of the decree and the appropriate use of the guidelines depends on the discretion of legal drafters. There is therefore limited evidence on the use of the guidelines and the impact they might have had in the quality of the regulation.

The use of consultation for dialogue with affected groups

Effective consultation is a key consideration for ensuring that the interests of citizens and business are taken into account in the development and design of regulation. It improves the effectiveness of regulation by drawing on the information that regulated entities have about the likely impacts of regulation. By exposing problems and potential deficiencies so that they can be taken into account, it increases stakeholder commitment and promotes a greater likelihood of compliance. The positive effect of increased transparency and stakeholder engagement is not just confined to regulation, but is also applicable to policy and programme development and delivery.

The administration, however, cannot be relied upon to take up consultation practices unassisted. Increased public participation in rule making can present political challenges and is also an additional administrative delay to the legislative process. It therefore calls for careful planning and preparation and may require cultural change to be successfully integrated within the administration. Accordingly, the OECD has found the adoption of common procedures and the publication of guidance documents to be particularly important in promoting a consistent commitment to public consultation within the administration. Guidelines on consultation serve two purposes: First, they clearly express the policy commitment of the government to require public officials to engage with the public. Second, they provide valuable technical guidance to public officials on how to design effective public consultation and integrate the views of the public.

In Colombia, there are several instruments that promote public consultation, even if there is no single, systematic and compulsory requirement to conduct public consultation within a given deadline. Public consultation *per se* is not clearly defined, even if institutions are required to make their draft regulations public and they must solicit opinions during a set period. Institutions have a considerable discretion as to how this is done. In addition, there are no formal requirements for pre-consultation (i.e., early consultation, before preparation of an *ex ante* impact assessment). This is also at the discretion of the institution concerned.

As to formal consultation, some arrangements have been introduced, depending on the type of institution (i.e., ministry or regulatory commission). This has led to a variety of ways and timeframes to conducting public consultation, but it is not clear whether one of the main purposes of the tool, providing inputs for decision making, is actually being achieved. Regulatory consultation might be open to all interested parties, but depending on the subject, it can also be restricted to particular groups. In addition, as there is no clear requirement to conduct public consultation before decisions have been taken, the opportunity to participate seems to be limited to providing opinions on draft regulations, rather than any previous analysis of the various options available. This is linked to the fact that there is no systematic use of impact analysis, where interested parties would have the opportunity to participate at an earlier stage of the regulatory process.

In general terms, the Political Constitution, in Title IV, includes the use of some mechanisms, such as referenda, plebiscites, popular consultations, and lobbying, regulated by Law 134 of 1994 as a way of citizen participation that could be used even in regulatory processes. Law 5 of 1992[9] creates opportunities for citizen participation in the preparation of legislative proposals when they are debated in the corresponding commissions of the National Congress. When it comes to specific regulatory proposals that affect certain groups, such as indigenous people,[10] pre-consultation is envisaged as a fundamental right that has to be observed when projects, public works, or regulatory decisions might affect their territories.

Article 8 of the Code of Administrative Procedure and Contentious Administrative[11] establishes that each institution is obliged to make public "the specific regulatory proposals and the information that gives them ground, in order to get opinions, suggestions and alternative proposals. Institutions should indicate the deadline for submitting such observations, which must be included in the public register." The Code, however, gives discretion to institutions on the way and means to conduct public consultation. Consequently, there is no homogeneity in the way public consultations are conducted in Colombia. This contrasts sharply with the international experience. For instance, in the United States, the "notice and comment" technique is an example of a central-led, mandatory, simple, and rigorous process (see Box 5.4).

Box 5.4. **International experiences on consultation procedures**

Public consultation is highly developed in the **United States**. Almost all federal regulations are developed through mandatory administrative procedures intended to ensure public consultation and openness. These "notice and comment" procedures dominate the rule making process in Washington by establishing the channels through which multiple interest groups strive to influence the regulatory decision by developing empirical or legal arguments supporting their positions. The Administrative Procedure Act, enacted in 1946, establishes minimum procedural requirements for rule making. While it leaves agencies great flexibility to develop procedures, the Act requires that an agency publish a proposed rule in the Federal Register. Except for some widely used exceptions, the public must be given at least 30 days to comment in writing and the agency must consider any comments received. The American system of notice and comment has resulted in an extremely open and accessible regulatory process at the federal level that is consistent with international good practices for transparency. The theory of this process is that it is open to all citizens, rather than being based on representative groups. This distinguishes the method from those used in more corporatist models of consultation, and also from informal methods that leave regulators considerable discretion as to who to consult. Its effect is to increase the quality and legitimacy of policy by ensuring that special interests do not have undue influence.

In **Switzerland**, consultation procedures are an important stage of the legislation process and a highly developed feature of the Swiss political system. The legal basis of the consultation procedure is found in the Federal Constitution, Art. 147, which states that "the Cantons, the political parties, and the interested circles shall be heard in the course of the preparation of important legislation and other projects of substantial impact, and on important international treaties". Besides the association of political actors into the legislative process, the consultation procedure allows the Federal Council to inform them on future actions and to ensure its acceptance and implementation. Since 1991 an ordinance (*Ordonnance sur la procédure de consultation*) has regulated the whole consultation procedure: field of application, form and body responsible for the consultation, launching of the procedure, organisations consulted, deadlines, handling and publication of results. Consultation was opened in the case of important legislation, important international treaties, or other projects of substantial impact.

Box 5.4. **International experiences on consultation procedures** (*cont.*)

The term "important" was open to interpretation, and projects were assessed on a case-by-case basis. Despite the discretionary decision, the Federal Chancellery, in charge of opening each consultation procedure, had to ensure a coherent practice. According to the ordinance, the consultation procedure was ordered by the Federal Council and arranged by the department concerned, either in writing or by means of hearings. People not invited to take part in the consultation procedure could also state their views on a proposal. The answers of the cantons, parties and associations were evaluated. The Federal Council then presented the main points of its proposal before the Federal Assembly or indicated its opinion on a parliamentary initiative. The Federal Council debated the draft legal act in light of the outcomes of this consultation. In 2004, the Federal Council submitted a dispatch to the Federal Assembly to embody consultation in a federal act. The new Federal Law on the Consultation Procedure (*loi fédérale sur la procédure de consultation*) entered into force on 1 September 2005. This law reduces the number of subjects that qualify for the consultation procedure: a consultation will only take place if the subject is likely to have a significant impact (i.e., if the project has far-reaching political, economic, environmental, social and cultural implications). At the federal level, the Federal Council or a parliamentary commission are the only entitled to initiate a consultation procedure, meaning that the consultation procedure is an executive or legislative, but not an administrative act. The Federal Chancellery and the ministries are competent to initiate "hearings" (auditions, *Anhörungen*) themselves about less important projects (Art. 10 of the Law on the Consultation Procedure). The Federal Chancellery ensures co-ordination and opens the procedure, indicating deadlines (normally three months) and availability of documents. The law explicitly recommends the use of external bodies of the federal administration to put consultation into practice. If the consultation is initiated by a parliamentary commission, this body can turn to the federal administration to ask for support for the procedure.

Source: www.regulations.gov, accessed 10 March 2013; OECD (1999), *OECD Reviews of Regulatory Reform: Regulatory Reform in the United States 1999*, OECD Publishing. doi: 10.1787/9789264173989-en; and OECD (2006), *OECD Reviews of Regulatory Reform: Switzerland 2006: Seizing the Opportunities for Growth*, OECD Publishing, doi: 10.1787/9789264022485-en.

Regulations issued by ministries are normally subject to public consultation, but there are no defined criteria. Draft regulations are normally published for consultation among interested stakeholders, both public institutions and the private sector, and the deadline for consultation depends on the topic. During the consultation period, the public has the opportunity to send comments, suggestions and proposals on draft regulations, which may be incorporated after a careful discussion in the ministry. This means that ministries, as heads of sectors, oversee the consultation process. Opinions made by public consultation might lead to the revision of draft regulation. In terms of technical regulations and conformity assessment procedures, the MCIT publishes all draft proposals not only to all trading partners of Colombia, but also to the World Trade Organization (WTO).

Under Article 9 of Decree 2696 of 2004,[12] regulatory commissions must publish all draft resolutions of general character, except for tariff setting, on their websites, at least thirty days before they are adopted. The Decree gives discretion to commissions to set criteria for publication and to define exemptions to the process. The Communications Regulatory Commission, for example, has established an exemptions list. The Energy and Gas Regulatory Commission has set out that the publication of draft resolutions will be accompanied by an explanatory note describing the objective of the proposal, the background to it, international experiences, the alternatives assessed, the technical studies conducted and their conclusions, as well as an assessment of the impact of the proposal.

Box 5.5. **Examples of public consultation procedures in Colombia**

Two examples show in more detail the way public consultation is used in Colombia. The SIC publishes all draft regulatory proposals in its website in order to get opinions and suggestions. Any interested party can send comments to the SIC on a particular draft regulation, through mail or personally, indicating name and mail for contact. The publication of draft proposals is done once an initial draft is ready, which can be modified in light of the comments received both from stakeholders, interested parties or public institutions. The deadline to get comments is indicated in the website, but it cannot be shorter than three working days. However, there is no legal mandate for SIC to publish its opinions on its website until final concepts on regulatory projects are taken.

In terms of environmental policies, social participation is guaranteed through a series of requirements and modalities:

- Right to intervene in environmental administrative procedures. Any individual or society, public or private, can intervene in the process of issuing, cancelling or modifying licences and authorisations that might have a negative effect on the environment or impose or revoke sanctions due to non-compliance with regulations, according to Article 69 of Law 99 of 1993 that regulates the National Environmental System.
- Public hearings. Before licences or authorisations are issued, there are mechanisms to organise a public hearing to give stakeholders the opportunity to express their points of view concerning potential environmental impacts. It is a formal procedure with a specific type and number of participants.
- Consultation with indigenous and black communities. Any legal act (law, decree, resolution, licence) that might affect indigenous or black communities has to be submitted to public consultation to identify measures to protect their cultural, economic, and ethnic identity.
- Petition right of information. Any individual or society has the right to request information about decisions that might harm and represent a potential danger for the environment and human health.
- General guidelines. Ministries have created a consultation link that offers the possibility to any interested party to participate in the preparation of public policies, plans, programmes and regulations. A specific form has been created to provide comments, as well as an e-mail to send all contributions.

Source: Information provided by the DNP.

When public consultation is conducted, there is no obligation for ministries to neither publish the results of the consultation nor to provide feedback to the participants in the process. Despite this limitation, some ministries disseminate the results of the consultation process with interested parties and publish them on their websites. In some cases, roundtables are organised to continue the discussion, as in the case of the MCIT, which has promoted this practice in order to increase the adoption of technical norms that might have significant economic impacts on entrepreneurs.

Regulatory commissions are obliged to provide feedback on the comments received and respond to them, according to Article 10 of Decree 2696 of 2004. The contributions must be analysed and included in a report explaining the reasons for either accepting or rejecting them. This document is published one working day after resolutions have been made public in the Official Gazette.

Choice of policy instruments: Regulations and alternatives

Critical to the administrative capacity for good regulation is the ability to choose the most efficient and effective tool, whether regulatory or non-regulatory, to meet a policy objective. The use of alternative policy tools is expanding among OECD countries. This follows experimentation, shared learning and an increased understanding of the potential role of markets. Typically, however, there are disincentives for public servants to be innovative: the use of untried methods carries risks and bureaucracies can be inherently conservative. Reform authorities must take a clear leading role in supporting and promoting alternatives to traditional regulatory approaches if innovative alternatives are to be developed and implemented.

There is no systematic consideration of alternatives in the process of preparing new regulations in Colombia, mostly due to the lack of training in the use of such alternatives and a legalistic approach towards problem solving, in addition to the lack of a systematic use of RIA. The use of alternatives depends on the topic and the technical capacities of the experts that are dealing with the issue, as well as to the consideration of international practices. There are, however, some examples that illustrate potential in the use of alternatives.

The Colombian legal framework does not foresee the delegation of regulatory powers to individuals, apart from cases where there has been an explicit presidential delegation and impartiality is guaranteed by a legitimate system that ensures a proper functioning of delegation. Law 489 of 1998, which deals with the structure and functioning of public entities, regulates those cases. The Political Constitution, in articles 116 and 210, foresees the possibility of private entities performing administrative functions under certain conditions. Examples include arbitrators, mediators, Chambers of Commerce and notaries, which can be self-regulated and issue internal regulations to provide services to users.

Examples of self-regulation, important for encouraging entrepreneurship and contributing to the improvement of regulatory quality in Colombia, include the Chambers of Commerce, which are private entities with delegated regulatory functions, according to Law 28 of 1931, such as the maintenance of public registries. This has contributed to the development of a programme to formalise business start-ups and to improve and simplify procedures for registering companies. There are currently 57 Chambers of Commerce in Colombia affiliated to the Colombian Chamber of Commerce Confederation (Confecamaras). The SIC has the attribution to supervise and sanction Chambers of Commerce.

In the financial sector, there are various examples of self-regulation, one of which is the Stock Market Self-regulator (*Autorregulador del Mercado de Valores*, AMV). AMV is a private corporation at the national level that is governed by the Political Constitution, civil norms, and Law 964 of 2005 regulating the way in which the government manages and invests resources originated in the stock market. AMV was set up in 2006 and the Financial *Superintendencia* delegated self-regulatory powers to it through Resolution 1171 of July 2006 (www.amvcolombia.org.co/).

Box 5.6. **Exploring the use of alternatives to regulation in OECD countries**

The first response by governments to a perceived policy issue is often to regulate, but it may be appropriate to ask whether traditional regulation is the best possible course of action. In many situations there may be a range of options other than traditional "command and control" regulation available. The alternatives to traditional regulation fall into three main categories: market-based instruments, self-regulation and co-regulation approaches, and information and education schemes. OECD countries are increasingly experimenting with the use of alternatives to regulation, mainly in association with the use of RIA.

In **Australia**, the *Best Practice Regulation Handbook* requires that the Regulatory Impact Statement (RIS) include consideration of a range of regulatory and non-regulatory alternatives. The handbook promotes the early consideration of alternatives when examining the need for regulation. It provides guidance and identifies the strengths and weaknesses of a range of alternative approaches, including examples of where they could be applied. There is no preference expressed for a particular regulatory approach, the appropriate solution should be identified based on the features of the policy problem and deliver the greatest net benefit compared to other possible options. In all cases where new regulation is being considered, self-regulation is required to be examined in a RIS. The training for departments provided by the Office of Best Practice Regulation includes discussion of the range of alternative instruments and their application.

In **Germany**, the Joint Rules of Procedure of the federal ministries stipulate that draft regulations must be accompanied by an explanatory memorandum, which among others must establish:

- whether there are other possible alternatives to regulation;
- whether the identified policy objective can be performed by private parties; and
- the considerations that led to the rejection of non-regulatory options.

An annex to the Joint Rules provides a checklist for identifying opportunities for self-regulation:

1. What kind of regulation arrangement is appropriate to address the problem? Is self-regulation sufficient? What structures or procedures should the State provide to enable self-regulation? Would it be possible for the State to make self-regulation mandatory?
2. Provided the task can be carried out by non-governmental or private bodies: how is it ensured that the non-governmental service companies will provide their services for the common good (nation-wide coverage, etc.)? What regulatory measures and bodies does this require? How is reassignment of tasks to governmental institutions ensured in the case of bad performance?
3. Can the problem be solved in co-operation with private bodies? What requirements for the legal design of such co-operative relationships should be imposed? What practical design is suitable and necessary to enable or support such co-operative relationships in organisational terms?
4. If it seems that the problem can only be solved adequately on the basis of a programme or other target-oriented basis: what minimum content of regulation is required by the rule of law (i.e. stipulations on competence, aims, procedures, etc.).

Source: OECD (2005), *Alternatives to Traditional Regulation*, OECD Publishing; OECD (2010c), *Better Regulation in Europe: Germany 2010*, OECD Publishing, doi: 10.1787/9789264085886-en; and Government of Australia (2010), *Best Practice Regulation Handbook*, Canberra.

Legal review of regulatory proposals

The SJ is the main institution in charge of legal review of regulatory proposals, mainly draft laws and decrees, prepared by executive institutions. The SJ focuses on the legal accuracy of drafts and their constitutionality to avoid future laws or decrees being overturned either by the originating institution, a higher level one, or following an appeal to the State Council. The highest level of legal review in Colombia is done by the Constitutional Court, which reviews not only the procedures to issue laws, but also their contents to ensure that they are not in disagreement with the constitutional framework. Hence, the constitutionality of laws is reviewed by the Constitutional Court, while that of the resolutions issued by regulatory commissions is reviewed by the State Council.

Box 5.7. **Improving legal techniques in France**

In **France**, the Secretariat General of Government plays an important role as "checkpoint guard" in monitoring the preparation of legislation and regulations. In addition to its role far upstream in the scheduling of government work, it intervenes at decisive stages in the drafting of legislation. In certain cases the legislation and law quality department (within the Secretariat General of Government) may contribute to the first stages of drafting legislation by providing expertise, for example on a legal problem or on the impact assessment. In any event, the department intervenes in the final stages of preparation of the text, before it is passed on to the Council of State. It provides its expertise to the prime minister's cabinet in arbitration at the stage of inter-ministerial validation of legislative or regulatory draft bills. It also intervenes before regulations (decrees and orders) are presented for signature by the prime minister or by the President of the Republic prior to publication in the Official Journal. This check relates both to the legality of the draft law and to the editorial quality of legislation. It prepares the six-monthly schedule for the government's work, on the basis of ministerial proposals, and the scheduling of the enabling texts. It ensures the validity and quality of draft legislation presented at the Council of Ministers meetings and thus carries out an upstream check on the review done by the Council of State. The Council of State issues a recommendation on the validity of the legislation. More specifically, when it examines draft legislation, it gives its opinion on:

- the presentation, ensuring that draft legislation is well-written;
- the validity, checking that competence rules are complied with and, in respect to content, compliance with hierarchically superior legislation; and
- the expediency, drawing up an assessment of the advantages and disadvantages of legislation.

The government is not obliged to follow the advice of the Council of State but it may only enact the bill adopted by the Council of State or the draft in its initial state. However, if it decides not to pay any attention to an irregularity pointed out by the Council of State it runs a greater risk of litigation. Even if the Council of State recommendation in its consultative form does not include its contentious parts, it is very rare for the core analysis to be different. The government has the option of consulting it for a recommendation on any other regulatory legislation. The Council of State's recommendation is secret but the government may make it public and the annual report of the Council may refer to certain *ex post* recommendations.

Source: OECD (2010b), *Better Regulation in Europe: France 2010*, OECD Publishing, doi: 10.1787/9789264086968-en.

The SJ is a small unit that does not have sufficient manpower to play a regulatory quality role. While it acts as co-ordinator to solve legal inconsistencies when it comes to draft laws and decrees, its quality control role in the production of subordinate regulations is rather limited, because the legal departments of the public institutions are primarily responsible for that task. In most cases, the SJ does not focus on the content of the draft proposal, except to ensure it is legally sound. Any substantive concerns are resolved through other *ad hoc* co-ordination mechanisms, such as discussions within the sectors, before the draft law or decree reaches the SJ. The SJ has also had a role in the promotion of best practices for legal drafting by, for example, preparing guidelines for this purpose.

Potential for the use of Regulatory Impact Analysis (RIA)

Among the various tools for regulatory management, the use of RIA has particular prominence in OECD countries as a systemic mechanism to assess the benefits of regulatory proposals *ex ante*, and evaluate whether the estimated benefits of proposed regulation exceed the estimated costs. The OECD has been a long-standing advocate of the use of RIA for this purpose.[13] The 2012 *OECD Recommendation of the Council on Regulatory Policy and Governance* (OECD, 2012). advises governments to integrate RIA into the early stages of the policy process for the formulation of new regulatory proposals; to clearly identify policy goals, and evaluate if regulation is necessary and how it can be most effective and efficient in achieving those goals; and to consider means other than regulation and identify the tradeoffs of the different approaches analysed to adopt the best one.

In Colombia there is no mandatory requirement to conduct RIA. However, there are a number of pilot initiatives to explore the feasibility of introducing RIA:

- Normative Impact Study (*Estudio de Impacto Normativo*, ESIN). According to the Guidelines to Elaborate Legal Texts – Draft Decrees and Resolutions,[14] an ESIN should be done in the preparation of draft decrees and resolutions to establish the need to adopt, modify or eliminate a legal instrument. The preparation of an ESIN is mandatory for ministries and administrative departments when they prepare draft decrees and resolutions for signature by the President. The ESIN provides for an economic impact assessment of the draft proposal, in terms of timeframe and measures required to adjust to the new regulation. Numerous ministries use this instrument to prepare their draft regulation. For example, the Ministry of Environment and Sustainable Development considers legal, economic, and environmental impacts in the preparation of its legal provisions.
- According to Decree 2696 of 2004, the three regulatory commissions are required to conduct a form of *ex ante* evaluation, assessing economic impacts on different actors, as part of the preparation of new regulations. There are, however, no standardised methodologies used for this purpose. The Communications Regulatory Commission, for instance, prepares a type of *ex ante* evaluation for all draft proposals that is published as part of the supportive documents of the draft regulatory proposal. This includes information about the identified problem, the possible alternatives, and the impact assessment of each alternative. The publication of the documents is the basis for the consultation process.

- The MCIT has introduced the Procedure to Elaborate and Issue Technical Regulations (PEERT), which includes an *ex ante* assessment, as part of the steps in the preparation of technical regulations. The RIA, in this particular case, includes some basic steps: identifying the problem and the alternatives to technical regulations, as well as the costs of implementing them. Depending on the estimated risk, the MCIT has the discretion to perform a deeper analysis.[15] In the framework of a co-operation with the Government of Canada, MCIT completed its first RIA in December 2012 during the update of the technical norm on home appliances requiring gas. This RIA incorporated cost-benefit analysis. MCIT established an internal policy to require that all new projects for technical norms be accompanied by a RIA, starting on 1 January 2013. Likewise, technical norms in force will be reviewed during 2013-2014 applying regulatory impact assessment.[16]
- According to Law 962 of 2005 and Decree 4669 of 2005, the DAFP should assess the implementation costs and the costs imposed on users by new formalities. Hence, it is in charge of enforcing restrictions to create new formalities. The RIA reviewed by DAFP should include: a description of the formality and its legal justification; a design proposal for the process of the formality; the likely benefits for the public entity and the users; the lack of alternative solutions at lower costs; the implementation costs, and the financial resources required for implementation. The DAFP is responsible for evaluating the impact assessments prepared by the various national entities. These documents are not routinely published.
- The SIC prepares an *ex ante* study on regulatory proposals of other government entities to assess their competition impact.

Roadmap to implement RIA based on international good practices

RIA is fundamental to consolidate a comprehensive regulatory approach since it is a tool that provides objective elements, such as costs, benefits and options, for decision making. A RIA system can only be consolidated and improved over time and following different stages in which a combination of elements should be taken into consideration. The roadmap to implement RIA in Colombia requires evaluation of the following issues:

Maximise political commitment to RIA. The OECD experience shows that the use of RIA to support reform should be endorsed at the highest levels of government. RIA has to be supported by a legal instrument that makes it compulsory for entities inside the administration (Box 5.8).

The various attempts to introduce RIA show that political commitment in Colombia is still to be formally institutionalised for the use of the tool. The lack of an oversight body for regulatory quality contributes to the diffusion of the political commitment, as several institutions claim to do some form of *ex ante* impact assessment, but there are no clear guidelines, criteria, methodology and obligation to conduct RIA.

Allocate responsibilities for RIA programme elements carefully. Experience in OECD countries shows that RIA will fail if left entirely to regulators, but will also fail if it is too centralised. To ensure ownership by regulators, while at the same time establishing quality control and consistency, responsibilities for RIA are often shared between ministries and a central quality control unit.

Box 5.8. **Maximising political commitment to RIA**

There are various RIA systems in OECD countries, depending on particular administrative, economic, political and cultural contexts. International experience shows, however, that the most successful RIA systems are those where there is clear political commitment to the use of the tool. Political commitment can be expressed in various forms, but the most common one is a clear recognition of the obligation to conduct RIA, its role in decision making, and the way the tool contributes to promote regulatory quality in the country.

In the **United States**, the principal tool for measuring the effects of proposed federal regulations is RIA, which was pioneered beginning in 1974 with inclusion of benefit-cost analysis in Inflation Impact Assessments. In fact, the United States was the first country to adopt broad requirements for benefit-cost analysis for regulation. Full RIA has been required by executive order for all major social regulations from 1981, with the Office for Management and Budget (OMB) responsible for quality control. The value of RIA has been considerably enhanced by its full integration into the public consultation process. Political commitment to RIA has come from the highest political level in the United States. The obligation to carry out RIA has, since its inception in 1981, been through executive orders. Moreover, each president since 1981 has issued his own revision of RIA, ensuring that the commitment to this tool is reaffirmed.

In **Mexico**, the use of RIA was formalised through amendments to the Federal Law of Administrative Procedure in 2000. RIA became compulsory for all types of legal measures of general application that create compliance costs, from formats to major implementation rules. They have to be submitted to the Federal Commission for Regulatory Improvement (COFEMER), except for the subjects that the law explicitly excludes, like those of fiscal nature, or acts by sub-national administrations (states or municipalities). Ministries and regulatory agencies are responsible for elaborating RIAs, while COFEMER is responsible for reviewing them. RIAs include a discussion of objectives, obligations to be imposed, alternatives considered, potential costs and benefits, and the results of public consultation.

Source: OECD (1999), *OECD Reviews of Regulatory Reform: Regulatory Reform in the United States 1999*, OECD Publishing, doi: 10.1787/9789264173989-en; and OECD (2004), *OECD Reviews of Regulatory Reform: Mexico 2004: Progress in Implementing Regulatory Reform*, OECD Publishing, doi: 10.1787/9789264017528-en.

For the particular case of RIA, the lack of a central oversight body limits the challenge function, whereby a central institution is responsible for reviewing the quality of RIA and ensuring that criteria and standards were applied in the preparation of the analysis.

The first attempt to have such a mechanism goes back to Decree 4669 of 2005, which established that the DAFP has the role to authorise if a new formality can be introduced and public institutions have to present a RIA to get the authorisation. The same instruction was reiterated in the recent Decree 0019 of 2012, which established that the department has to review and approve evaluations prepared by public institutions authorised to introduce formalities, at national and local level, in case they would like to register new ones. The practice, however, suggests that regulators still need to better understand their role as implementers of RIA, as the quality of analysis can be further developed and refined, and criteria and standards applied can be improved.

Train the regulators. Regulators must have the skills to prepare high-quality economic assessments, including an understanding of the role of RIA in assuring regulatory quality and an understanding of methodological requirements and data collection strategies. All complex decision-making tools, such as producing adequate RIA, demand a learning process.

In Colombia there is no comprehensive training programme on RIA methodologies for public officials. Institutions that are pioneering this tool are developing their own capacity-building programmes, and therefore some are more advanced than others. The Directorate of Regulation in the MCIT is currently developing a framework to introduce the use of RIA for technical regulations. This has included an initial training programme, as well as the preparation of templates and guidelines for this purpose.

Use a consistent but flexible analytical method. The OECD recommends as a key principle that regulations should "produce benefits that justify costs, considering the distribution of effects across society." A cost-benefit analysis is the preferred method for considering regulatory impacts because it aims to produce public policy that meets the criterion of maximising welfare.

Despite existing efforts in various institutions, there is no single approach to RIA in the Colombian administration. Initial elements of impact assessment are found in Decree 1345 of 2010, which includes guidelines for the application of legal techniques when ministries and administrative departments are preparing draft decrees and resolutions. Some questions in those guidelines would follow the logic of RIA, particularly in the definition of the problem, the goal of government intervention, and the identification of possible affected groups. But the assessment then does not get deeper in the analysis of costs and benefits, as it is confined to defining the need of intervention. A particular limitation is that the ESIN is supposed to be done for the draft proposal so it is unclear if the document is prepared before the decision to regulate has been taken.

Some Regulatory Commissions undertake a form of *ex ante* analysis with the use of concrete methodologies. The Energy and Gas Regulatory Commission (CREG) conducts cost-benefit analysis. For the Communications Regulatory Commission, the methodology used for *ex ante* analysis is based on principles of good governance, such as proportionality, targeting, consistency, accountability and transparency. The Water and Sanitation Regulatory Commission (CRA) has established some phases for conducting *ex ante* analysis, based on a first stage where a detailed plan is presented and the study should examine the sustainability, viability and dynamics of the sector; an additional stage, where a cost-benefit analysis in the water and sanitation services should be conducted; and a final stage to evaluate the quality of the regulation that is being proposed. The Regulatory Commission on Health incorporated in its analysis an evaluation of the effectiveness and security, economic impact and financial impact.[17]

Target RIA efforts. RIA is a difficult process that is often opposed by ministries unfamiliar with external review or are under time and resource constraints. The preparation of an adequate RIA is a resource intensive task for drafters of regulations. Experience shows that central oversight units can be swamped by large numbers of RIA concerning trivial or low impact regulations. OECD countries have opted for different approaches to target RIA (see Box 5.9).

Box 5.9. **Targeting RIA efforts in OECD countries**

In the **United States**, a full benefit-cost analysis is required if a regulatory measure is deemed "economically significant", if it is expected to represent annual costs exceeding USD 100 million; if the measure is likely to impose a major increase in costs on a specific sector or region; or if it will have significant adverse effects on competition, employment, investment, productivity or innovation. The United States' Office of Management and Budget reviews roughly 600 regulations a year (15-57% of the regulations published), of which fewer than 100 (1-2% of the regulations published) are considered "economically significant".

Korea has introduced mechanisms to target RIA. The Regulatory Reform Committee (RRC) decided in April 2004 to target its review of RIA to those dealing with "core regulations", RIA conducted on other regulations are subject to review by the Internal Regulatory Reform Committee (IRRC) under the relevant ministry. Core regulations are those which:

- have over KRW 10 billion (approximately EUR 8.5 million) of annual costs of regulatory impact;
- affect over one million regulated people;
- explicitly restrain competition;
- are excessive or unreasonable in the light of international standards; or
- are recognised by the RRC as in need of review because a regulation is controversial among related ministries or stakeholders, or has significant social and economic ramifications.

This is a useful mechanism for the RRC to focus its oversight and resources on those regulations which are likely to have significant economic or social impacts, while still ensuring that the RIA conducted on non-core regulations are subject to oversight and quality control by the IRRC in each ministry.

Source: www.whitehouse.gov/omb/inforeg, accessed 20 March 2012 and OECD (2007), *OECD Reviews of Regulatory Reform: Korea 2007: Progress in Implementing Regulatory Reform*, OECD Publishing, doi: 10.1787/9789264032064-en.

Decree 1345 of 2010 indicates that some form of impact assessment should be conducted for draft decrees and resolutions. There is nothing similar for law proposals and subordinate regulations. This is an area where the Colombian administration will need to define the thresholds and criteria for conducting RIA.

Develop and implement data collection strategies. The usefulness of a RIA depends on the quality of the data used to evaluate the impact. An impact assessment confined to qualitative analysis provides less accountability of regulators for their proposals. Since data issues are among the most consistently problematic aspects in conducting quantitative assessments, the development of strategies and guidance for ministries is essential if a successful programme of quantitative RIA is to be developed.

There is no clear evidence that information and data are systematically used in Colombia to support regulatory decisions. Some institutions prepare supportive documents that include information, but the level of analysis due to data availability could still be improved.

Integrate RIA in the policy-making process, beginning as early as possible. Integrating RIA in the policy-making process will, over time, ensure that the disciplines of weighing costs and benefits, identifying and considering alternatives, and choosing policy in accordance with its ability to meet objectives become a routine part of policy development. If RIA is not integrated into policy-making, impact assessment becomes simply an *ex post* justification of decisions already taken, and contributes little to improving regulatory quality. Integration is a long-term process, which often implies significant cultural changes within regulatory ministries. Early integration of RIA in the policy process would require stronger incentives and possible sanctions for non-compliance. More importantly, it would require that policy makers be convinced of and request the added value of RIA.

The lack of systematic use of RIA in Colombia indicates that the tool is not yet a mechanism to feed the decision-making process at the early stages. The challenge for Colombia is to design an effective mechanism that facilitates the use of RIA for decision making, providing evidence as early as possible on the potential costs and benefits of regulatory interventions.

Communicate the results. The assumptions and data used in RIA can be improved if they are tested through public disclosure and consultation. Releasing RIA along with draft regulatory texts as part of the consultation procedure is a powerful way to improve the quality of the information available about new regulations and, in so doing, improve the quality of regulations themselves.

The current information on regulatory decisions available to the public in Colombia relates to supportive documents and some justifications prepared by certain institutions when regulations are adopted. Consequently, there is scope for improvement in the quality of relevant information that is provided to the public, including the results of *ex ante* analysis.

Involve the public extensively. Public involvement in RIA has several significant benefits. The public, and especially those affected by regulations, can constitute cost-effective sources of the data needed to complete high quality RIA. Consultation can also provide important checks on the feasibility of proposals, on the range of alternatives considered, and on the degree of acceptance of the proposed regulation by affected parties. The extensive use of other different strategies, such as consultation, can be seen as an important means of collecting information and integrating the public in the decision-making process. The challenge is to use this information in a structured and critical way, avoiding the promotion of interests of particular stakeholders.

In the current administrative context of Colombia, regulatory commissions include technical evaluations to understand possible *ex ante* impacts as part of the package that is presented with the draft proposal to the public. All documents are published on the Internet, and this constitutes the beginning of the public consultation period. Public participation is considered as input in the preparation of the draft proposal and once a decision has been made, the institution has to prepare a document that explains the regulatory decision.

Ex ante analyses produced by ministries or other regulatory institutions are also part of the preparation of a draft proposal, but they are not systematically made public. In the case of the RIA required by the DAFP on formalities, it is usually not published.

Apply RIA to existing as well as new regulation. RIA is equally useful in reviewing existing regulation as it is in assessing proposed new regulatory measures. In fact, reviewing existing regulation involves fewer data problems, so the quality of the resulting analysis is potentially higher. Consistently applying RIA to existing regulation is a key priority. Parts of the regulatory structure that are not directly subject to government disciplines should be included in the analysis, such as local government regulations or the actions of independent regulators.

Regulatory commissions are obliged to conduct an impact assessment of their current regulatory framework every three years. This form of *ex post* analysis might serve as a basis for a more systematic review of existing regulation.

Assessment and recommendations

The Government of Colombia (GOC) should develop a common and compulsory set of standards and administrative requirements to prepare regulations of the highest quality and evidence-based.

Colombia has made clear efforts to introduce a series of administrative requirements to improve the preparation of regulation, such as the use of regulatory agendas, communication obligations, and plain language. However, they are scattered in a number of legal instruments and their implementation is limited to some institutions. There is, therefore, not a general trend and commitment to their use in the whole administration.

The lack of quality control and oversight mechanisms that ensure co-ordination and a systematic use of these requirements also contributes to be dependent on the willingness of the institution to comply with them. Given the fact that no entity makes a quality control check of the process to prepare new regulations in a systematic way, it is highly possible that institutions decide which tools to use and which to ignore, leading to inconsistency. Regulatory institutions in Colombia, despite improvements over time, still lack a systematic use of regulatory tools to improve the development of new regulations.

It would be therefore advisable to review the current requirements and make a comprehensive approach for transparency, predictability and communication in the preparation of regulations, as part of a strategy for high-quality rules. This would lead to integrating key principles of good regulatory practice in the preparation of new regulations in a comprehensive way and with a whole-of-government approach.

Develop and implement mandatory standards on the use of public consultation as a means to involve citizens, business and civil society in the regulatory process and obtain better policy outcomes.

There is room for improvement in the current arrangements for public consultation in Colombia. The government should establish a clear policy identifying how open and balanced public consultation on the development of rules will take place. So far and in certain circumstances, consultation is equivalent to making available to the public a draft proposal and expecting people to contribute to it, within a very limited period of time, as there are no clear generally applicable deadlines on the time permitted for participation. These practices are initial steps to have a systematic use of consultation mechanisms, but much is still needed to ensure social participation in the regulatory process.

In Colombia, there is no single requirement for public consultation that could harmonise practices among institutions, which has led to a variety of applications. In some cases, contributions to consultation receive an answer and are published; in others, those participating in the consultation process do not get any feedback. Regulatory institutions also lack clear internal procedures on how to consult (i.e., which methods to use) and what are the deadlines. In this sense, consultation processes must be designed to maximise the quality of the information received and its effectiveness and to target those who are affected (i.e., specific sectors, business, trade unions, and non-governmental organisations).

The public consultation process could be improved by making it compulsory for all institutions in the national administration, establishing clear deadlines for accepting comments, and ensuring that public consultation is accompanied not only by the draft proposal, but also supportive documents that provide information on the decision under discussion and stimulate participation, such as *ex ante* impact assessments. Regulatory authorities should make available to the public, as far as possible, all relevant materials from regulatory files, including supporting analyses and the reasons behind regulatory decisions. Regulators should also provide feedback to participants and ensure that all comments received are made public. Consultation should be made early enough in the process to ensure that it contributes to the improvement of the draft laws and regulations, and that comments from the public are properly heard.

For regulatory purposes, additional consultation techniques should be promoted, particularly before decisions are taken. Consultation is a key tool to get information and data when conducting RIA. It should therefore be recognised as a fundamental step in the RIA process and promoted among regulators as a way to obtain valuable information that could help in analysing the possible impacts of regulatory interventions.

Box 5.10. **Promoting consultation techniques and practices in the United Kingdom**

In the **United Kingdom**, the Government's Consultation Principles apply the foundations of civil service reform to the government approach to consultation. The principles integrate consultation into the policy-making process, meaning policy can move faster but with more and earlier input from stakeholders. The Civil Service Reform Plan commits the government to improving policy making and implementation with a greater focus on robust evidence, transparency, and engaging with key groups earlier in the process. As a result, the government is improving the way it consults by adopting a more proportionate and targeted approach, so that the type and scale of engagement is proportional to the potential impacts of the proposal. The emphasis is on understanding the effects of a proposal and focusing on real engagement with key groups rather than following a set process. The key Consultation Principles are the following:

- Departments will follow a range of timescales rather than defaulting to a 12-week period, particularly where extensive engagement has occurred before.
- Departments will need to give more thought to how they engage with and consult with those who are affected.
- Consultation should be 'digital by default', but other forms should be used where these are needed to reach the groups affected by a policy.
- The principles of the compact between government and the voluntary and community sector will continue to be respected.

Previous to these principles, the Code of Practice on Consultation established seven criteria:

Box 5.10. Promoting consultation techniques and practices in the United Kingdom (*cont.*)

- When to consult: Formal consultation should take place at a stage when there is scope to influence the policy outcome.
- Duration of consultation exercises: Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
- Clarity of scope and impact: Consultation documents should be clear about the consultation process what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
- Accessibility of consultation exercises: Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
- The burden of consultation: Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
- Responsiveness of consultation exercises: Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
- Capacity to consult: Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

Source: www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance, accessed 5 March 2013.

The GOC should integrate the systematic use of RIA in the policy-making process.

The introduction of RIA in the Colombian administration needs to take into consideration not only administrative, economic, political and cultural features, but also respond to good international practices. In that sense, the Colombian case presents initial possibilities, which can be used to design a proper RIA system.

As the GOC develops its regulatory policy, it should design the system to embed RIA in the policy-making process, not as an isolated tool, but rather as part of a framework that may include, but is not limited to, other tools currently being used, such as legal and competition analyses. This requires a deep review of current policy-making practices to streamline them so that the burdens imposed on public officials are rationalised, creating better conditions for the introduction and institutionalisation of RIA. A RIA system that standardises good policy-making practices across the government will assist to achieve better social, environmental, and economic outcomes.

Designing a RIA system to analyse a public policy problem and alternative potential solutions should then be a priority within Colombia's regulatory policy. The effort would imply aligning the different actors that would have to participate in the system, granting them responsibilities, developing the resources for the introduction of the system, creating awareness and capacities, as well as ensuring political buy-in at different layers of the government, and piloting the system. Evidently, this cannot be achieved from one day to the next, it has to be a gradual and continuous process. However, the key actors should be identified and brought together to build consensus.

The alignment of agencies and ministries calls for a deliberate set of efforts. First, as the GOC is determining where to establish the challenge function, it should provide guidance and develop resources for the implementation of RIA. Several OECD countries, such as Australia, Canada, Ireland, Mexico, and Spain have developed RIA Handbooks with detailed instructions as to how to prepare the analysis. A RIA portal, with methodological guidance materials, is another alternative for facilitation. These resources not only support the introduction of RIA, but also advance consistency in its application. Developing expertise and building capacities should also be part of a long-term strategy to ensure quality RIA. Indeed, the set-up of a RIA system requires clear definition of principles and criteria, as well as an extensive capacity-building programme that helps regulators to master particular techniques and methodologies needed to conduct sound evidence-based analysis.

In addition to facilitation, political buy-in is a *sine qua non* factor for RIA. Political commitment is more effective when it runs both ways, top-down and bottom-up. The highest political authorities should be committed to good governance and evidence-based policy making for the system to work. But it is also true that senior government officials who understand the need for better regulation making practices and the benefits of a RIA system can advocate for the use of the tool and gather the necessary institutional political support. In this sense, it is useful to identify political advocates ("champions") for RIA, who could be senior public servants, reputable politicians, and even outside actors (i.e., influential business organisations or think-tanks) with the credentials to advance reform.

In fact, in order to have a robust and sustainable RIA system, it should include the participation of different actors, not only the public administration. Business groups, think-tanks, the press, legislators, and academia can play an important role. For example, business groups could advocate the preparation of a RIA of good quality to support consultation, bonding these two tools and creating pressure for the administration to adopt them as standard practices. Likewise, legislators could require a RIA to support debates of draft laws and amendments. Developing such a network of active participants in the process requires an awareness raising campaign, aimed at specific groups and making clear how they would contribute to and benefit from the system.

Various institutions, such as ministries and regulatory commissions, prepare supportive documents when proposing new laws and regulations. Pilot projects have recently been conducted, introducing cost-benefit analysis. However, these pilot efforts have been mainly directed towards developing capacities within ministries and agencies, but not towards developing a RIA system as described above. At this stage, this orientation may make sense, but pilots would be more useful if they involved other actors, allowing them to identify how RIA will be useful for them and creating incentives for the administration to use it consistently. Pilot initiatives could concentrate on high impact regulatory proposals, so that participation by the affected groups would be more likely.

On the methodological side, even if most of today´s examples lack some of the key features of RIA, they constitute initial steps to build a solid analysis that can include a proper definition of the problem, evaluation of alternatives, and an analysis of the impacts of the proposed options. It is therefore advisable that the introduction of RIA takes into consideration current practices that can be upgraded and improved over time.

The institutional design of the RIA system will highly depend on the evolution of co-ordination mechanisms for regulatory quality and the likely set-up of a unit with oversight functions. It is therefore important to ensure that RIA is meant as a tool to improve regulatory quality, where a quality control mechanism through the use of a central challenge function is eventually introduced as part of the system.

Good practice indicates that RIA should be proportional to the significance of regulation – when regulatory proposals would have significant impacts, the assessment of costs, benefits, and risks should be quantitative, to the extent possible. Where relevant, the analysis should also provide qualitative descriptions of those impacts that are difficult or impossible to quantify, such as equity, fairness, and distributional effects. It also requires to bridge the technical and political levels to ensure that RIA results contribute to decision making.

Colombia could take advantage of current international co-operation efforts, such as Latin-REG and its privileged commercial relationship with countries like Canada to learn from the experiences of other countries in introducing and managing a RIA system that differentiates between high and moderate impact regulation. In addition, in the context of this review, the OECD is helping Colombian institutions to develop capacities to undertake RIA and may continue doing it on the basis of a follow-up co-operation.

Box 5.11. **International experience on guidance to carry out RIA**

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

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

Source: www.vcec.vic.gov.au and www.tbs-sct.gc.ca, accessed 8 November 2012.

Notes

1. Decree 3257 of 2008, Article 6, the Commission is responsible for revising the National Plan of Quality, the Annual Programme of Voluntary Normalisation, and the Annual Plan of Technical Regulations, evaluating their performance and ensuring their proper implementation.
2. Chapter II of Decree 2696 of 2004.
3. Law 57 of 1985 mandates the publication of acts and official documents.
4. Law 489 of 1998 sets the principles and basic rules of the public administration.
5. Law 1437 of 2011 issues the Code of Administrative Procedures and Contentious Administrative.
6. This Decree refers to general guidelines for legal techniques in the drafting of decrees and resolutions by institutions of the Executive branch.
7. Law 109 of 2004.
8. Law 489 of 1998 that modified Article 95 of Decree 2150 of 1995.
9. Particularly Chapter IX. This Law establishes the Rules of Congress: the Senate and the Chamber of Representatives.
10. Decree 1320 of 1998 regulates pre-consultation with indigenous and black communities concerning the exploitation of natural resources in their territories.
11. Law 1437 of 2011.
12. Decree 2646 of 2004 defines minimal rules to guarantee disclosure and participation in the interventions of regulatory commissions.
13. The 1995 Recommendation of the Council of the OECD on Improving the Quality of Government Regulation emphasised the systematic role of RIA in ensuring that the most efficient and effective policy options were chosen. The 1997 OECD Report on Regulatory Reform recommended that governments integrate RIA into the development, review, and reform of regulations. In 1997 the OECD published a list of ten best practices in Regulatory Impact Analysis: Best Practices in OECD Countries.
14. Decree 1345 of 2010.
15. Document prepared by the MCIT on "Procedure to Elaborate and Issue Technical Regulations PEERT" (Procedimiento de Elaboración y Expedición de Reglamentos Técnicos PEERT. El procedimiento de 22 pasos - Buenas Prácticas de Reglamentación Técnica de producto).
16. It is planned that a reform to Decree 2269 of 1993 will establish the requirement of a RIA being prepared for projects of new technical norms. This requirement would be applicable for all entities issuing technical norms.
17. Decree 2560 of 2012 abolished the Regulatory Commission on Health (CRES) and granted its functions on the Ministry of Health and Social Protection.

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Chapter 6

The management and rationalisation of existing regulations in Colombia

Chapter 6 describes the management and rationalisation practices that the Government of Colombia applies on existing regulations, particularly a centralised registry for formalities and services and different simplification initiatives to streamline specific economic processes, such as the Business Support Centres, the one-stop shops for property registration and foreign trade, Competitive Regulation, and the Group on rationalisation and automatisation of formalities. It also explains the need for a baseline measurement of administrative burdens and the use of other simplification tools, such as the silence is consent *rule. Finally, it provides recommendations to improve the management of the regulatory stock and focus current simplification initiatives.*

"Fit for purpose" regulation that was relevant at one point in time may become outdated and obsolete as circumstances change. Periodic evaluations and reviews are therefore needed to assess the impact of regulations and whether the desired outcomes are being accomplished. Reviews also introduce a measure of accountability for the regulatory reform policy. The 2012 *OECD Recommendation of the Council on Regulatory Policy and Governance* advises governments to "conduct systematic programme reviews of the stock of significant regulation against clearly defined policy goals, including consideration of costs and benefits, to ensure that regulations remain up to date, cost-justified, cost-effective and consistent and deliver the intended policy objectives".

Regulatory reviews are a complement to *ex ante* regulatory controls, as the former corrects problems and the latter avoids them. Hence, reviewing the regulatory stock is particularly important in Colombia, as there is currently no *ex ante* regulatory assessment generally applied to the flow of regulation. Whenever there is a lack of an *ex ante* control, a common reaction among public servants when faced with a public policy problem is to regulate. This results in an extensive and overly burdensome stock of regulations which impedes entrepreneurship and innovation.

Approaches to regulatory reviews vary from generalised reviews and "guillotines" to sunsetting and automatic review clauses. The OECD has found that in many cases regulatory agencies have substantial discretion to conduct reviews in the absence of standardised evaluation techniques and criteria. When this happens, reviews have a tendency to become an *ad hoc* and unstructured practice that focuses only on marginal changes to complex regulatory structures (OECD, 2002, p. 35).

Once a review has been conducted, it should be accompanied by measures to eliminate or simplify regulatory requirements. Here again, techniques may vary, but the use of ICT and the deployment of e-government is of increasing importance as a tool for administrative simplification.

Reviews of the stock of regulations and formalities

Colombia has focused its regulatory improvement policies on the simplification of formalities, which is reflected in the way stock management tools are applied. Here again, the focus is on formalities, not regulations. The Government of Colombia (GOC) does not make systematic use of generalised regulatory reviews or sunsetting.[1] Some regulations may establish their own expiration dates, such as Law 418 of 1997 (by which instruments are set to aim at justice effectiveness), whose expiration was delayed by laws 548 of 1999, 782 of 2002, 1106 of 2006, and 1421 of 2010.

Box 6.1. **Alternative approaches to regulatory reviews**

International experience illustrates several approaches for regulatory reviews:

- Scrap and build: This comprises a comprehensive review and rebuilding of entire regulatory regimes, prioritising specific sectors and taking into account the interactions of multiple regulations. This methodology has a number of advantages, including benefits being visible more quickly, affected parties having more notice of the need to adapt, vested interests having less opportunity to block change, and the reforms benefiting from a higher political profile. However, the disadvantages are that this method is costly, time-consuming, and may not be feasible when resources and expertise are limited.

Box 6.1. **Alternative approaches to regulatory reviews** (*cont.*)

- Generalised reviews: These are policies that instruct regulatory bodies to review the entire structure of their regulatory frameworks against general criteria such as need and efficiency. This kind of review has a wide scope, for example to review the entire stock of regulations with business impacts. A variant of this kind of reviews is the "guillotine", which annuls regulations that are not registered before a certain date. However, such reviews have been weakened by exemptions, which may exclude particularly burdensome regulations, and they may suffer from a lack of prioritisation, a fragmented approach, and a lack of depth and rigor.
- Sunsetting and automatic review clauses: This technique consists of setting an automatic expiry date for new laws and regulations upon adoption. Regulations subject to sunsetting can only be extended if they are reintroduced through standard law making procedures. This kind of reviews reduces the average age of the regulatory structure and ensures periodic reform of the regulatory stock. Its disadvantages include reducing the predictability of the regulatory environment. Furthermore, sunsetting will not tackle the existing stock of regulation as it only focuses on individual measures and does not challenge whole areas of regulation in need of review.
- Mandated or automatic review processes: This method consists of systematic reviews of existing regulations. Rules are grouped according to their age and progressively reviewed against quality criteria, which in turn gradually brings the regulatory stock into conformance with these standards. Unlike sunsetting, regulations continue unless actions are taken to eliminate them. The obvious disadvantage is that since positive action is required, vested interests are better able to defend the status quo.
- Variance processes or equivalence of performance tests: This technique allows businesses to apply lower-cost compliance methods as long as they are equally effective as an existing regulation. It combines the logic of performance-based regulation with the ability to advance the innovative skills of business to come up with more efficient processes.

Source: OECD (2002), *Regulatory Policies in OECD Countries: From Interventionism to Regulatory Governance*, OECD Publishing, doi: 10.1787/9789264177437-en, pp. 35-39.

Centralised registries

Centralised registries are tools frequently used by OECD countries to advance regulatory transparency. Although the GOC has not developed a centralised registry of regulations, it has done so for formalities. Law 962 of 2005 establishes that formalities can only be imposed if they are registered in the SUIT. This law established the requirement for the government to provide basic information about formalities via electronic means.

As stated previously, SUIT is the legal registry of the Colombian State, which provides information about formalities managed at the central and sub-national levels of the public administration. It is managed and co-ordinated by the DAFP and can be consulted at www.gobiernoenlinea.gov.co/web/guest. SUIT is managed in a decentralised way, so that every entity of the public administration registers information about the formalities it manages. Where it is possible to complete the formality online, SUIT provides the links to do so. Once formalities are registered, the DAFP verifies their legal basis and the general quality of the information, but it is the responsibility of each entity to update the information related to the formality it adopts.

The following information is provided for each formality:

- What it consist of;
- Steps to follow;
- Required documentation;
- Required payments;
- Remember… (information about how to follow up an application, what the user will be provided with, and turnaround time, among others);
- Legal basis;
- Related formalities.

Box 6.2. **The Federal Registry of Formalities and Services of Mexico**

In Mexico, the Federal Registry of Formalities and Services (RFTS) is a collection of federal formalities and contains all the information necessary for their implementation, as well as the application forms. It is administered by COFEMER and is available online: www.cofemer.gob.mx/BuscadorTramites/BuscadorGeneralHomoclave.asp.

Formalities are grouped by entity and administrative units and there is also a browser that searches by keyword. As established in the Federal Law on Administrative Procedure, federal ministries and agencies cannot require a formality that is not registered in the RFTS and cannot apply formalities in a different way from that described in RFTS. Public servants that do not abide to this mandate can be sanctioned.

The following information is provided for each formality:

- Name of the formality.
- Legal justification.
- Circumstances for which the formality must be completed.
- Presentation of the application (specific or free format).
- Format and, if applicable, date of publication in the Official Gazette.
- Information and documents to be attached.
- Turnaround deadline and indication of whether the *silence is consent* rule applies.
- Cost.
- Validity of the permits, licences, authorisations, and resolutions to be received.
- Criteria to review applications.
- Administrative unit managing the formality.
- Office hours.
- Phone, fax, e-mail, address and other means to submit questions, complaints, and consultations.

Source: OECD (2012b), *Guía para Mejorar la Calidad Regulatoria de Trámites Estatales y Municipales e Impulsar la Competitividad de México*, OECD Publishing, pp. 74-75.

The DAFP has facilitated the process to register the stock of formalities through training, guidance documents, and onsite support. For example, it published the Guide for the registration and rationalisation of formalities and services of the public administration and SUIT's user manual (*Guía para la Inscripción y Racionalización de Trámites y Servicios de la Administración Pública y Manual del Usuario, SUIT* – http://portal.dafp.gov.co/form/formularios.retrive_publicaciones?no=559). To date, all of the formalities administered by the central public administration are registered, while there is an ongoing effort to collect information and register formalities administered at the sub-national level. As of August 2012, 2 162 formalities from the central government were registered in SUIT, 1 162 from the Departmental level, and 3 702 from the municipal level.

The SUIT has also been upgraded. Version 1.0 was established in 2005. In 2010, version 2.0 was developed and implemented. The SUIT allows users to identify formalities by searching through "life situations" (i.e., education, taxes, housing, and pensions) and topics (i.e., public services, health, and business start-ups). It also provides access to a directory of public entities, formats, and tutorials on how to use SUIT. Version 3.0 is currently in the design phase.

In addition, there is an initiative led by the Ministry of Justice called Unique system of normative information (*Sistema Único de Información Normativa*, SUIN), which is the result of a rationalisation and simplification project launched in 2003. SUIN's objective is to allow access via Internet to laws and decrees issued since 1886, rulings that have determined the constitutionality and legality of these laws and decrees, and information about the validity of this normative instruments. SUIN is in its starting implementation phase, but already allows access to 20 000 laws and decrees, and more than 8 000 decisions of the Constitutional Court, the Supreme Court of Justice, and the State Council.

The Ministry of Justice has also recently created the Committee to streamline and rationalise the Colombian legal regime (*Comité para la Depuración y Racionalización del Ordenamiento Jurídico Colombiano*), which includes participation from the SJ, the Transparency Minister of the Presidency, the High Presidential Advisor for Good Government and Administrative Efficiency, the presidents of the High Courts, the Attorney General, the Prosecutor General, the Association of Law Schools, and the directors of legal research institutions. The objective of this committee is to ensure that the normative function of the State is consistent, rational, simplified, and offers legal certainty to citizens.[2]

Administrative simplification initiatives

As set out previously, Colombia's primary focus in terms of regulatory improvement has concentrated on administrative simplification. The policy to streamline formalities is focused on strategies to eliminate unnecessary formalities, simplify those with significant impact, automatise those with a wide scope at the national level, along with interoperability initiatives to guarantee access to public services and standardise procedures.

The objectives of the policy are the following:

- Rationalising formalities and administrative procedures through simplification, standardisation, elimination, optimisation, and automatisation, advancing citizen participation and transparency.

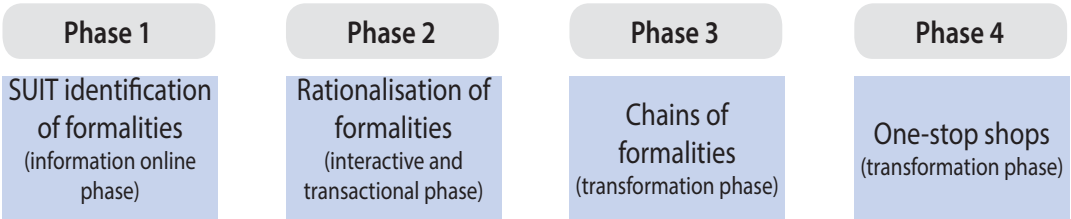
- Facilitating and promoting the use of ICT to enhance access to information on formalities and electronic means to complete them, creating trust in ICT tools.

- Making the management of public entities more efficient, through better use of resources and improvement of internal procedures, so that a quick turnaround is guaranteed for citizen requests.

- Promoting trust in citizens and the principle of good faith, as well as excellence in service delivery, so that citizens' interactions with government are easier.

The policy to simplify formalities is organised in four steps, as described below (Figure 6.1):

Figure 6.1. Phases of the simplification policy



Source: Information provided by DAFP.

- Identification of formalities and services in the SUIT: This phase consists of taking stock of the formalities and services of each entity, collecting and reviewing detailed information on them, and registering them in the SUIT.
- Rationalisation of formalities and services: This phase consists of applying techniques of simplification, automatisation, and optimisation of procedures so that formalities are streamlined.
- Analysis of formalities and identification of "formality chains": This analysis allows identifying bottlenecks and links inside and between entities correlated through the services provided by the State, creating opportunities to eliminate duplicity, unnecessary steps, and transaction costs.[3]
- Implementation of one-stop shops: This phase consists of the design of electronic sites from which formalities are managed and applied for. A formalities chain is integrated in a one-stop shop so that there is a unique access point.

These phases are not necessarily sequential, in many cases they can be simultaneous, and are supported by the Government online strategy. Three one-stop shops have been particularly successful, which are the Business Support Centres (*Centros de Atención Empresarial*, CAE), the one-stop shop for property registration (*Ventanilla Única de Registro*, VUR), and the one-stop shop for foreign trade (*Ventanilla Única de Comercio Exterior*, VUCE).[4] Along with Competitive Regulation (*Regulación Competitiva*) and the GRAT, these constitute the major initiatives concerning administrative simplification.

Business Support Centres

In co-operation with the Inter-American Development Bank (IADB) six municipalities, in co-ordination with their Chambers of Commerce, implemented a one-stop shop model to create a unique formality for start-ups. Besides the six

municipalities (Bogota, Bucaramanga, Cali, Cartagena, Medellin, and Barranquilla) other participating entities included the Office of the Presidency, DAFP, SIC, the Direction of Taxes and National Customs (*Dirección de Impuestos y Aduanas Nacionales*, DIAN), notaries, Departmental governments, and the Network of Chambers of Commerce (Confecamaras). The first one-stop shops started operations in mid 2003.

Business Support Centres or CAE aim at promoting a more efficient and transparent interaction between businesses, the public administration, and private entities that manage services related to starting-up and registration (i.e., chambers of commerce and notaries). To achieve this goal, it established the following strategies:

- Minimising steps, legal requirements, and deadlines for start-ups.
- Establishing one-stop shops in the participating municipalities.
- Facilitating formal registration for businesses in the informal sector.
- Improving access to regulatory information about formalities.

The CAE programme established one-stop shops in the premises of the Chambers of Commerce of the participating municipalities, where start-ups can be created in one day, in one step, in one place, in one counter, and at minimal cost. This is a significant improvement from the previous situation, illustrated in Table 6.1.

Table 6.1. Baseline indicators of the process to start up a business in different cities

Item	Indicator	Cali	Medellin	Cartagena	Barranquilla	Bucaramanga	Bogota
Formalities	Individual	20	20	21	20	23	20
	Business society	23	23	24	23	27	23
Time (days)	Individual	51	51	51	51	51	51
	Business society	55	55	55	55	55	55
Excessive costs (in COP)	Difference between the legitimate and the real cost of starting up	17 200	200 000	6 600	33 500	178 006	145 100

Source: Information provided by DNP.

The responsibility for the management of the CAE programme was transferred to Confecamaras in 2004. Confecamaras has been responsible for guaranteeing the continuity of the programme in the municipalities where it has been established, extending its implementation to more municipalities, and acting as an anchor to maintain regulatory reform on the political agenda.

Concerning the use of ICT, in the beginning the six CAE were integrated in the Single Registry of Enterprises (*Registro Único de Empresas*, RUE), but later on it was replaced by the National Start up Portal (*Portal Nacional de Creación de Empresas*), which can be accessed at www.crearempresa.com.co. Officials at CAE use this portal to register start-ups, consult information, follow up applications and, in some cases, make payments corresponding to start-up applications. Twenty one municipalities are currently included in the portal and ten more are in the process of joining. In addition to the use made by CAE officials, citizens can use the portal to consult information concerning business formalities, fill out and print formats, and follow up their applications.

The CAE programme has benefited from a high level of participation from and consultation with the business sector. From the design stage up through its dissemination, CAE has actively engaged with business representatives. In fact, each participating municipality has a Local Anti-Red Tape Committee which evaluates progress concerning simplification and guarantees continuity.

Currently, 23 CAE have had continuity during a gradual implementation period that lasted 10 years and, with the incorporation of 12 new cities, there will soon be 35 CAE in operation. CAE has also gradually extended its functionalities by incorporating the National Start up Portal, the application for land use permits, online payment, and an inspection module. Furthermore, the Chamber of Commerce of Bogota hosts a Centre for Entrepreneurship (*Bogota Emprende*), where business projects are supported with basic services.[5] The main challenges for the future include the following:

- Extending the model to the 100% of the Chambers of Commerce.
- Integrating taxes to the formalities to be completed through CAE.[6]
- Automatising the functionalities of CAE.
- Making the model available to small and marginalised municipalities.
- Ensuring continuity beyond political administrations.

The main results of the CAE programme are summarised in Table 6.2. Arguably, it is one of the factors behind the increasing number of newly registered businesses in the country (from 33 752 in 2006 to 57 768 in 2011).[7]

Table 6.2. CAE main performance indicators

As of 30 June 2012

Item	Objective	Previous situation	Current situation	Best practice
Time (days to register a business)	1 day	51 days for individuals	National average is 3 days	In some cities, the process takes 1 day
		55 days for business societies	National average is 5 days	In some cities, the process takes 2 days
Steps	1 contact point	31 contact points for individuals	National average is 5 contact points	In some cities, the process implies 2 contact points
		34 contact points for business societies	National average is 7 contact points	In some cities, the process implies 3 contact points
Entities with which entrepreneurs must interact	1 entity for individuals	10 entities	National average is 2 entities (CAE and DIAN)	In some cities, the process implies 1 entity
	2 entities for a business society	11 entities	In some cities, 3 entities are involved (CAE, DIAN and notary).	In some cities, the process implies 1 entity
Formalities	100% of start-up formalities integrated in CAE	Entrepreneurs had to file and manage 17 independent formalities to start up	On average, 14 of the 17 formalities are integrated in CAE	In some cities, 16 of the 17 formalities are integrated in CAE
Cost	Reducing 100% excessive costs of the start-up process	Estimated direct costs of starting-up amount to COP 929 648 and the average in the six initial participating municipalities was COP 1 042 265, which represents an excessive cost of COP 112 617.	Costs have been reduced by COP 85 400 Colombian pesos.	

Source: Information provided by DNP.

The one-stop shop for property registration

The one-stop shop for property registration or VUR establishes notaries as the unique point of contact for citizens wanting to register transactions of real estate property. The project started in 2006 when the SNR took the leadership for implementation. The VUR integrates all the entities involved in the chain of formalities for property registration, such as territorial entities, in charge of the certification of the value estimation fees; municipal treasuries, which certify accounts of property taxes; departmental governments, which collect the registration tax; notaries, which receive, issue, and authorise public deeds of property transactions; and the SNR, which safeguards the registry of real estate property.

The objectives of the VUR are the following:

- Minimising the formalities, deadlines, costs, and requisites to formalise real estate property.
- Promoting formalisation and compliance with duties concerning property transactions.
- Articulating public and private entities involved in the property registration process.
- Achieving excellent service delivery for citizens.
- Advancing transparency and minimising fraud risks concerning property transactions.
- Improving data collection and management concerning property.

The VUR was launched in Bogota in 2009, since it has the highest concentration of property files, transactions, and notaries (77). This required entities from the national and sub-national governments to sign the Co-operation Interadministrative Covenant 022 of 2009 to "launch the simplification strategy one-stop shop for property registration agreed by the Ministry of Environment, Housing, and Territorial Development; MCIT; the Ministry of Communications; DAFP; DNP; the Ministry of Finance; SNR; the Capital District (Secretary General of the City of Bogota, local ministry of the treasury, Urban Development Institute), and the Department of Cundinamarca".

Table 6.3. Impact of the VUR in the eleven cities where it has been established

In per cent

	Formalities	Entities	Time (days)	Steps	Documents	Requisites
Bogota	-73	-57	-58	-77	-67	-25
Barranquilla	-50	-17	-35	-53	-61	-14
Manizales	-63	-50	-30	-55	-23	-17
Valledupar	-44	-20	-19	-53	-50	-63
Medellin	-17	-25	-19	-47	-40	-33
Sincelejo	-33	0	-19	0	-18	-43
Cartagena	-29	-17	-19	-10	-9	0
Bucaramanga	-11	0	-19	-25	-14	0
Armenia	-25	-33	-19	-41	-16	-33
Pereira	-13	-25	-19	-28	-27	-33
Ibague	-20	0	-19	-30	-22	-25

Source: Information provided by DNP.

The municipalities of Barranquilla, Manizales, and Valledupar were the first to adopt the VUR model after Bogota, raising the number of participating notaries to 100. By 2012, VUR is operating in 11 municipalities, adding 72 notaries, and the goal for 2014 is to integrate 45 municipalities and 292 notaries.

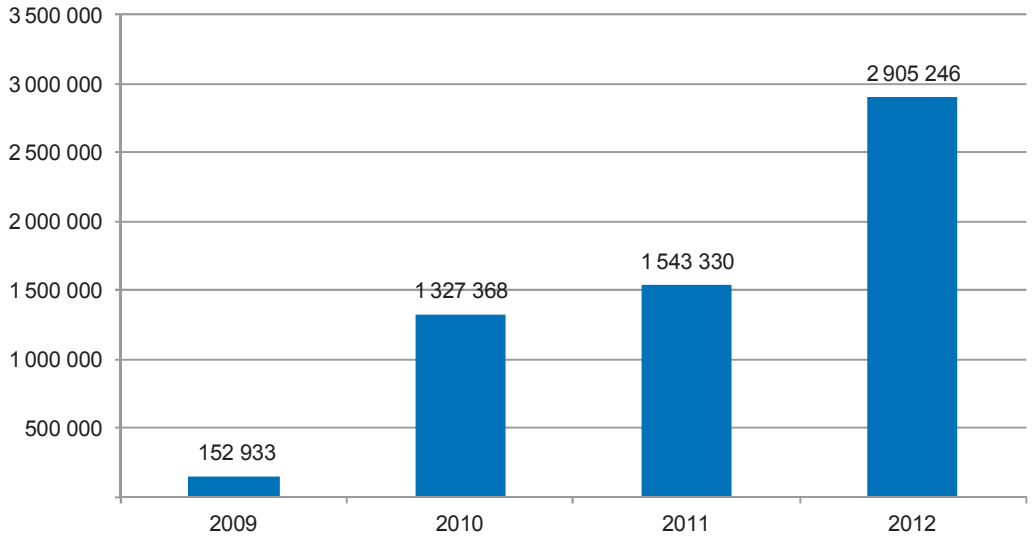
The VUR has been successful in the eleven cities where it has been implemented in terms of reducing formalities, time, and steps required for property registration, as shown in Table 6.3.

In addition to registering documents issued by notaries and deeds for transferring property and allowing businesses to obtain online certification of valuation, ownership, and good standing for property taxes, the VUR allows online consultation of the certificates and documents required for transactions of real estate property, which limits fraud.

From 2009 to 2012, the number of consultations reached 5 928 877, out of which 93.78% are concentrated in Bogota, 4.57% in the Department of Atlantico, 1.01% in the Department of Caldas, and 0.24% in Cundinamarca. Notaries have been the main clients of consultations in the VUR. Indexes and legal status are the most frequent consultations.

In 2010 the VUR was upgraded improving service delivery and user access, which is reflected in the drastic increase of the number of consultations, as shown in Figure 6.2.

Figure 6.2. Evolution in the number of consultations to the VUR, 2009-2012



Source: Superintendencia de Notariado y Registro (2012), Informe Estadístico: Proyecto Ventanilla Única de Registro – VUR – Versión 1.0.

The main challenges going forward for the VUR are to address the need to update regulations to allow the use of ICT and online formalities. This is necessary given that some regulations require the client to be physically present. Allowing online payments and modernising the technological infrastructure of sub-national governments will also enable the VUR to replicate its model in other municipalities. While the first challenge is being addressed by Law 1579 of 2012, which refers to the registration of public instruments, the second depends more on the territorial entities, not on VUR central management.

The one-stop shop for foreign trade

In the late nineties and the early 2000s businesses had to complete several foreign trade formalities which required the physical presence of the user. The entities involved were not co-ordinated, which led to duplicate requests for information and documentation, as well as delays in trading operations. The solution was to launch an electronic platform to harmonise the formalities and documentation required by several entities involved in foreign trade operations; the objective being to facilitate international transactions and improve the competitiveness of Colombian products.

Consequently, the GOC created the one-stop shop for foreign trade (VUCE) via Decree 4149 of 2004. VUCE is managed by the MCIT and is an instrument that allows electronic processing of the authorisations, permits, and certifications required by State authorities to engage in foreign trade operations. Decree 4149 establishes the electronic management of formalities dealing with exports and imports, electronic payment of fees, the adoption of a unique format, and a consolidated inspection in ports, airports, and border stations.

The process to create VUCE required reviewing the stock of formalities concerning foreign trade, analysing the chains of formalities, and identifying consolidation, elimination and optimisation opportunities. MCIT, in co-ordination with the Office of the Presidency, DNP, and DAFP advanced this process of rationalisation with the 18 entities linked to foreign trade operations: Ministries of Mining and Energy, Environment and Sustainable Development, Transport, Health and Social Protection, Foreign Affairs, Agriculture and Rural Development, Defence, Culture, Justice and Rule of Law, SIC, *Superintendencia* of Surveillance and Private Security, National Fishing and Aquaculture Authority (AUNAP), ICA, Colombian Geological Service, INVIMA, Military Industry (INDUMIL), National Fund of Stupefacient, and National Mining Agency.

VUCE is composed of four modules, each one addressing specific formalities, as shown in the following table:

Table 6.4. VUCE modules

Module	Formalities	Year started
Imports	Import registrations Import licences	2005-06
Exports Unique Format for Foreign Trade (FUCE)	Export quotas Export authorisations and certificates of origin Registration of producers of national goods	2008-09
Consolidated inspection (SIIS)	Scheduling a consolidated inspection	2011

Source: Information provided by DNP and MCIT.

VUCE led to the following benefits for businesses:

- Eliminating the need to attach paper documents for each application;
- Allowing electronic follow up of the status of an application;
- Minimising administrative costs (paperwork, physical presence, etc.);
- Access 24/7 during the 365 days of the year.

Likewise, for public entities VUCE delivered benefits in terms of freeing up record keeping spaces, updating electronic equipment, and improving internal processes. As of September 2012, VUCE registered 51 600 users and 3 505 000 transactions. The portal will soon incorporate a System for Risk Management, which will help to categorise applications based on risks in order to better target physical inspections and improve turnaround deadlines.

Competitive Regulation

Competitive Regulation is a public-private alliance that aims at eliminating trade barriers by removing market distortions and introducing efficient and effective regulations to improve the economic performance of the country. Additionally, it aims at developing regulatory transparency, accountability and citizen participation.

The programme is led by MCIT and it works through horizontal and regional task forces, meeting in person or through electronic means, to suggest the elimination or reform of regulations, as well as the need to issue business friendly norms. The roundtables are formed by members of the public and private sectors. Seven horizontal task forces were created in Bogota: tourism, manufacturing and industry, foreign trade and logistic chains, productive transformation, agro-industry chains, construction, and innovation and technology.

Likewise, 19 task forces were created at the regional level: Armenia, Barranquilla, Bucaramanga, Cali, Cartagena, Cucuta, Ibague, Manizales, Medellin, Monteria, Neiva, Pasto, Pereira, Popayan, Riohacha, Santa Marta, Sincelejo, Tunja, and Valledupar. Additionally, the MCIT website provides a link where citizens can make proposals to improve the regulatory framework.

In order to illustrate the results of Competitive Regulation, the following table highlights the proposals of the task force in the construction sector:

Table 6.5. Goals and strategies set by the task force on construction

Goals	Strategies	Deadlines
• Reviewing the cost structure of the sector	Establishing clear rules for the tax on urban alignment	January 2012
	Developing updated cadastral and tax information at the municipal level	
• Efficiency in processing construction licences and property registration	Reducing the turnaround time for a construction licence application	December 2012
	Eliminating duplicative inspections	June 2012
	Extending the validity of the concept of availability of public services until a partial plan is adopted	January 2012

Source: Information provided by DNP and MCIT.

The Group on rationalisation and automatisation of formalities (GRAT)

The policy for the simplification of formalities is focused on eliminating unnecessary formalities, simplifying those with the highest impacts, and automatising those with wide territorial coverage, while advancing interoperability to facilitate access to public services. In the framework of this policy, GRAT is the consulting body of the national government concerning simplification, as well as a facilitating entity to support DAFP and the MINTIC to follow up and co-ordinate high impact projects.

GRAT was created by Decree 4669 of 2005 and is composed of two high-level delegates from the Office of the Presidency (from the offices of the High Presidential Advisor for Good Government and Administrative Efficiency; and the High Presidential Advisor for Public and Private Management), the Office of the Vice-presidency, Ministry of the Interior and Justice, MINTIC, DNP, and DAFP, as the leading entity. GRAT meets upon convocation by the Director of DAFP or by request of any of its members. Its objectives include the following:

- Co-ordinating the action plan that groups the different sectoral and inter-sectoral plans concerning simplification and automatisation of formalities.
- Recommending normative proposals to the national government to contribute to the performance of the policy for the simplification of formalities.
- Analysing and approving reports, following up projects of special interest for the national government, monitoring compliance with deadlines, and ensuring co-ordination between the public and private sectors.
- Recommending initiatives for the simplification, elimination, consolidation, standardisation, and automatisation of formalities.
- Promoting interoperability between information systems and integrated technologies.

The main results of GRAT consist of support and follow up to the following projects:

- Unique territorial format.
- Judicial certificate.
- Electronic invoice.
- National unique transit registry (RUNT).
- Electronic passport.
- Chains of formalities.
- E-regulations.
- Property registration.

Administrative burdens, other simplification techniques, and general results

Despite the different initiatives advanced for administrative simplification and the existence of SUIT, there is no quantitative information of the administrative burdens resulting from regulations and formalities. Consequently, no estimation has been done of the savings realised. To some extent, this limits the understanding of the impacts of the different simplification initiatives as the numbers available only indicate how many formalities have been simplified, and there is little data about the extent of the impacts in terms of reducing administrative burdens.

Table 6.6. Formalities simplified by sector

2006-2012

Sector	Before 2005	2006	2007	2008	2009	2010	2011	January-August 2012
Agriculture	15	4	10	8	16	6		
Environment	26	3	18	27	13	9	8	1
Trade	1	11		2	5	26	2	
Communications	6	5	4	5			1	1
Culture		2	3				1	
Defence	28	32	26	2	16	2	7	6
Economy	2							
Education	11	22	5		8	2	2	
Public management		1	2					1
Finance	13	11	39	48	14	2	4	14
Statistical information	6							
Interior	3	9	11		2	1	1	
Strategic intelligence	3							
Mining and energy	15	3	5	2	1			
Control entities	2			1				
Elections			1					
Office of the Presidency		3						
Planning	5		9	12	2			
Foreign affairs	1							26
Health	4	7	11	12	16	8		41
Employment							1	
Transport	1	1						20
Civil registration								1
Sub-national entities								20
Sub total	142	114	144	119	93	56	27	131
Total				**826**				

Source: Information provided by DAFP.

In addition to GRAT, Decree 4669 of 2005 established sectoral committees. Their mission is to support DAFP in the analysis and approval of proposals of new formalities coming from public entities or private ones that provide public services. Sectoral committees meet upon convocation by DAFP and their objectives include the following:

- Supporting DAFP in the analysis to establish, amend or simplify formalities.
- Helping DAFP apply policies for simplification, rationalisation, and standardisation of formalities in particular sectors.
- Establishing mechanisms for co-ordination and joint action with the private sector concerning planning and execution of programmes dealing with identification, diagnosis, simplification, and elimination of unnecessary formalities and procedures.
- Participating in projects to facilitate the use of ICT to interconnect public entities, upgrade access to information, allow electronic management of formalities, and promoting the massive use of ICT.
- Evaluating the implementation of programmes concerning specific sectors.

Decree 4669 also provides the possibility for the integration of Inter-sectoral Committees, with the participation of members from several sectoral committees and public entities from the central and sub-national governments.

The strategy has been successful in limiting the approval of new formalities, as only 41 had been created in the period 2006 - August 2012, as shown in Table 6.7. However, as in the case of simplified formalities, there is no measurement as to how these new formalities contribute to administrative burdens.

Concerning the use of the *silence is consent* rule, Law 1437 of 2011 establishes that if after three months of submitting an application there is no answer from the authority, the response will be considered as negative. However, Article 84 establishes that the *silence is consent* rule applies when specific rules authorise it.

Table 6.7. New formalities approved by sector

2006 - August 2012

Sector	Formalities
Agriculture	2
Environment	10
Professional councils	1
Defence	13
Economy	2
Education	1
Finance	3
Mining	2
Protection	5
Foreign affairs	1
Transport	1
Total	**41**

Source: Information provided by DAFP.

Assessment and recommendations

The GOC should undertake a comprehensive and across-the-board review of the stock of regulations, starting by creating a centralised registry of laws and regulations.

Despite significant progress in publishing laws and regulations in Colombia, there is no single portal that gathers all the information about the different stages involved in the preparation of laws and regulations, the amendments that can be introduced, as well as providing a comprehensive registry of existing regulations.[8] Communication by government institutions about their regulatory frameworks is therefore uneven, as there is no single arrangement on what has to be disseminated and when to do so.

Hence, one of the first steps for the GOC to improve its management of the regulatory stock should be the development of a single registry of laws and regulations, in alignment with the efforts undertaken for administrative requirements and services offered by public institutions and the compilations completed by some entities, such as the Central Bank,[9] the CRC, the CRA, the CREG, and the Financial *Superintendencia* (see Box 6.3). These individual experiences are a good starting point, but do not substitute for the advantages provided by a centralised registry.

The construction of a centralised registry of laws would be a necessary first step in the process of reviewing the stock of regulations and would complement the information on formalities provided by SUIT, without necessarily being incorporated in the same platform. The positive experience gained from the construction of a centralised registry of formalities, SUIT, should be leveraged for this purpose.

A centralised registry of rules would advance normative transparency and facilitate a consistent enforcement of regulations. In OECD countries, centralised registries are used as the main reference not only for citizens, but also for public servants themselves, who can rely on the information contained in the registry to avoid confusion and apply requirements in a way that supports legal certainty. In this sense, a centralised registry of rules builds order and discipline in the public administration and advances a stable business environment.

Box 6.3. **Taking stock of the inventory of regulations: The case of the Financial *Superintendencia***

The Financial *Superintendencia* identified the need to systematise, compile, and harmonise in a single instrument the rules in force for the sectors it regulates, so that regulated entities and the public in general know the applicable rules and are able to easily consult them. This need was evident by the numerous and diverse regulatory requirements existing for the financial, insurance, and stock market sectors.

Decree 2555 of 2010 compiled and re-issued in a single instrument all the regulations applicable for the financial, insurance, and stock market sectors. The Ministry of Finance and Public Credit (*Ministerio de Hacienda y Crédito Público*) updates the decree periodically by adding, modifying or eliminating the compiled rules as required. It can be consulted at the websites of the Financial *Superintendencia* and the Ministry of Finance and Public Credit (www.minhacienda.gov.co/HomeMinhacienda/regulacionfinanciera).

Additionally, instructions issued for entities subject to inspection, oversight, and control by the then existing Banking *Superintendencia* and Stock *Superintendencia*, and currently by the Financial *Superintendencia*, were compiled and are updated with the new instructions being issued, so that the applicable regulatory stock can be consulted in a single instrument:

- Legal basic statement (*Circular Jurídica Básica*): Compiles legal instructions applicable for entities subject to the oversight and control of the Financial *Superintendencia*.
- Accounting basic statement (*Circular Básica Contable*): Compiles instructions to disclose accounting information for regulated entities and the rules concerning risk management.
- Unique accounting plans (*Planes Únicos de Cuentas*): These are established by regulation for specific industries, such as insurance and stock exchange.

These normative inventories can be found at the website of the Financial *Superintendencia* (www.superfinanciera.gov.co/normativa).

Source: Information provided by the Financial *Superintendencia*.

Reviewing the stock of regulations was raised in the concerns expressed by the business community during the fact-finding missions, in particular those regarding lack of consistency and overlapping. In some sectors, such as health, the regulatory stock has built over time into a complex web of rules and decrees, with conflicting concepts issued by the ministry and the *Superintendencia*, creating confusion for those who have to enforce the regulatory framework (i.e., sub-national governments). This problem is exacerbated by the lack of a control mechanism on the flow of regulations.

Once the centralised registry has been developed and the GOC has taken stock of the normative inventory, it will be in a better position to advance a comprehensive review. Some alternatives to undertake a generalised review include the techniques "scrap and build" and "regulatory guillotine", depending on the scope and depth of the initiative. Whichever the methodology, it is important to consider that these exercises must be accompanied by strong political support at the highest level, active participation of line ministries, business engagement, careful organisation, and proper management (see Annex 6.A1 on good international practices). In addition, as established in Chapter 5, there is a need to develop an *ex ante* assessment system to make sure that the streamlining that may be achieved after reviews of the stock is not reversed by a continuous flow of regulations. Controlling the stock and the flow of regulations must therefore go hand in hand.

Box 6.4. **Sunsetting in Australia and the United Kingdom**

Australia has put in place sunsetting strategies to review and update the stock of regulations on a systematic basis. Legislative instruments are automatically scheduled to sunset ten years after being made and 2013 will be the first year that Commonwealth legislative instruments will cease under the sunsetting provisions. Additionally, the government has established a policy commitment to review regulation not otherwise scheduled for review every five years, commencing in 2012. An OECD study conducted in 1999 found that in several Australian states sunsetting had substantially reduced the overall number of regulations in force, removed redundant regulation, and encouraged updating and rewriting of the remaining rules. Four of the five states using sunsetting opted for a ten year cycle, with New South Wales adopting a five year cycle.

In the **United Kingdom**, the impact assessment form requires officials to commit to a date when they will review the actual costs and benefits of any new proposal, and establish whether the policy has achieved the desired effects. This *ex post* review should typically occur within three years of implementation, depending on the nature of the policy. The review should establish a baseline and include success criteria against which the effectiveness of the policy will be judged. Departments are also asked to consider the scope for simplification, including revisiting European Union directives where relevant. The impact assessment guidance also recommends that opportunities to use sunset clauses should be explored where appropriate.

Source: OECD (2010h), *Better Regulation in Europe: United Kingdom 2010*, OECD Publishing, doi: 10.1787/9789264084490-en; and OECD (2010i), *OECD Reviews of Regulatory Reform: Australia*, OECD Publishing, doi: 10.1787/9789264067189-en.

In addition to a generalised review, the GOC should introduce mechanisms to ensure the periodic renewal and analysis of existing regulations. A generalised review would likely identify opportunities to streamline the stock and reduce administrative burdens. Following on from this, the GOC should introduce mechanisms to ensure periodic analysis and simplification of the regulatory stock, particularly high impact regulations. Sunsetting or measuring administrative burdens might be good options. However, as

established in Box 6.1, sunsetting is not implemented retroactively and will not tackle the general burdens of the regulatory stock, as it applies to individual regulations. Likewise, identifying high impact regulations to measure administrative burdens would be facilitated once there is a substantive reduction of the stock. Hence, the use of these tools is complementary and, in any case, should follow a generalised review, but not replace it.

These complementary techniques could also be embedded into *ex ante* assessment by requiring regulators to consider whether it would be suitable to integrate them into regulations as they are being developed, to facilitate periodic review (see Box 6.4 for the cases of Australia and the United Kingdom).

The GOC should focus on high impact regulations to provide momentum to a long-term simplification programme. Making use of qualitative methods and measuring regulatory burdens against which achievements and savings can be assessed are complementary approaches to move forward in this direction. Citizens, business and civil society should participate in this effort and the experience of Competitive Regulation might be leveraged for this purpose.

A cost-effective strategy for the Colombian government to focus its simplification efforts would leverage on previous assessments and rely on both, qualitative and quantitative techniques. First, the GOC could revise the information collected through the "Cristal Ballot" when preparing Decree 0019 to identify recurrent regulatory complaints that have not been addressed. The same revision would be useful for the suggestions that came out from the taskforces formed in the context of Competitive Regulation.

Second, the GOC might want to apply qualitative techniques (i.e., perception surveys or focus groups) on specific populations affected by regulatory inflation, such as business chambers and professional associations, among others. The use of ICT can add to the cost-effectiveness of this exercise. In fact, some OECD countries have decided to use qualitative techniques, either as a complement to the existing quantitative ones or to replace them. Qualitative techniques do not try to express administrative burdens in measurable terms but rather work with information that may be subjective and is not quantifiable, but still may represent useful input for simplification purposes. Perception surveys, for example, are used to identify and sometimes measure irritation costs (see Box 6.5 on the experiences of Denmark and the Netherlands).

These two sources would be helpful to identify economic sectors or processes (i.e., getting a construction permit) in which simplification efforts should be reinforced. As a third step, a measurement of administrative burdens in the specific sectors or processes identified can be undertaken to get a better idea of the extent of the problem, attract public attention and support for the simplification initiative, quantify savings, and control progress. This focalisation strategy would avoid the excessive costs of estimating a generalised baseline measurement.

Quantifying savings creates incentives to keep a long-term approach to controlling the stock of regulations and numbers are easy to present to the public and the media. In consequence, a focused exercise of quantification can help spot burdensome regulations while keeping efficiency in mind and avoiding unbearable costs (OECD, 2010d).

Experience of countries that have already measured their administrative burdens shows that the process of measurement may be costly, especially when the full baseline measurement is conducted (all existing regulation is measured) and when external private companies are contracted for the measurement phase. For example, in the United Kingdom the full baseline measurement cost approximately GBP 10 million.

Results in countries that have conducted measurements also prompt that the Pareto principle can be applied on administrative burdens (20% of regulations usually cause 80% of the administrative burdens). It is therefore more efficient to focus solely on these 20% as a way to make the exercise less expensive. For the above reasons, it is highly recommended to try to set priorities by identifying those areas of regulation or those individual regulations that have the potential to be the most burdensome and focus on them. As mentioned above, this must be done in co-operation with citizens, business and civil society.

The Standard Cost Model (SCM) is probably the most popular methodology to measure administrative burdens. Expressing the value of such burdens in monetary terms helps to set quantitative targets for reduction, both general ones or divided by specific ministries, agencies, etc. Targets are widely used in OECD countries because they create momentum and facilitate progress monitoring. They also create pressures for individual institutions to deliver on time.

Some countries, such as Mexico and Spain have opted for a simplified version of the SCM in order to reduce costs of measurement (see Box 6.5 on the experience of Mexico). Spain, for example, developed a "Table of Standard Values" which assigns a standard cost to the different activities which might be required to complete a formality (i.e., filing a physical application is estimated at EUR 80). These standard values are calculated according to time and price parameters used in the SCM methodology. The main advantage of this simplified version is that it does not require conducting surveys for each regulatory requirement, eliminating the burden that is sometimes imposed on businesses.

Box 6.5. **Good international practices on focusing simplification efforts using quantitative and qualitative techniques**

Mexico invested reasonable resources in producing a baseline measurement of administrative burdens by embarking in the collection of data from around 500 interviews, and using a combination of statistical and mathematical techniques and internal assessments to extrapolate the data to estimate burdens. Following international practices, Mexico set the objective of reducing 25% of administrative burdens as part of the regulatory improvement programmes for the years 2011-12 submitted by line ministries and agencies of the federal government.

In 2007, the **Danish** government initiated the *Burden Hunters Project*. This was the first step in the development of a more systematic approach towards the reduction of irritation burdens. Staff from the Danish Commerce and Companies Agency (DCCA) and representatives of line ministries visited businesses to get concrete and specific knowledge about how they experience interactions with government authorities and services provided. The Danish government presented an action plan containing 105 measures to reduce administrative burdens on public sector service providers expected to free up some three million working hours annually for service provision.

In the **Netherlands**, the perception of businesses towards regulatory burdens reduction is measured yearly as part of an initiative called *Business Sentiment Monitor*. It does not only focus on the reduction of administrative burdens, but also includes costs to comply with regulations, requirements of supervisory bodies, and the constantly changing rules. The Netherlands aims at increasing by 25% the number of businesses that say that they have very little irritation from unnecessary information obligations.

Source: OECD (2012c), *Mexico, Towards a whole-of-government perspective to regulatory improvement*, OECD Publishing, Paris. OECD (2010b), *Better Regulation in Europe: Denmark 2010*, OECD Publishing, doi: 10.1787/9789264084551-en, and OECD (2010k), *Why Is Administrative Simplification So Complicated?: Looking beyond 2010*, *Cutting Red Tape*, OECD Publishing, doi: 10.1787/9789264089754-en.

The GOC would advance regulatory certainty and responsiveness by adopting specific tools to increase discipline in the management of formalities.

During the fact-finding mission, the business community raised the issue of an uneven application of regulatory requirements across the public administration. There seem to be opportunities to increase discipline in the management of formalities and to establish a commitment with citizens that regulations and formalities will only be applied as officially stated. This commitment may well involve turnaround deadlines, specific requirements to be submitted by citizens, costs, and validity of resolutions, among others. This information is already compiled in the SUIT, but the international experience suggests other tools that could also be advanced to reach those groups that have limited access to ICT, for example, total quality management (TQM) systems, citizen or *service delivery charters*, and the *silence is consent* rule. Even though some of these tools are already used in Colombia, the government may want to assess the feasibility of extending their application.

TQM systems impose discipline on government processes. They not only imply certain time limits to reply to applications to licences and permits, but also external certifications of government processes, particularly when a formal quality system is being applied. These certifications force public officials to map the processes they manage and think on better ways to organise their work, leading to improved services and certitude for citizens and businesses.

Implementing a formal TQM system for the processes that deal directly with business licences and permits helps streamline them and provides certitude for businesses. Implementation requires some previous actions such as an analysis of the processes that will be certified and training for the public servants that will be subject to the requirements of the quality system. Internal and external certifications are required every once in a while to keep the certification of the quality system, which help to preserve a working discipline. The CRA, for example, has certified its internal processes under ISO 9001:2008.

In addition to formal TQM systems, there are other simpler mechanisms to apply to ensure service delivery standards and regulatory certainty, such as *service delivery charters* and the *silence is consent* rule. *Service delivery charters* are public, accessible, simple, and clear statements that provide citizens with all the information they need to file an application or request a public service, emphasising quality standards that the public agencies are committed to observe and including mechanisms for citizen participation. These charters are usually placed in a highly visible place in public offices and on their websites.

Concerning the *silence is consent* rule, Law 1437 of 2011 (Code of Administrative Procedure and Contentious Administrative) states that it will only apply in specific cases established by law. The government limited the application of the rule to reflect the actual capacity of the State to respond to citizen requests. Even though a generalised application of the *silence is consent* rule might not be feasible, the government may want to carefully assess how to make the best use of it, so that timely service delivery is facilitated and the risks implied by it are minimised (see Box 6.6 on the application of the *lex silencio* in the Netherlands). Certainly, it is important to consider risk in the assessment of the application of the rule.

Box 6.6. **The use of the *silence is consent* rule in the Netherlands**

In the **Netherlands**, the Ministry of Economic Affairs has been working on the introduction of *lex silencio*. All nationally generated licence systems have been reviewed by an independent agency to see if this approach was suitable. First, it was determined whether it is legally and technically possible to introduce *lex silencio* (for example, no conflicting European Union (EU) directives, no extensive consulting procedures with third parties). In the second step, for licence systems that passed this test, the risk to society of introducing *lex silencio* was assessed. Where *lex silencio* was possible, consideration was given to whether it was possible to abolish the permit or replace it with general rules. In December 2008 the cabinet decided that the *lex silencio* be introduced on an extra 24 licences. By 2011, the Cabinet wants to see this figure of the number of licensing systems working with *lex silencio* doubled.

Source: OECD (2010e), *Better Regulation in Europe: Netherlands 2010*, OECD Publishing, doi: 10.1787/9789264084568-en.

Notes

1. However, it is worth noting that the DNP is developing a framework for institutional and legal intervention to streamline formalities and regulations. This framework considers both, *ex ante* and *ex post* controls (i.e., regulatory reviews and *ex post* evaluation).
2. Ministry of Justice, www.minjusticia.gov.co.
3. The "formalities chain" is created when the completion of a formality managed by one entity requires the presentation of documents issued by other entities.
4. In 2012, two additional one-stop shops began operations: the Environmental one-stop shop (*Ventanilla Única Ambiental*) and the Forestry one-stop shop (*Ventanilla Única Forestal*). Likewise, Virtual INVIMA was launched on December 2012. Furthermore, the one-stop shop for payment of copyrights and linked fees (*Ventanilla Única para el pago de Derechos de Autor y Derechos Conexos*, VID) was created in January 2013, as a result of Decree 0019 of 2012.
5. 16 473 businesses have started up since 2006 with the support of *Bogota Emprende*.
6. A new process for tax registration established by DIAN complicated completion via CAE.
7. IFC (2012), *Doing Business 2013: Smarter Regulations for Small and Medium-Size Enterprises*, Washington, D.C., p. 26. In *Doing Business in Colombia 2010*, the IFC states that new firm registration increased by 5.2% in the six initial municipalities after the introduction of CAE.
8. The Secretary General of the Senate provides a compilation of primary laws and their antecedents in www.secretariasenado.gov.co/leyesyantecedentes.htm.
9. Juriscol is a system of historic-legal information with the objective to compile, sistematise, and analyse laws and jurisprudence of the high courts concerning the Central Bank, since its creation in 1923. This portal is managed by the Central Bank and can be consulted at http://juriscol.banrep.gov.co.

Annex 6.A1.

Good international practices to review the regulatory stock

The experience of OECD countries with comprehensive reviews applied to business regulations indicates that there are different approaches regarding the organisation and methodologies of the review processes, as well as the institutional and political aspects. Nevertheless, it is possible to derive some general principles and good practices. The OECD documented some of these good practices during a co-operation with Mexico's Ministry of Economy to help it lead a regulatory review. These are set out below.

1. *Sustaining high-level political support is key to ensuring the success of the review*

A core governmental body should lead the reform, with a top-down approach, to help minimise resistance from various sectors. Senior-level officials must support the process, with Presidential or Prime minister endorsement.

2. *Engage with regulators to maintain momentum for reform*

This strategy requires close and on-going communication with line ministries and agencies responsible for enforcing regulations. It also calls for incentives and facilitation to motivate them to be proactive, accompanied by capacity building and guidance. Naming and shaming, and reporting on progress to the senior political level can help as well.

3. *Involve businesses and other stakeholders*

Consultation and stakeholder participation have multiple positive effects for reviews: Business and citizen participation provide useful input for an expert review, helping to define goals, ensuring that the most burdensome regulations are tackled - not just the "low hanging fruit" – acting as a check on vested interests, and avoiding regulatory capture.

4. *Partner with Congress and legislators*

Involving legislators helps push amendments through parliament: For the exercise to have a significant economic impact, it must include not only secondary regulations, but also primary legislation and policy. As a consequence, legislative action is required.

5. *Planning, organisation, and guiding criteria for the review*

Careful planning and organisation is key to success. It requires clear objectives, responsibilities, and timelines, especially as the process is likely to extend over a year. Criteria used by OECD countries include compatibility with international standards, cost-benefit analyses, assessing administrative burdens on businesses, identifying legal justification and any duplication with sub-national regulations, assessment of risks, and whether regulations have been updated in the past. It should be noted that a "guillotine" exercise risks eliminating regulations that may in fact serve some public interest. The planning process should include anticipating remedies to correct mistakes made.

6. Regulatory reviews are typically organised in stages

These stages usually include identifying the existing laws and regulations (stock), classifying (whether they are necessary or not), and codifying or simplifying them.

7. Capacity building and guidance

It is essential to produce guidelines, manuals, and handbooks, as well as training and other capacity building activities for ministries and agencies, including support from experts, to help towards the achievement of successful results. The central body must facilitate the work of the ministries and help them adopt a proactive approach to conducting reviews.

8. Measure the economic benefits

This is useful to guide and justify further reforms and build momentum for an in-depth review. The SCM, for example, is useful to define the benefits of simplification in monetary terms.

9. Communicate to the wider public

A well-articulated communications strategy keeps stakeholders and the wider public informed of the review, hence generating support to sustain the effort overtime.

10. Take preventive action for the flow of regulations and envisage regular "clean up" with periodic reviews

A review of the regulatory stock must be accompanied by strict controls on the flow of new draft regulations in order to avoid re-building the stock. Only new regulation that is strictly necessary and cost-effective must be authorised. This strategy implies establishing or improving an *ex ante* assessment system. Furthermore, regulatory reviews are not "one-off" exercises, but they must be performed periodically and build on previous reforms.

Source: OECD Secretariat.

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Chapter 7

Compliance, enforcement and appeals in Colombia

This chapter discusses the approaches applied by the Government of Colombia to advance regulatory enforcement and compliance, particularly the role played by Superintendencias*. This analysis includes a description of the extent to which risk-based approaches are applied to focus control and inspection activities. It also explains the alternatives citizens have to appeal regulatory decisions and the roles of institutions such as the Constitutional Court and the State Council. Finally, the chapter provides recommendations to improve judicial review processes.*

A regulation must be complied with to achieve its intended objectives. A mechanism for the redress of normative abuse by regulators should also be in place as a democratic safeguard of a rule-based society and as a feedback mechanism to improve regulations.

Approaches to regulatory enforcement and compliance

A crucial performance indicator for any regulation is the degree of compliance it generates. An *ex ante* assessment of compliance is increasingly part of the regulatory process in OECD countries, although the level of resources and attention focused on it varies significantly.

Box 7.1. **The Table of Eleven in the Netherlands**

The **Netherlands** has engaged in pioneer work to ensure that compliance and enforcement are considered at the start of the rule-making process. Efforts by the Ministry of Justice to raise awareness go back over two decades, via the Directives on Legislation, the legal quality criteria which it applies, and the Practicability and Enforcement Impact Assessment which it also undertakes. The Netherlands developed the so-called "Table of Eleven" determinants of compliance, which have widely influenced other countries' efforts in this field.

The Inspectorate of Law, now called the Expert Centre on the Administration of Justice and Law Enforcement, within the Ministry of Justice, acts as consultant to ministries on issues of enforcement in relation to regulatory proposals. The Expert Centre regards enforceability assessment as essentially probabilistic, recognising that there is significant uncertainty. It aims to identify the two or three key "risk factors" for compliance/enforcement in relation to each regulatory proposal to enable policy makers to address these issues in advance. The review is made as consistent as possible through adoption of standard checklists and other instruments. A key tool is the "Table of Eleven" determinants of compliance.

The Table of Eleven was developed jointly by the Ministry of Justice and Erasmus University and derives from academic literature in the areas of social psychology, sociology and criminology, supplemented by the Ministry's practical experiences and viewpoints on law enforcement. The table is divided in three parts:

- Spontaneous compliance dimensions. These are factors that affect the incidence of voluntary compliance – that is, compliance which would occur in the absence of enforcement. They include the level of knowledge and understanding of the rules, the benefits and costs of complying, the level of acceptance of the "reasonableness" of regulations, general attitudes to compliance by the target group and "informal control", and the possibility of non-compliance being sanctioned by non- government actors.
- Control dimensions. This group of factors determines the probability of detection of non-complying behavior. The probability of detection is directly related to the level of compliance. The factors considered are the probability of third parties revealing non-compliance, the probability of inspection by government officials, the probability of inspection actually uncovering non-compliance and the ability of inspection authorities to target inspections effectively.
- Sanction dimensions. The third group of factors determines the expected value of sanctions for non-compliance, that is, the probability of a sanction being imposed where non-compliance is detected and the severity and type of likely sanctions.

Source: OECD (2010e), *Better Regulation in Europe: Netherlands 2010*, OECD Publishing, doi: 10.1787/9789264084568-en.

In general, regulatory institutions in Colombia do not monitor compliance levels with regulation, although some might have sanctioning powers in particular cases, such as the obligation to provide information, or might monitor the implementation of regulation. The Civil Aviation Authority, for instance, monitors compliance with regulations through other institutions, such as the Secretariats of Operational Systems, Air Security and the Office of Air Transportation. The Ministry of Justice and Law has also put in place an electronic system to control and inspect Conciliation and Arbitration Centers, in relation to matters of controversy, number of requests, conciliatory agreements reached, and number of hearings conducted in a given period. The Ministry of Transport monitors, for instance, the value to pay through a system that includes efficiency costs for operation based on technical, logistic and efficiency criteria.

Responsibilities for inspection, monitoring and enforcement are the role of the *Superintendencias*. However, these institutions do not always quantify the level of compliance. In general terms, *Superintendencias* claim that compliance levels are good, and some consider them to be high. Various indicators have been introduced within public institutions to monitor the improvement of performance and enforcement, which has contributed to reductions in corruption and evasion. For instance, in the field of public services, the Single Information System (*Sistema Único de Información,* SUI) provides technical, operational, commercial, and financial information to the *Superintendencia*, which is essential for oversight and control functions. The *Superintendencia* of Public Services uses this information to set up strategies to improve the quality of service provision, analyse impacts on tariffs and prices, and ensure positive financial and accounting balances of operators. However, much remains to be done in relation to regulatory sectors where the exact level of compliance is unknown.

Superintendencias in Colombia are also responsible for inspections and administrative investigations. For example, if the *Superintendencia* of Public Services finds some gaps in the proper application of regulations, it has the authority to take actions against the operators, such as officially requiring information, conducting inspections *in situ*, signing improvement agreements or management programmes with operators, or analysing complaints and administrative investigations that might lead to sanctions.

Some regulations, such as the law that introduces efficient instruments to guarantee the social character of the Colombian State,[1]oblige the executive to inform the National Congress on an annual basis about the compliance level of policies and interventions. This was replicated in Law 962 of 2005 on formalities, which established that the Ministry of Interior and Justice and the Director of the DAFP have to present a report twice a year to the First Commission of each one of the Chambers, in a special session, on the newly adopted formalities.

Use of risk-based approaches

Regulators should be required to develop, implement and review regulatory compliance strategies against risk-based criteria. Risk assessment, risk management, and risk communication strategies for the design and implementation of regulations should be introduced gradually to ensure that regulation is targeted and effective. Regulators should also build an accountable system for the review of risk assessments accompanying major regulatory proposals that present significant or novel scientific issues, for example through expert peer review. However, the Government of Colombia (GOC) should bear in mind that the implementation of risk-based approaches to regulatory enforcement requires specific institutional capacities, which may take time to develop. Consequently, the application of these approaches must be planned to be incremental.

Box 7.2. **The application of the principles of risk in compliance and enforcement in the United Kingdom**

The **United Kingdom** Hampton review on reducing administrative burdens through better compliance and enforcement practices was published in March 2005. In April 2008, the United Kingdom issued The Regulators Compliance Code, a statutory code of practice intended to ensure that inspection and enforcement are efficient, both for regulators and those they regulate, and based upon risk principles. The Code gives the seven Hampton principles relating to regulatory inspection and enforcement a statutory basis and is binding on regulators. It requires the following:

- Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection.
- Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources in the areas that need them most.
- Regulators should provide authoritative, accessible advice easily and cheaply.
- No inspection should take place without reason.
- Businesses should not have to give unnecessary information or give the same piece of information twice.
- The few businesses that persistently break regulations should be identified quickly and face proportionate and meaningful sanctions.
- Regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take.

It was important to review the success of these measures in practice and in July 2008, the United Kingdom National Audit Office reported on reviews of the performance of the five largest regulators in implementing the Hampton principles. The regulators were the Environment Agency, Health and Safety Executive, Financial Services Authority, Food Standards Agency and the Office of Fair Trading. The general conclusion was that regulators had accepted the need for risk-based regulation and in most cases had established mechanisms to assess risk and direct resources accordingly. There were, however, a number of common challenges faced by regulators. Among these the development of a comprehensive risk assessment system to deal with a wider range of risks, including those applying to the regulated sector generally and at the level of the firm, so that resources could be applied effectively. The review concluded that there was considerable value in regulators sharing their knowledge and experience.

Source: OECD (2010d), *Risk and Regulatory Policy: Improving the Governance of Risk*, OECD Publishing, doi: 10.1787/9789264082939-en; United Kingdom Government (2005), *The Hampton Review – Reducing Administrative Burdens Effective Inspection and Enforcement*, March, www.hm-treasury.gov.uk/media/7/F/bud05hamptonv1.pdf, accessed 12 Dec. 2012; United Kingdom (2007), *Regulators Compliance Code – Statutory Code of Practice for Regulators*, Department of Business Enterprise and Regulatory Reform, 17 December, www.berr.gov.uk/files/file45019.pdf, accessed 12 Dec. 2012; and United Kingdom Government (2008), National Audit Office, *Regulatory Quality: How Regulators are Implementing the Hampton Vision*, www.nao.org.uk, accessed 12 Dec. 2012.

Superintendencias, responsible for supervision and enforcement in Colombia, have introduced risk-based approaches in their activities. The Financial *Superintendencia*, for instance, is working to develop supervision based on risk assessments. This implies an important change in the traditional approach, which was based primarily on monitoring compliance with all of the basic legal requirements, towards a risk-approach to be conducted by each financial entity, based on its particularities. The new approach aims to identify those activities that impose higher risks for solvency and management in each regulated financial institution.

For certain inspection activities, *Superintendencias* are also introducing risk-based approaches. For instance, the SIC, in charge of compliance with regulations on consumer protection, personal data, metrology, technical norms, and competition, as well as the administration of the National System of Industrial Property, is designing a supervision and control system based on risk and prioritisation, as well as self-management by the regulated entities, which shall provide information and keep archives updated. Other policy areas which may benefit from the introduction of risk-based approaches to target inspection and control include health, environment, and labour.

Appealing process for regulatory decisions

The role of the judiciary is essential for regulatory quality control and economic performance. The effectiveness of the process arises from the ability of the judiciary to consider the consistency of regulations with principles of constitutionality, including notably proportionality and the right to be heard. It also arises from scrutiny by the courts of whether secondary regulation is fully consistent with primary legislation. A feature of regulatory justice is the existence of clear, fair and efficient procedures to appeal administrative decisions and regulations. Regulators must exercise their authority only within the scope permitted by their legal powers, treat like cases in a like manner and have justifiable reasons for decisions, and for any departure from regular practice. Embedding the principles in law and providing for effective appeals processes prevents abuse of discretionary authority, and preserves the integrity of the regulatory system.

In Colombia, two institutions of the Judicial branch have played a significant role in reviewing citizen´s demands against laws and regulations: the Constitutional Court (*Corte Constitucional*), in the case of unconstitutionality of certain laws issued by Congress or decrees having the force of law issued by government or legislative acts amending the Constitution, and the State Council (*Consejo de Estado*), in the jurisdiction of the administrative contentious, in case of decrees or resolutions that have been declared void. This has led to increasing the control over regulatory institutions.

According with the first of these two institutions, Colombian citizens have the possibility to bring a case to the Constitutional Court if they believe a law or decree violates the Constitution. This process is regulated by Decree 2067 of 1991 and it consists of the following phases. The claim is received and a judge randomly assigned to the case is responsible for admitting or rejecting it. Once admitted, when it meets all requirements, the judge informs the President and the President of the Congress and requests evidence from the institution that adopted the law or regulation to defend the constitutionality of the norm and the Attorney General presents his opinion. Once the deadline has passed, the judge prepares a ruling and transmits it to the rest of the judges for their opinions. The ruling is passed once analysis of evidence provided by the parties has been completed.

Regulation in Colombia is considered a general administrative act, which does not provide room for appeals through actions taken by citizens to review, modify, or remove a decision taken by the public administration (*vía gubernativa*). The procedures that apply are defined by Law 1437 of 2011.

According to Article 74, No. 2, of Law 1437 of 2011, no appeal can be lodged in the case of decisions made by "ministers, directors of administrative departments, heads of *Superintendencias,* and legal representatives of decentralised entities, directors or superior bodies of the constitutional autonomous institutions." The only possibility is direct repeal (*revocación directa*) by those that issued the regulation under certain circumstances.

Likewise there is no appeal channel for normative decisions of regulatory commissions. In the case of the CRC, there is, however, the possibility for an appeal for reversal (*recurso de reposición*) that has to be lodged within ten days against individual administrative acts.[2]

Citizens can also lodge a case against general administrative acts to declare their nullity if they imply a direct infringement of the Constitution and their revision does not correspond to the Constitutional Court in terms of articles 237 and 241 of the Constitution. In the case of judicial review of regulations, the only existing mechanism is for the decision to be declared null and void *(acción de nulidad)*.

Assessment and recommendations

Regulatory bodies should promote the use of risk-based approaches to increase compliance, target regulations, and focus their resources.

Increasing compliance should be an ongoing objective of regulatory institutions in Colombia. The use of risk-based approaches would assist with increasing compliance levels in recognition that government institutions might not always have the capacities to ensure compliance through their supervisory and enforcement functions. Initial examples in the use of risk-based approaches should be encouraged and improved over time, as *Superintendencias* might not always be equipped with all the necessary human and technical resources to ensure a high level of compliance.

There is a general perception in Colombia that compliance levels with regulation are good, but there is no clear evidence of this. Two issues could be explored by the GOC with the aim of improving compliance. The first would be to establish the current level of compliance with existing regulations in order to identify where regulators should focus their activities to improve compliance rates. Some techniques could be piloted, such as the use of checklists or indicators, and a comprehensive risk management system, standardised across the regulators, to regularly monitor compliance and enforcement issues.

Second, compliance and enforcement could be linked to the use of RIA. It is at the initial stages of government intervention that regulators should consider implementation issues, including enforcement mechanisms and compliance levels. Involving *Superintendencias* in a clear discussion about what has to be implemented and how in an early stage of regulatory development would be helpful for the purpose of assessing potential compliance and anticipating incentives. Training on RIA techniques should include guidance on preparing regulations, including an analysis of how it would be

implemented, the possible reactions of affected groups in terms of compliance effectiveness, as well as the resources needed to ensure proper oversight, monitoring, and enforcement.

The GOC should improve judicial review processes of regulatory decision making through increasing specialisation of judges.

The current judiciary arrangements in Colombia do not promote the specialisation of courts and judges for regulatory decision making. The Colombian judicial system had traditionally addressed the legality of administrative acts by government institutions, but it has increasingly sought to fill the implementation gaps in regulatory frameworks. The judiciary's role in terms of regulatory quality has increased and there is a need for improved training and specialisation on technical issues surrounding regulatory decisions. Even if judges use technical analyses and reports to base their decisions, there is scope for improvement in this area.

The specialisation of court decisions might help in improving the overall quality of regulation. In countries with a system of Roman law, it is essential to ensure that court decisions are based not only on legal and procedural approaches, but also on a technical perspective, which is fundamental for the adequate operation of economic markets and to provide certainty among competitors. Some countries have not only specialised judges, but also specialised courts dealing with concrete areas of expertise. The set-up of specialised courts would require a major institutional change, which might only happen if there is sufficient political leverage and consensus. Therefore, an initial movement towards offering training and capacity-building activities on regulatory issues for judges might raise awareness of the relevance of this issue for regulatory quality.

Box 7.3. **International examples of specialised courts**

In the **United States**, the majority of courts are special courts, which include all courts of limited and specialised jurisdiction that are not courts of general jurisdiction or appellate courts. A special court generally addresses only one or a few areas of law or has only specifically defined powers. Judges who serve in special courts are as varied as the special courts themselves. Most special court judges obtain their positions through election, rather than through the merit selection system common in general-jurisdiction courts. In addition, the majority of special court judges are not lawyers. Several states have established tax courts that have jurisdiction to hear appeals in all tax cases and have the power to modify or change any valuation, assessment, classification, tax, or final order. Massachusetts is unique in that it has a land court with exclusive jurisdiction over all applications for registration of title to land within the commonwealth, writs of entry and various petitions for clearing title to real estate, petitions for determining the validity and extent of municipal zoning ordinances and regulations, and all proceedings for foreclosure.

In the **United Kingdom**, the Competition Appeal Tribunal is a specialist judicial body with cross-disciplinary expertise in law, economics, business and accounting whose function is to hear and decide cases involving competition or economic regulatory issues. The Competition Appeal Tribunal was created by Section 12 and Schedule 2 to the Enterprise Act 2002, which came into force on 1 April 2003. Cases are heard before a Tribunal consisting of three members: either the President or a member of the panel of chairmen and two ordinary members. The members of the panel of chairmen are judges of the Chancery Division of the High Court and other senior lawyers. The ordinary members have expertise in law, business, accounting, economics and other related fields. The current functions of the Tribunal are:

Box 7.3. **International examples of specialised courts** (*cont.*)

- Hearing appeals on the merits in respect of decisions made under the Competition Act 1998 (as amended by the Competition Act 1998 and other enactments) by the Office of Fair Trading (OFT) and the regulators in the telecommunications, electricity, gas, water, railways and air traffic services sectors;
- Hearing actions for damages and other monetary claims under the Competition Act 1998;
- Reviewing decisions made by the Secretary of State, the OFT and the Competition Commission in respect of merger and market references or possible references under the Enterprise Act 2002;
- Hearing appeals against certain decisions made by OFCOM (Independent regulator and competition authority for the communications industries) and/or the Secretary of State under:
  - Part 2 (networks, services and the radio spectrum) and sections 290 to 294 and Schedule 11 (networking arrangements for Channel 3) of the Communications Act 2003;
  - The Mobile Roaming (European Communities) Regulations 2007 (S.I. 2007 No. 1933).

Source: www.catribunal.org.uk, accessed 12 Dec. 2012.

Undertake an assessment of the current judicial review channels for regulatory decisions and identify areas for reform.

Citizens and businesses that are subject to the decisions of public authorities should have ready access to systems for challenging the exercise of those authorities. This is particularly important in relation to regulatory sanctions (i.e., sanctions issued by an authority in virtue of a regulation). In principle, appeals should be heard by a separate authority from the body responsible for making the original regulatory decision. However, it is also important to consider the capacities and legal structure of each country to establish mechanisms consistent with its context.

There is scope to improve the possibility for citizens to appeal regulatory decisions in a more effective way. The GOC should conduct a review of the current appeal system for regulatory decisions to ensure access to due process for citizens and businesses. This would help improve the quality of regulation in terms of its effectiveness during the implementation phase. The current instances and procedures to challenge and reverse regulatory decisions only provide a framework for nullifying an action and recovering a right. There seems to be scope to improve the possibility for citizens to appeal regulatory decisions in a more systematised way, particularly for subordinate regulations managed by regulatory bodies, such as regulatory commissions or ministries.

Identifying gaps might open up an opportunity to make the judiciary a key player in promoting regulatory quality, as it could contribute to provide sustained basis for better regulatory decisions and to fill legal challenges.

Notes

1. Law 418 of 1997.
2. Law 1437 of 2011.

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Chapter 8

Ex post regulatory evaluation in Colombia

This chapter describes the status of ex post *evaluation of regulations, as well as regulatory programmes and institutions, emphasising the experience gained by regulatory commissions in conducting reviews of their normative frameworks every three years. The chapter concludes by recommending a more generalised use of* ex post *evaluation.*

Ex post evaluation of regulations, policies and institutions is a key part of the regulatory governance cycle that should be encouraged as an ongoing activity. The feedback regulators can obtain from a systematic *ex post* evaluation process can make a difference in the way they deal with regulatory concerns and can help make regulation more effective and efficient. *Ex post* evaluation is also essential to make regulators and their decisions more accountable *vis-à-vis* the public.

Ex post evaluation of regulations

Box 8.1. *Ex post* evaluation of laws in OECD countries

In **France**, several organisations monitor the correct implementation of regulations and supply information for evaluating regulations once they have been implemented. One of these bodies is the French National Assembly. The Commission of Constitutional Law, Legislation and General Administration of the Republic deals with issues about constitutional law, organic laws, internal rules, electoral law, public freedom, security issues, administrative law, civil service, judicial organisation, civil law, commercial law, general administration of the State and territorial collectivities. The Commission prepares a number of reports for information on topics of interest to the French society. It also prepares control reports on the application of certain laws (*rapports sur la mise en application de la loi*). In most cases, these reports contain an analysis of proposed amendments that are discussed in parliament, as well as points of view of various stakeholders interested in the issues. The Commission also publishes a yearly report on the implementation of approved laws and an overall assessment for each legislature. It examines the ability of the government to implement the law using enabling decrees.

In **New Zealand**, the Regulations Review Committee, a specialist committee within the House of Representatives, examines all regulations, investigates complaints about rules, and examines proposed regulation-making powers in bills. Although it carries out technical scrutiny of regulations, the committee seems to rather watch over the constitutionally proper use of regulation-making powers than dealing explicitly with regulatory quality or conducting *ex post* evaluation. The committee scrutinises existing regulations, it is composed of seven voting members and by convention it is chaired by a member of the opposition. It can only analyse draft regulations if referred to it by a minister. A complaint should be made in writing and needs to set out how the person or the organisation making the complaint has been aggrieved. It should also address one of the following:

- the relationship between the Act and the regulations;
- the practical operation of regulations;
- the implementation of the policy in regulations;
- the regulation-making process itself.

Source: French National Assembly, www.assemblee-nationale.fr/commissions/59051_tab.asp, accessed 23 Jan. 2013; and Parliamentary Counsel Office of New Zealand, www.pco.parliament.govt.nz/law-drafting, accessed 23 January 2013.

The evaluation of existing policies through *ex post* impact analysis is necessary to ensure that regulations are effective and efficient. In some circumstances, the formal processes of *ex post* impact analysis may be more effective than *ex ante* analysis in informing an ongoing policy debate. Consideration should be given early in the policy cycle to the performance criteria for *ex post* evaluation, including whether the objectives of the regulation are clear, what data will be used to measure performance, as well as the

allocation of institutional resources. It can be difficult to direct scarce policy resources to review existing regulation; accordingly, it is necessary to systematically programme the review of regulation and ensure that *ex post* evaluation is undertaken. Practical methods include embedding the use of sunset clauses or requirements for mandatory periodic evaluation in rules, scheduled review programmes, and standing mechanisms by which the public can make recommendations to modify existing regulation.

In Colombia, *ex post* evaluation of regulations is applied mainly by regulatory commissions, which have to conduct reviews of their regulatory frameworks every three years, according to Decree 2696 of 2004, and publish them on their websites within five working days of the completed evaluation being sent to the President of the Republic.[1] The review should include an impact analysis of the overall regulatory framework, along with an assessment of the sustainability, viability and dynamism of the sector, indicating the effect of existing regulations and the way they have affected the private sector, citizens and society in general. Each regulatory commission is responsible for preparing the terms of reference for such analyses, which are subject to a consultation process.

Box 8.2. *Ex post* reviews conducted by regulatory commissions in Colombia

The **Communications Regulatory Commission** published in 2007 an *ex post* evaluation of the legal framework in the telecommunications sector, which included a quantitative and qualitative analysis of the impacts of the regulatory framework. The study included the review of eight regulatory measures taken by the Commission between 2000 and 2005. According to the evaluation, the positive results of the sector, analysed mainly through the aggregated value of the companies over time and the behaviour of sectoral aggregated value, are due to regulations passed by the CRC, which facilitated greater demand of services, widened supply, and encouraged innovation in the sector. The global impact of some of the regulatory measures on the dynamics of the sector facilitated a 3.6% growth increase, which translated into COP 237 000 million in absolute aggregated value for the sector. In terms of the consumption evolution of services in the sector, the evaluation found out that regulation was not directly responsible for consumer increase of telecommunication services, but it had a positive impact on the sector as it might have facilitated a reduction in tariffs and widened the supply of new services for consumers. In terms of investment, the regulatory framework seemed to provide sufficient legal certainty for companies to expect high investment rates of return.

The **Water and Sanitation Regulatory Commission** published in 2010 an evaluation of the regulatory framework for the sector. The analysis included the follow-up of indicators and the use of general equilibrium models to value the costs and benefits of regulation in various affected parties. In addition, the evaluation included an assessment of economic, legal, financial, and social perception by affected parties on the effects of regulation. Results of the evaluation revealed that coverage of sanitation services in Colombia has increased. A detailed analysis of indicators in the sector, such as water quality, evolution of consumer complaints or financial results of sanitation companies, revealed that most of them have improved over time. The quantitative analysis showed an increase in the net benefit for consumers.

Source: CRA (2010), *Evaluación General del Marco Regulatorio*, Bogota and CRC (2007), *Impacto del marco regulatorio en su conjunto, en relación con la sostenibilidad, viabilidad y dinámica del sector de las telecomunicaciones*, Bogota.

These *ex post* evaluations, however, still lack a clear link to the regulatory process or development plan. In other words, as recognised by officials of regulatory commissions, evaluations still have to be incorporated into the policy cycle, so that the information they provide is actually useful to inform decision making. The preparation of such analysis

reflects the challenges ahead: insufficient expertise to conduct sound analysis on the impacts of the regulatory framework in a given sector, difficulties to establish clear connections between policy objectives and impacts, limited use of *ex post* analysis to improve decision making in regulatory commissions, and a short period (three years) to assess the performance of the sector and impacts caused by the regulatory framework.[2]

Ex post evaluation of regulatory programmes and institutions

Information on the performance of regulatory reform programmes is necessary to identify and evaluate if regulatory policy is being implemented effectively and if reforms are having the desired impact. Regulatory performance measures can also provide a benchmark for improving compliance by agencies with the requirements of regulatory policy, such as reporting on the effective use of impact assessment, consultation, simplification measures, and other practices.

Box 8.3. *Ex post* evaluation of regulatory programmes in the United Kingdom

The **United Kingdom** is ahead of many other OECD countries with its understanding of the importance of *ex post* evaluation of specific Better Regulation policies, in developing processes for this, and in using the results to strengthen specific policies (such as *ex ante* impact assessment). Good use is also made of the evaluation work of the independent National Audit Office (NAO). The depth and number of individual policies which have been launched underlines the need for a strong and sustained *ex post* evaluation of their effectiveness.

The NAO provides an external, professional, concrete, independent view on the quality of regulatory management. It has provided, over the last few years, valuable input to key Better Regulation programmes and processes such as impact assessment and the simplification programme. It has recently been engaged in joint review activities with the Better Regulation Executive (BRE). Its independence is an asset that has played an important role for these activities. The NAO has, over the last few years, carried out successive audits of Better Regulation policies and processes. For the last four years it has made an annual assessment of the quality and effectiveness of impact assessments. The NAO also reports to parliament annually on the achievements of the Administrative Burdens Reduction Programme. The 2008 annual review focused on the delivery of the four departments that are responsible for the five policy areas with the largest administrative burden. As part of its reviews, the NAO conducts an annual survey to track around 2 000 businesses' perceptions of the burden of regulation and the impact of departmental initiatives to reduce burdens. The BRE uses the evidence and conclusions from NAO reports to refine the approach in these areas. For example, NAO views were instrumental in shaping the new format of impact assessment arrangements.

The BRE (and its predecessor the Regulatory Impact Unit) carried out compliance tests to check that regulatory proposals are accompanied by an impact assessment between 2002 and 2005. This was done by analysing consultations undertaken by departments and the legislation that was then added to the statute book. Compliance levels varied between 92% and 100% between 2002 and 2005. Since that time compliance has been consistently at 100%. The development of the impact assessment library has in essence made the checks redundant. The final version of impact assessments includes a requirement to set a date (usually three years after the enactment of the new regulation) for review of what actually happened relative to predictions.

Source: OECD (2010b), *Better Regulation in Europe: United Kingdom 2010*, OECD Publishing, doi: 10.1787/9789264084490-en.

There is no systematic evaluation or monitoring of regulatory reform programmes or institutions dealing with regulatory quality in Colombia. Each institution is responsible for the evaluation of the tools they use and the effectiveness of the regulation they implement. For instance, regulatory commissions might develop *ex post* evaluations of their regulatory framework or particular projects they have been responsible for. Ministries, through their Internal Control Units, evaluate the implementation of their regulations. The DAFP prepared a perception study of the benefits of the Anti-formalities Decree in five cities in the country, but this only showed an initial diagnosis of how formalities are perceived, not the effectiveness of the measures taken.

Assessment and recommendations

The Government of Colombia (GOC) should promote the systematic use of* ex post *evaluation of regulations, regulatory reform programmes and institutions to make regulation more efficient and effective.

Ex post evaluation is essential to understand if regulation continues to be efficient and effective. It is therefore critical that Colombian authorities encourage the use of *ex post* evaluation for regulations, programmes and institutions, in order to ensure they still meet the objectives they were meant to serve.

Ex post evaluation of regulations should be undertaken by all institutions with regulatory powers, which should analyse the appropriateness of regulations after a given time they have been in force. This would complete the regulatory cycle and facilitate feedback on possible amendments to be done or changes in approaches to be introduced. *Ex post* evaluation would also assist regulators in identifying whether stakeholders are affected by regulations in the manner intended. The reviews conducted by regulatory commissions on their respective normative frameworks should be encouraged and enhanced over time and the practice extended government-wise.

Given that the Colombian administration does not have yet a formal regulatory policy and there are no institutions charged with the co-ordination of this effort, it is not surprising that *ex post* evaluation of regulatory programmes or institutional performance is not an active practice. As regulatory policy is developed, it should incorporate an *ex post* mechanism to evaluate performance both of the institution and the programme after a certain period, in order to identify gaps, challenges, and opportunities.

The set-up of a unit in charge of regulatory quality at the centre of government should incorporate the responsibility to promote and conduct *ex post* evaluation in the whole administration. This would require training regulators and establishing clear criteria for regulatory institutions to conduct *ex post* evaluations in a systematic way. In addition, it should incorporate *ex post* evaluation of existing regulatory frameworks, programmes, and regulatory institutions to ensure they are effective in attaining regulatory objectives.

Notes

1. For instance, the Communications Regulatory Commission has made available its latest *ex post* review at: www.crcom.gov.co/index.php?idcategoria=62063.
2. In OECD countries, the time span for *ex post* evaluation of regulations is of at least five years, but it could take more for the actual impacts of regulatory interventions to materialise.

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Chapter 9

Multi-level regulatory governance in Colombia

Chapter 9 describes the organisation of the Colombian territory and the distribution of regulatory powers among the different levels of government. Despite the fact that the mandates of territorial entities are residual, there are fields in which their powers impact significantly on economic activity. The chapter also introduces different means used in Colombia to advance multi-level co-ordination, such as associations, alliances, and pacts agreed by sub-national jurisdictions. It discusses the need to establish a multi-level dialogue platform and to clarify the roles of sub-national governments in promoting better regulation and the support the central government can provide. The chapter then briefly analyses challenges for and good practices in regulatory reform at the sub-national level. Finally, it provides recommendations to improve multi-level dialogue and co-ordination.

The 2012 OECD *Recommendation of the Council on Regulatory Policy and Governance* addresses multi-level regulatory governance in two sections regarding coherence and co-ordination, and regulatory management capacities. Achieving co-ordinated reform across multiple levels of government is certainly a case where the whole is greater than the sum of its parts.

In most OECD countries, different levels of government co-exist. Central government bodies, supported by a network of institutions and rules, function alongside regional and local governments, with their own set of rules and mandates. In this context, the different layers of government have the capacity to design, implement, and enforce regulation. This multi-level regulatory framework poses a series of challenges that affect the relationships of public entities with citizens and businesses and, if poorly managed, may impact negatively on economic growth, productivity, and competitiveness. Among others, the challenges include avoiding duplicated or overlapping rules, low quality regulation, and uneven enforcement.

In fact, the OECD has found that high-quality regulation at one level of government can be undermined by poor regulatory policies and practices at other levels, impacting negatively on the performance of economies and on business and citizens' activities. In order to ensure regulatory quality across levels of government, the principles that lower levels should follow must be defined. Clear definitions and effective implementation of the mechanisms to achieve and improve co-ordination, coherence, and harmonisation in making and enforcing regulation must also be in place. Finally, measures to avoid and eliminate overlapping responsibilities are also critical.

Empirical evidence and OECD analysis demonstrate that multi-level regulatory governance arrangements are country-specific. There is no single optimal model, since sharing and applying competencies remain strongly country-specific and depend on many internal and external factors, including the overall economic performance of the given country.

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

The organisation of the Colombian territory and the distribution of regulatory attributions

Although Colombia is a unitary republic, it is composed of 32 departments, as well as municipalities, special districts, and one capital-district in Bogota. These territorial entities are granted autonomy to conduct specific affairs. Departments, which consist of several municipalities, are responsible for territorial planning, setting objectives for development, and advising municipalities as the local administrative unit. Territorial entities are also entitled to raise taxes to fulfill their functions, in addition to receiving resources from the central level.

At the departmental level, the executive branch consists of the Governor and his cabinet ministers. At the municipal level, this branch includes the Mayor and his cabinet secretaries. Additionally, Departmental Assemblies (*Asambleas Departamentales*) and Municipal Councils (*Consejos Municipales*) fulfill administrative functions and, through departmental ordinances and municipal agreements, guide the use of public resources and exercise controls on Governors and Mayors, respectively.

Roles and responsibilities of the national government and the sub-national levels are primarily defined by the 1991 Constitution – and by the 2011 Organic Law on Territorial Organisation. The 1991 Constitution decentralised power – it empowered the territorial levels by ensuring that they are governed by their own authorities and they administer their resources and raise taxes necessary for their operations and their citizens' contribution to national revenues. The Constitution also states that the central government is to devolve powers to sub-national governments and ensure that they have the needed resources to implement their new mandates.

Article 287 of the Constitution established the framework to define the rights of territorial entities. However, there is no clear indication about the nature and criteria of the distribution of powers between the central and the sub-national levels of government. Hence, there is space for lower-level laws and regulations to establish the distribution of powers. Indeed, the Constitution does not provide details about the division of responsibility between the central government and territorial entities. A specific law – the Organic Law on Territorial Organisation (LOOT in its Spanish acronym) – does so.

Article 27 of the LOOT establishes the principles to exercise powers, which are the following:

- Co-ordination: The central level and the territorial entities should exercise their powers in an articulated and coherent manner.
- Concurrency: The central level and the territorial entities should develop timely joint initiatives for the common good, while respecting their autonomy.
- Subsidiarity: The central level, the territorial entities, and the territorial associations should temporarily and partially support entities with weak fiscal, economic, and social development when they cannot assume specific powers.
- Complementarity: Territorial entities may make use of schemes for association, co-financing, and delegation in order to upgrade or improve service delivery.
- Efficiency: The central level, the territorial entities, and the territorial associations should guarantee that public resources and investments deliver the highest social, economic, and environmental benefits.
- Balance powers-resources: Powers will be transferred once fiscal resources have been allocated to exercise them directly or in association.
- Incrementalism: Territorial entities will take over specific powers incrementally and flexibly, according to their management capacities.
- Responsibility: The central level, the territorial entities, and the territorial associations will take over their corresponding powers anticipating the required resources to do so and without compromising their financial sustainability.

Departmental assemblies, governors, and municipal councils can adopt rules regarding planning, economic and social development, financial support for municipalities, tourism, transport, environment, public works, and communication mechanisms. Municipal councils can adopt plans and programmes for social and economic development and public works, dictate rules for budgeting, and issue their annual budget of revenues and expenditures. Furthermore, they establish the structure of municipal public administrations and the functions of their units, as well as the salary structures for municipal public servants.

The regulatory mandates of territorial entities are residual and limited by the distribution set in several pieces of legislation. Law 155 of 1959 granted regulatory powers to entities of the central government. This pattern is continued in other laws, such as Law 142 of 1994, which established that national entities are in charge of defining methodologies and tariff formulas, as well as market entry concerning household public services. Law 1438 of 2011 authorised the *Superintendencia* of Health to delegate specific functions on Departmental Health Directorates, in which case it must also transfer resources.

Law 232 of 1995 establishes that no authority may request a licence or permit for starting up or to continue operating, if this was the case, or demand compliance with a requisite that is not explicitly mandated by legislation. Accordingly, territorial entities do not have the powers to establish property registries, construction permits, except those authorised by law, or requisites for start-ups, with the exception of those concerning land use, which are defined at the municipal level.

Even though the attributions of departments, districts, and municipalities are limited by law, there are fields in which their powers can impact on economic activity. For example, the Constitution grants powers to municipalities to regulate land use and, within the limits established by law, supervisory and enforcement powers in the area of construction and selling of real estate for housing purposes.[1]

Other examples that illustrate the distribution of powers among the different levels of government include the following:

- *Drinking water and sanitation:* The regulatory scheme establishes powers and responsibilities at the central, departmental, and municipal levels, but the core responsibility for sewage services lies with municipalities.
- *Industry and trade:* Public policies are established at the central level. However, implementation and supervision of policies concerning consumer protection, supervision of technical regulation, and metrological controls are decentralised and granted to municipalities.
- *Transport:* Road freight is the responsibility of the central level, but regulation of public transport and transit is granted to territorial entities.
- *Construction:* Municipalities regulate land use, the set-up of public services, and may impose taxes.
- Territorial organisation: The general policy on territorial organisation is dictated by the central government, as well as the guidelines for urbanisation. Departments establish guidelines for the organisation of their respective territories and the location of physical infrastructure. Municipalities draft and adopt the plans for territorial organisation and regulate land use.

Sub-national entities have the right to exercise their corresponding mandates and, therefore, are entirely responsible for the quality of the rules they adopt. This responsibility does not include rules originating at the central level, for which sub-national entities work as an agent. Under this scheme, the central government does not perform any quality control function for regulations issued at the sub-national level. The only exception is when the central government transfers regulatory powers according to Article 151 of the Constitution, in which case it may exercise some form of control.

Multi-level co-ordination

The LOOT specifies legal arrangements and forms of territorial co-operation enabling land use, planning, and territorial development across the country. It creates a governance framework in which different levels of government and different territorial entities can interact and co-operate. The LOOT defines the rules for decentralisation derived from the Constitution by providing a specific stable legal and policy framework without creating new government levels; in so doing, it strengthens the central government's ability to co-ordinate the implementation of decentralisation across the country.

The necessity of horizontal co-operation among territorial entities was initially recognised in the 1991 Constitution, which lists several possibilities to promote policy co-ordination at the local level. The LOOT embedded these instruments within a broader framework and added new instruments to promote territorial partnerships among sub-national entities. Some of these co-ordination tools have already been taken up, while others have yet to be implemented. These tools include:

- *Associations of municipalities:* voluntary association between two or more municipalities from one or more departments. Their aim is to improve service delivery, infrastructure, and more generally promote efficiency and effectiveness in municipal administration. Associations are organised as legal administrative entities that are independent and manage their own resources. They enjoy the same legal benefits provided to municipalities.
- *Metropolitan areas:* based on two or more neighbouring municipalities which are part of the same functional region (i.e. they share the same labour market and have a common transportation infrastructure). Metropolitan areas are legal entities that are independent and manage their own resources. The governance body leading the metropolitan area is the Metropolitan Board, which comprises the mayors of the partner municipalities, the governor of the Department in which the metropolitan area is located, a representative of the Municipal Council of the core or main municipality, and a representative from the other local assemblies. Metropolitan areas are usually organised around a core municipality. There are five metropolitan areas in Colombia: *Valle de Aburrá* (Medellin, Bello, Barbosa, Copacabana, La Estrella, Girardota, Itagüi, Caldas y Sabaneta); *Bucaramanga* (Bucaramanga, Floridablanca, Piedecuesta y Giron); *Barranquilla* (Barranquilla, Soledad, Puerto Colombia, Malambo y Galapa); *Cúcuta* (Cúcuta, Villa del Rosario, El Zulia, San Cayetano y Los Patios) and *Centro Occidente* (Pereira, Dosquebradas y La Virginia).
- *Administrative and planning provinces:* formed by two or more municipalities within a single department. Administrative and planning provinces are created by the central level to provide public services, carry out specific tasks related to local infrastructure development and, more generally, to support more integrated sustainable development.

- *Administrative and planning regions:* an association between two or more departments, with legal status and managing its own resources, working for the socioeconomic development of a specific territory that straddles departmental boundaries.
- *Management and planning regions:* a mechanism through which sub-national governments (or the central government) can provide assistance to other sub-national entities whose capacity to deliver key services is significantly challenged. Management and planning regions are based on three key principles of regulating public co-ordination in Colombia: complementarity, concurrency, and subsidiarity.

Other co-ordination arrangements governing territorial association that are minor or have yet to be implemented include:

- Association of departments;
- Association of special constituencies;
- Association of metropolitan areas;
- Association between municipalities;
- Areas for territorial development, identified in the National Development Plan; and
- Agencies for local economic development, created to boost equitable economic and social development based on a locality's endogenous potential. There are approximately eleven of these agencies active at the departmental level.

The Government of Colombia (GOC) has also adopted instruments that promote co-ordination between sub-national entities while not requiring the creation of new institutional arrangements. The two main tools are:

- *Territorial Pacts:* Sub-national authorities (departments and municipalities) belonging to a same territory can work together to shape a common vision for the economic development of their region. One of the most emblematic examples of this type of arrangement is the one signed by Bogota and the 116 municipalities constituting the Department of Cundinamarca. The partnership created a Regional Planning Board with the task of producing a shared vision for the region, which will be used as the main framework for policy interventions, notably in regional transportation infrastructure.
- *Territorial Alliances:* Sub-national entities can create a territorial alliance to find solutions to a common challenge. A good example of this type of arrangement is the Alliance Pro-Development for the eco-region of La Mojana (*Alianza Pro-Desarrollo para la Ecoregión de La Mojana*), which co-ordinates the actions of all sub-national governments within the region with that of the central government.

Despite the fact that the Constitution and other laws define the attributions of the different levels of government and the existence of the co-ordination mechanisms explained above, a permanent multi-level dialogue platform to promote regulatory co-ordination does not seem to be in place. There is also a lack of mechanisms (i.e., financial incentives) to motivate sub-national entities to advance regulatory quality. For example, the distribution of resources from the central to the sub-national levels depends

on criteria such as population and current resources, not on the achievement of specific policy milestones linked to productivity or regulatory improvement. Even so, there are fields in which regulatory attributions and resources are delegated to sub-national entities (i.e., health policy), which suggests that the central government may play a more relevant role on the control and co-ordination of policies, rather than on their direct implementation.

In fact, there is no national policy to promote regulatory quality at the sub-national level (see Box 9.1 for the case of Mexico). Indeed, sub-national governments have sometimes advanced simplification initiatives without adequate planning, without co-ordination with the central level, and sometimes in contradiction with central guidelines. In this sense, local autonomy has sometimes represented an obstacle to the implementation of regulatory improvement programmes. For example, the existence of special taxes (*cobro de paz y salvos*) has in some cases hindered the implementation of measures to simplify formalities. Another example is the need to reform local regulations to facilitate the implementation of the GEL strategy, leaving behind paper-based procedures.

Box 9.1. **National support to develop regulatory policies at the sub-national level in Mexico**

In **Mexico**, the Federal Law on Administrative Procedure grants on COFEMER the mandate to promote regulatory quality in states and municipalities. Accordingly, COFEMER helps states develop their own laws on regulatory improvement. Twenty out of the thirty one federal states and the Federal District have a law on better regulation, mandating state authorities and, sometimes, municipalities, to pursue regulatory improvement policies. In addition, eight states have laws on economic development containing a section on regulatory improvement.

The number of state and municipal public servants trained by COFEMER increased from 147 in 2008, to 370 in 2009, 484 in 2010, 647 in 2011, and 6 540 in 2012. This is in addition to the National Conference on Regulatory Improvement that COFEMER organises twice a year.

One of the main multi-level co-ordination mechanisms used in Mexico consist of covenants between COFEMER, states and municipalities. These covenants establish that COFEMER will provide training, advice, and implementation assistance concerning regulatory policies and tools. For example, COFEMER has led the implementation of the System for quick business start up (SARE), which is a simplification programme for start-up procedures. Up until October 2011, 189 SARE had been implemented, leading to the establishment of 264 489 businesses and 701 157 jobs, with an investment of MXN 42 441 million. According to COFEMER, the turnaround time for the municipal start-up licence went down from 25.2 to 2.4 days in the municipalities that established SARE between March 2010 and November 2011.

Just recently, COFEMER started promoting a regulatory governance cycle approach in states and municipalities. Accordingly, it has helped states and municipalities to develop and apply RIA, build centralised registries, and carry out regulatory reviews.

Source: OECD (2012c), *Mexico, Towards a Whole-of-Government Perspective to Regulatory Improvement*, OECD Publishing, Paris.

However, the central government has made an effort to promote simplification of formalities and establish one-stop shops for specific procedures at the sub-national level. The current project Territorial government online (*Gobierno en Línea Territorial*) supports municipalities in adopting ICT tools to allow for the completion of formalities online, such as registrations and renewals for tax purposes. The proliferation of CAE has allowed the generalised establishment of local anti-formalities committees. The DAFP, together with

the School of Public Administration, supports the registration of formalities managed at the sub-national level by training and advising local officials. Furthermore, the dynamic created by the sub-national *Doing Business* report, supported by the central government, has created competition between territorial entities and has prompted some to develop their own regulatory improvement agendas, with support from national institutions. The central government is also facilitating the exchange of good regulatory practices. For example, the National Management Award (*Premio Nacional de Alta Gerencia*) introduced a category to recognise best practices in the simplification of formalities. The national government has also approached the two federations representing territorial entities, the Colombian Federation of Departments and the Colombian Federation of Municipalities, to advance the implementation of the anti-formalities agenda.

Since 2007, the DNP has partnered with the World Bank to undertake the sub-national edition of the *Doing Business* report, which has been completed in 13 and 21 cities in 2007 and 2009, respectively.[2] The DNP set up the Programme for Technical Assistance for the Regions in 2010. This programme included a diagnosis of business regulations and formalities covering four indicators in the *Doing Business* methodology: starting-up a business, property registration, construction permits, and paying taxes. It led to the establishment of roundtables to identify reforms needed in 20 cities included in the sub-national *Doing Business* report and the design of an action plan for implementation.

The application of the sub-national *Doing Business* has raised regulatory reform on the policy agenda of territorial entities. For example, the city of Neiva, in the Department of Huila, was ranked last in the first report. The municipal and departmental governments, as well as the local chamber of commerce, took it very seriously and, after a significant effort, improved their ranking in the second report, moving up to the middle, ahead of 48% of the cities assessed.

The central government can play a more prominent role in facilitating the continuity of regulatory policies beyond political cycles. Continuity is often jeopardised when new governors or mayors take over and establish new agendas and priorities. The problem is exacerbated by the high turnover of the officials responsible for regulatory and simplification policies. Other OECD countries, such as Mexico, have the same problem.

Challenges for and good practices in regulatory reform at the sub-national level

The main regulatory improvement achievements of sub-national governments consist of administrative simplification initiatives and participation in registering formalities in the SUIT. However, akin to the central government, there is no regulatory governance cycle approach, which impedes the scope to realise gains in terms of productivity and competitiveness. For example, tools such as RIA and regulatory reviews are not deployed at the sub-national level. In addition, regulatory consultation is not standardised across territorial entities and practices differ widely.

The emphasis on the *Doing Business* rankings has certainly helped local governments to innovate, as illustrated by the following examples:[3]

- In 1995 Colombia redesigned its system of construction licences by moving the administration of building permits from the public planning office to the private domain. Bogota established the "urban curators" (*curadores urbanos*) to review applications for building permits. These urban curators are hired on the basis of a merit-based system, which includes exams and interviews with experts. The redesigned system improved turnaround times and increased efficiency in the use of the planning office's resources.

- Medellin eliminated the requirement for a land use certificate in the start-up process. It also made registering property easier by combining two certificates into one, while the departmental government eliminated the need to get a stamp to confirm payment of the registration tax.
- Builders in cities like Bogota and Medellin can submit applications and follow their progress online.
- In Manizales, the most recent property tax receipt (*impuesto predial*) is sufficient proof of payment and no separate certificate is required to register property.
- In Cali, the *SiCali* offices allow entrepreneurs to pay stamp duties and request certificates of property tax payment in one stop.
- Ibague reduced the number of Industry and Commerce Tax payments required annually. The municipal government introduced online tax filing and enabled payments by direct transfer from the company's checking account.

However, the focus on improving the *Doing Business* rankings, while meritorious, has arguably limited the scope of regulatory policies at the sub-national level. Having realised strong achievements in terms of simplification, it is time to move towards more comprehensive regulatory approaches.

Assessment and recommendations

When developing a national regulatory policy, the GOC should make explicit the roles that territorial entities should play to deliver better regulation, as well as the support that the central government will provide.

This report recommends that the GOC develop and adopt a formal, explicit, binding, and consistent whole-of government policy on regulatory improvement. This policy should include a comprehensive description of the roles territorial entities should play in promoting regulatory quality. It should be explicit in requiring sub-national governments to develop their own policies and institutions for regulatory improvement, so that progress at the national level is mirrored by the territorial entities. Likewise, the national policy should mandate the adoption of a regulatory governance cycle approach, applicable at all levels of government.

The national policy should also recognise that territorial entities will need support from the central government to strengthen their institutions and implementation of tools that go beyond simplification measures, such as RIA, consultation mechanisms, and regulatory reviews. Hence, it should establish the potential mechanisms, programmes, and institutions by which the central government can facilitate the development of regulatory policies and tools at the sub-national level. The experiences of DAFP and the MINTIC in facilitating the simplification of formalities and the application of the GEL strategy at the sub-national level provide insights as to which practical steps should be pursued. Training, advice, and implementation assistance are certainly some specific mechanisms by which the central government can support territorial entities to achieve better regulation practices.

In some cases, such as the implementation of RIA, there is scope for the central government and territorial entities to move forward in parallel, possibly through pilot programmes for specific sub-national jurisdictions (see Box 9.2 on the experience of Piemonte, Italy). Another alternative is to promote the adoption by sub-national governments of a simplified methodology for *ex ante* analysis. In any case, there is scope for the central government to play the role of advocate for better regulation practices.

Box 9.2. **Implementing RIA through pilot programmes: The experience of Piemonte**

In Italy, RIA underwent a six year experimental phase at the national level. It came into force in 2005. At the sub-national level it is not compulsory for the regions to carry out RIA for their legislative proposals, it is discretionary. A trial period was carried out during 2002-03 involving 12 regions and 16 pilot projects.

Piemonte experimented with RIA on one regulatory measure related to the safety of ski slopes. This exercise identified the problems that regulation aimed to solve, used consultation with relevant stakeholders, identified multiple regulatory and alternative options, and the estimated costs and benefits of the most feasible choices. This experimental phase highlighted the need to narrow the scope of the application of RIA, increase the human and financial resources, and assign dedicated staff.

Source: Garcia Villarreal, Jacobo Pastor (2010), "Successful Practices and Policies to Promote Regulatory Reform and Entrepreneurship at the Sub-national Level", *OECD Working Papers on Public Governance*, No. 18, OECD Publishing, doi: 10.1787/5kmh2r7qpstj-en.

The central government should work with the territorial entities to develop a permanent and institutionalised multi-level dialogue platform. The multi-level dialogue should facilitate political buy-in and a consistent approach at sub-national and national levels, which are necessary to pursue policies to advance productivity and growth.

Multi-level regulatory co-ordination is still an issue in Colombia. There is a need for a widely recognised dialogue platform through which the central government and the territorial entities can discuss national priorities, make high-level political commitments, and agree on specific policies to promote competitiveness. Currently, there is no such institution in place (see Annex 9.A1 on the cases of Canada and Italy). In fact, the lack of a structure facilitating political commitment to address regulatory and policy co-ordination is decreasing the potential for convergence in regulatory practices.

Regulatory initiatives at the sub-national level are sometimes at odds with national policies. There is even a marked disparity in progress among territorial entities and not all of them have committed to the policies advanced by the central government (i.e., GEL, anti-formalities policy). Harmonisation and policy convergence between the national and sub-national levels are required.

Once there is agreement on the strategic dimensions of regulatory policy, a multi-level dialogue platform can serve to define mechanisms by which the central government can support and motivate territorial entities (i.e., training programmes, incentive payments, benchmarking). The creation of funding incentives for local authorities to engage, for example, in online or mobile service delivery might be one way of increasing the value added of the GEL strategy. The platform can also provide a system to monitor compliance with specific milestones, which can feed back to central government and inform the incentives and support provided to sub-national entities (see

Box 9.3 on the case of Australia). The platform could serve as an institution to assess progress of sub-national governments towards national agreements. Accountability and outcome evaluation would be the basis to access funding from the central government to advance projects on good regulatory governance.

Box 9.3. **The Council of Australian Governments (COAG)**

COAG is the main forum for the development and implementation of inter jurisdictional policy, comprising the Australian Prime minister as its chair, State Premiers, Territory Chief ministers, and the president of the Australian Local Government Association. It was established in May 1992 out of a shared agenda aimed at advancing microeconomic reform and reducing the economic costs of duplication and overlap. This agenda led to the historic *National Competition Principles* (NCP) agreement, which was signed by COAG in 1995. In 2006, COAG reached an agreement to implement a further ambitious programme of national reform, including regulatory reform, called the *Australian National Reform Agenda* (NRA).

In 2007 COAG agreed a new model of co-operation underpinned by more effective working arrangements, with seven areas identified for its 2008 work agenda (health and ageing, productivity, climate change and water, infrastructure, business regulation and competition, housing, and indigenous reform). COAG also determined to begin changing the nature of Commonwealth-State funding arrangements by agreeing to focus more on outputs and outcomes, underpinned by a commitment from the Commonwealth to provide incentive payments to drive reforms.

In 2008 COAG agreed additional elements of the reform agenda in relation to boosting productivity, increasing workforce participation and mobility, and delivering better services to the community. In developing its new reform agenda, COAG endeavoured to build on the lessons from the NCP and adapt these to the development of co-ordination arrangements. The COAG reform agenda also involved the Commonwealth and the States entering into reform agreements, the attachment of incentive payments to the achievement of agreed reforms by the states and monitoring by an independent oversight body, in this case the *COAG Reform Council*. This council has responsibility to make recommendations to the Commonwealth government, specifically the Prime minister, on the performance of the states in meeting agreed reforms before incentive payments to reward nationally significant reforms are made.

Source: OECD (2010i), *OECD Reviews of Regulatory Reform: Australia 2010: Towards a Seamless National Economy*, OECD Publishing, doi: 10.1787/9789264067189-en.

Notes

1. Article 313 of the Constitution.
2. Work towards a third sub-national *Doing Business* report began in 2012.
3. IFC (2012).

Annex 9.A1. Multi-level dialogue platforms in Canada and Italy

In **Canada**, the *Federal-Provincial-Territorial Committee on Regulatory Governance and Reform* is a group that shares ideas and principles between the federal and provincial governments. The committee brings together a network of regulatory experts from across provincial boundaries and works to develop best practices on regulatory policy, building support for common approaches to regulatory development and overall management in Canada.

In **Italy**, the amendments introduced to the Constitution in 2001 established the transfer of legislative and regulatory competences from the State to the regions. In general, regions have gained legislative powers due to the increase of matters of concurrent competence. They have also reinforced their competence in issues that are no longer an attribution of the State. In the new constitutional balance of power among different levels of government, co-ordination mechanisms play a fundamental role. The main mechanism in Italy is the so called "Conference System", based on three co-ordination bodies:

- The *Conference of State-Regions*: It was established in 1988 to allow regional governments to play a key role in the process of institutional innovation, particularly regarding the transfer of attributions from the center to the regional and local authorities. Its composition includes the Prime minister or the Minister of Regional Affairs as President of the Conference, the presidents of the regions, and other ministers according to the issues under discussion.
- The *Conference of State-Municipalities and Other Local Authorities*: It was established in 1996 and its functions include co-ordinating the relations between states and local authorities, as well as analysing and serving as a forum for discussion of issues of interest for local authorities. Its composition involves the Prime minister as President of the Conference, the ministers of the Interior, Regional Affairs, Treasury, Finance, Public Works, Health, the President of the Association of Italian Provinces, the President of the Association of Italian Mountain Communities, 14 mayors, and 6 presidents of provinces.
- The *Unified Conference of State-Regions-Municipalities and Local Authorities*: It was established in 1997 as the institutional mechanism to co-ordinate the relationships among the central government, regions, and local authorities. Its composition includes all the members of the previous two conferences. It served as the forum for an agreement on administrative simplification between the Italian regions and the national government in 2007. The signed document defines common principles for quality and transparency of the normative system in order to harmonise legislative techniques. In particular, it engages the State, regions, and local authorities to apply *ex ante* instruments, such as impact analysis and feasibility studies, and *ex post* evaluation.

Source: García Villarreal, J. P. (2010), "Successful Practices and Policies to Promote Regulatory Reform and Entrepreneurship at the Sub-national Level", *OECD Working Papers on Public Governance*, No. 18, OECD Publishing, doi: 10.1787/5kmh2r7qpstj-en.

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Chapter 10

Regulatory reform in Barranquilla

This chapter discusses the status of regulatory policies, institutions, and tools in the Special, Industrial, and Port District of Barranquilla. It starts by reviewing the main socioeconomic trends in the District and its legal status. The chapter then introduces a framework to understand multi-level regulatory governance. Afterwards, it discusses why Barranquilla requires a regulatory policy, the institutional design of its government, and the co-ordination mechanisms in which it takes part. Finally, it analyses the extent to which the District government makes use of tools to manage inspections and enforcement, improve the quality of the flow of regulations, advance regulatory transparency and communication, and apply administrative simplification.

Introduction

This chapter briefly illustrates the case of Barranquilla, a special, industrial and port district within a metropolitan area located in the north of the country, in the *Atlántico* Department. Although information collected in a single regional case study is not sufficient to assess the general state of Colombia's multi-level regulatory governance, the experience of Barranquilla does provide some insights about the action of local governments within current regulatory arrangements. For instance:

- It provides an opportunity to assess the functioning of multi-level regulatory governance from a first-hand perspective on what local actors perceive as opportunities and challenges.
- It provides information on the capacity of a local government to design, manage, enforce, and review regulations, some of which are produced at the sub-national level and others are issued at the central level but the local government is responsible for enforcement.
- It suggests to the central government possible ways to enhance multi-level co-ordination and strengthen the institutional capacities of sub-national governments to advance regulatory quality.

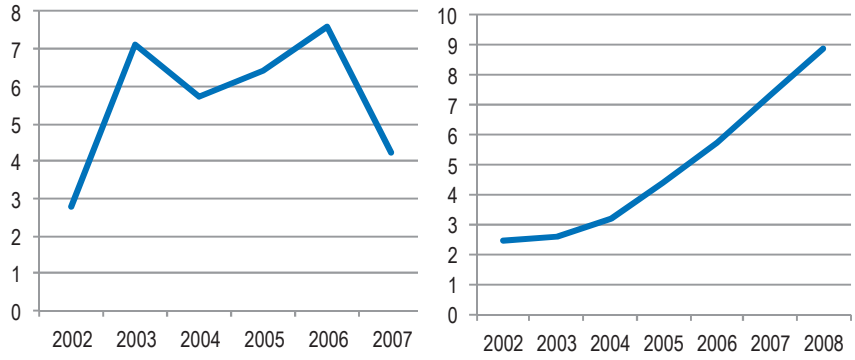
Main socioeconomic trends in Barranquilla

Barranquilla has a total population of approximately 1.2 million inhabitants (2013) and is the core of a metropolitan area of 1.9 million, the fourth largest in Colombia.[1] The *Atlántico* Department[2] has a total population of approximately 2.4 million (2013). Barranquilla is an industrial city with an important logistics and port platform. It is one of Colombia's maritime gateways; its positive economic performance is dependent on Colombia's commodities boom and sustained international consumption of the country's natural resources. The city is in the process of reclaiming the importance it had at the beginning of last century during which it was known as Colombia´s Golden Gate.

The region's economy and demography are on an upward trend. The *Atlántico* Department produced 3.6% of the national GDP in 2011. Figure 10.1 illustrates the trends in terms of GDP growth. The international crisis had a relatively small impact on the local economy and key stakeholders believe that current performance might return to the levels achieved before the crisis. The increase in overall investment (*usos del sector financiero*) is another illustration of the good performance of the local economy: total investment grew from COP 2.4 to almost 9 trillion from 2002 to 2008. The unemployment rate in the *Atlántico* Department decreased from 15% in 2002 to 11% in 2008 and to 8% in 2012 and the population of the metropolitan area (Barranquilla-Soledad) increased by 5.1% between 2005 and 2013 (from 1.17 to 1.23 million). The metropolitan area's population is also young with an average age of 31 (one of the lowest among metropolitan regions in Colombia and only slightly higher than the national average of approximately 30).

Figure 10.1. Main economic trends

GDP growth (%) and overall investment (trillion COP) in Barranquilla



Source: DANE (2008), "Informe de Coyuntura Económica Regional Departamento de Atlántico", *Convenio Interadministrativo No. 111*, www.dane.gov.co/files/icer/2008/atlantico_icer_II_sem_08.pdf, accessed 12 March 2013.

The city's industrial mix is based on manufacturing, logistics, and construction. In particular, the city owes its good economic performance to local manufacturing specialised in several sectors, including chemistry, mechanics, and food, which involve a large number of SME. This manufacturing pole generates increasing flows of imports and exports. These positively affect the local port which has become another driver of regional growth.

Barranquilla's port has become an important national logistic platform servicing Colombia and neighbouring countries. Movements in the port, for instance, grew from 4.5 million in 2005 to 7.5 million in 2011, despite a decline between 2008 and 2010 due to the international crisis. The construction sector was pushed by demographic growth and demand for housing.

Despite this good performance, the District still faces key challenges related to its poverty rate, which is very high – at 36% compared to the national average of 34% – and goes hand in hand with income inequality, the scarce delivery of basic public services, insufficient skills in both the local labour pool and in its own municipal workforce, and significant challenges to the region's environmental sustainability.

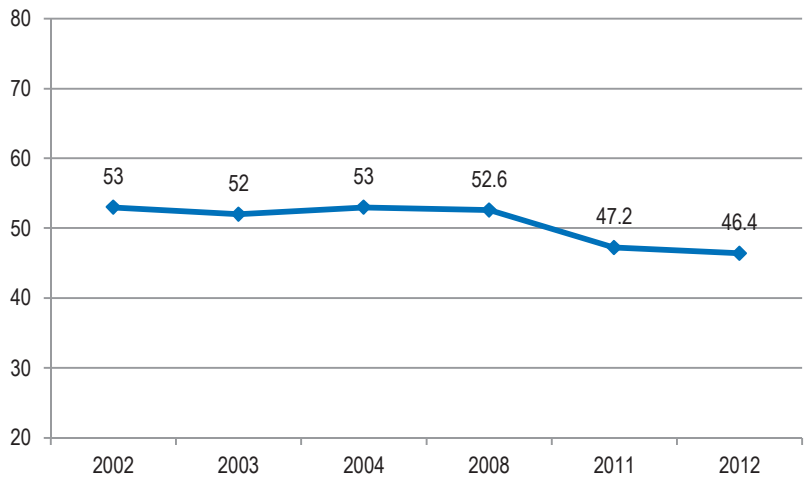
Despite positive economic trends, Barranquilla still grapples with significant inequality:

- A large number of inhabitants perceive themselves as poor. This is due to large inequalities in income distribution; these inequalities have remained static over time and seem not to be affected by the positive economic performance of the District. The Gini index of Barranquilla has been stable at approximately 0.53 since 2002 (Figure 10.2).
- Poverty is spatially concentrated in specific neighbourhoods with a split between the poor areas in the south of the city and the more affluent areas in the north. This spatial pattern is also reflected in differences in the accessibility of key services such as sewage, drinking water, health care, and education.

- Concerning skills and human capital, Barranquilla reflects a national trend with a structural lack of qualified workforce. For example, the city displays an average schooling of just 8.3 years – the OECD average is 12. Insufficient qualified workers could impinge upon the sustainability of the positive economic trend over the medium term.
- Last, the quality of the environment has suffered from unplanned growth over the past decades; in particular, the urban community is completely cut off from the Magdalena River, the metropolitan area's natural border along the northeast of the city.

Figure 10.2. Gini Index in Barranquilla

In per cent



Source: Fundesarrollo, www.fundesarrollo.org.co/docs/FUN-2-2009-20.pdf, accessed 20 March 2013.

The report *Doing Business in Colombia 2013* ranks Barranquilla 22out of 23 cities in the aggregate indicator (*ease of doing business*), as shown in Table 10.1:

Table 10.1. Barranquilla's ranking in *Doing Business in Colombia 2013*

Ranking among 23 cities

Indicator	Ranking
Ease of doing business	22
Starting a business	14
Dealing with construction permits	19
Registering property	19
Paying taxes	20

Source: IFC (2013), *Doing Business in Colombia 2013*, Washington, D.C.

Even though this ranking does not reflect recent reforms implemented by the Government of Barranquilla, it is indicative of several problems to be addressed:

- Registering property ranked particularly low and it is relatively expensive. Local stamp duties increase the number of procedures and an entrepreneur must first obtain an invoice for the stamp duty on line or at the municipal treasury office and then pay at a commercial bank (this stamp duty accounts for 2% of the underlying property value). Entrepreneurs must also personally notify the local cadastre office about a change in ownership.
- Barranquilla needs to decrease the time required to issue technical certificates in the process to obtain a construction permit.
- The number of yearly tax payments can be reduced to eliminate administrative burdens.

Legal status and attributions of Barranquilla

Barranquilla is a municipality that acquired the status of a Special, Industrial and Port District in 1993 given its characteristics (i.e., location, commercial activities, and being one of the most dynamic ports in Colombia).[3] As other territorial entities at municipal level, it has the following competences:[4]

- Providing public services according to the law.
- Building public works required for local progress.
- Ensuring sound territorial development.
- Promoting community participation, as well as social and cultural improvement of its inhabitants.
- Engaging in other responsibilities according to the Constitution and laws.

Law 768 of 2002 established the political, administrative, and fiscal regime of various districts: the Special, Industrial and Port District of Barranquilla, the Touristic and Cultural District of Cartagena de Indias, and the Touristic, Cultural and Historic District of Santa Marta. This Law gave these districts additional specific regulatory powers concerning the use of natural resources, tourism, port development, and environmental management.

A framework to understand multi-level regulatory governance[5]

The management of multi-level regulatory arrangements is faced by most OECD countries. Although institutional and procedural settings vary from country to country, a set of common challenges is emerging from the fact that more than one level of government plays an important role, from supra-national to local level, in designing, implementing and enforcing regulations.

A central premise to look at multi-level regulatory governance is the fact that high quality regulation at one level can be undermined or reversed by poor regulatory policies and practices at other levels, while conversely, co-ordination and coherence can vastly expand the benefits of reform. Many regulations that affect directly business operations are essentially a local and regional matter: land-use, zoning, construction, water, transport, and so on. In a multi-level context, this fact implies not only reducing the risk of overlapping responsibility and duplication, but also having in place appropriate mechanisms that create incentives for economic activity, such as policies towards reduction of administrative burdens, simplified and clear rules to be enforced, etc. Indeed,

citizens and business who must cope with administrative burdens and comply with regulations do not necessarily care at what level of government a particular regulation was adopted or on the basis of what kind of impact assessment. Furthermore, the first window through which the citizen or businessman passes is often at the local level of government.

Multi-level regulatory governance deserves special attention, since sub-national levels of government can be confronted with overlapping roles, as direct service providers and as regulators. Moreover, regulatory obligations may be imposed by a higher level on a local government without adequate compensation ("unfunded mandates"). The boundary between both roles is not always easy to define, but regulations and the regulatory process should be as transparent as possible to make governments accountable for their actions.

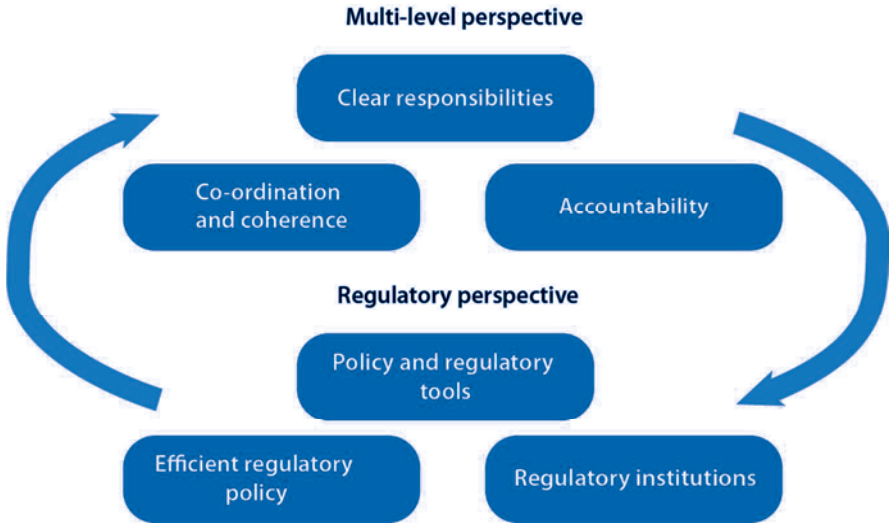
All OECD countries face multi-level arrangements that correspond to particular historical, political, legal, economic, and social conditions. These arrangements are associated in most cases to the constitutional framework and reflected in primary legislation. But their impact goes beyond that point: the application of constitutional principles in practical terms is reflected in very detailed legal instruments that permeate most of the interaction between public institutions at different levels of government.

As a consequence of these arrangements, the regulatory dimension implies that multiple layers of government and actors produce and/or enforce regulation that affects citizens and business in different ways. Citizens and businesses confront multi-level issues only when they have to interact with the public sphere and multi-level arrangements interfere in their activities. In economic terms, there are two main points to consider in this relationship. On the one hand, bad regulations impose costs on businesses and citizens, which have clear consequences on the economic activity as a whole. Businesses have growing concerns about regulatory costs, skills, and capacities of local institutions and competitiveness that are linked to multi-level regulation. On the other hand, there is a tendency to make sub-national levels of government more responsible for the provision of services, which requires an analysis of the different possibilities in which public action can make more efficient and effective the use and delivery of public services. Again, local governments tend to mix their roles of regulators, service provider or owner of public firms. This creates important conflicts of interests, which may breech the competition laws and distort the functioning of markets.

The OECD has developed a framework to analyse key issues of multi-level regulatory governance. It sets out that an analytical framework for multi-level regulatory governance should address a number of issues, including regulatory policies and strategies, institutions, and policy tools (Figure 10.3):

- On *regulatory policies and strategies*: harmonisation of regulatory policies, including competition principles, at all levels of government; and horizontal and vertical co-ordination for regulatory quality at different levels of government.
- On *regulatory institutions*: defining roles and responsibilities of the institutions responsible for regulatory policy and strengthening institutional capacities for regulatory quality: resources, training, and capacity-building.
- On *regulatory and policy tools*: consultation and communication mechanisms as a way to improve transparency at different levels of government; the introduction and use of RIA at sub-national levels of government; reducing administrative burdens; the use of alternatives to regulation; and tools to improve implementation, compliance, and enforcement.

Figure 10.3. Multi-level regulatory governance: Framework for analysis



Source: Rodrigo, D., L. Allio, and P. Andres-Amo (2009), "Multi-level Regulatory Governance: Policies, Institutions, and Tools for Regulatory Quality and Policy Coherence", *OECD Working Papers on Public Governance*, No. 13, OECD Publishing, doi: 10.1787/224074617147.

Regulatory policy in a multi-level context

Regulatory governance has a dual meaning, i.e. it refers both to rule making at different levels of government and to overall implementation, compliance, and enforcement. The scope, definition and content of regulatory policy, but also the different tools and methods used to produce and implement regulation at all levels of government, should follow general principles to reduce uncertainty in regulatory action and to establish a general framework for regulatory quality.

A core question for national governments is how to ensure regulatory quality at all levels of government, since the coherence of government action is only achieved through the complementarity of different regulations and sub-national levels are responsible to a large extent for the application of national norms. In the same way as for the national level, regulatory policy should serve to boost economic development and consumer welfare by encouraging market entry, innovation, and competition at sub-national levels of government. In economic terms, controlling regulatory costs and reducing unnecessary barriers, in particular to SME, is fundamental to improve productivity. Regulatory policy should also be seen as part of improving public sector efficiency, responsiveness, and effectiveness.

A key element is to have in place governance processes which allow jurisdictions to co-operate in a consideration of uniform regulatory systems to eliminate barriers to trade, maximise the simplicity and ease of comprehension of regulatory requirements, and reduce transaction costs, taxes, and charges. Even without achieving regulatory uniformity, harmonisation of regulatory policy at all levels should follow certain principles, including competition principles that lead to the attainment of common economic and social objectives.

Co-ordination is fundamental for the attainment of regulatory goals. As an important component of co-ordination, better communication between levels of governments may help prevent conflicts and ineffectiveness. Making information available reduces inefficiencies and duplication of regulations, providing a sound legal framework. In addition, co-ordination helps in sharing good practices.

On the one hand, horizontal co-ordination suggests that sub-national levels of government should put in practice mechanisms for increased co-operation among bodies responsible for regulatory reform, following efforts already undertaken at the national level, but also among other entities at the same level of government. This co-ordination is only possible when there is awareness of the importance of regulatory policy and when political support exists to mobilise the different actors involved in the regulatory process. Trying to achieve a whole-of-government perspective for regulatory quality at sub-national levels of government requires increasing support and commitment from actors and institutions responsible for the implementation of regulatory policy.

Horizontal co-ordination between different actors at the same level of government is essential to share practices and to understand better the challenges ahead. Horizontal co-ordination can also facilitate the exchange of experiences about the costs and benefits that regulation might impose on citizens and businesses.

On the other hand, vertical co-ordination is a political priority in the cases where sub-national levels of government are constitutionally responsible if the law or the Constitution does not expressly assign a given power to the State. The principle of subsidiarity reflects a real concern for clarity and calls for finding more appropriate co-ordination mechanisms that can help to avoid overlapping and duplication.

Regulatory institutions in a multi-level context

In a multi-level context, the challenge for most countries is to ensure that the right institutions are in place, at the right level, with the right powers and accountability to allow them to exploit endogenous strengths and tackle the particular weaknesses of each area. The right set of institutions to ensure regulatory design and implementation is fundamental at any level of government. In OECD countries, regulatory institutions have appeared at sub-national levels of government, as a way to maintain coherence and to support co-ordination.

There are many kinds of institutions responsible for moving the regulatory agenda forward in a multi-level context. Given this multiplicity of actors, it is fundamental to identify those that complement the leadership and the political will for introducing a reform agenda that will bring benefits to the whole system. This implies finding ways to solve particular tensions between technical bodies and representative institutions that might not always have the same policy priorities. Institutions for regulatory quality at the centre of government can only succeed in implementing broad programmes of regulatory reform if they find support from other institutions at different levels of government.

In some federal countries, sub-national governments have established oversight bodies for regulatory reform, emulating the ones at the central level, responsible for introducing quality controls to the way regulation is produced and enforced. These bodies also take the lead as co-ordinators and managers for reform with a whole-of-government approach and introduce the use of policy and regulatory tools in a systematic way (see Box 10.1 on the cases of Canada and Mexico).

However, institutions can only be effective if they have the necessary resources to implement policies and make use of policy tools. Without real financial means, the regulatory powers transferred to local governments will not be exerted. Spreading the concept of "regulatory quality" also requires training those dealing with regulations and building capacities across the administration. National governments have encouraged and assisted the development of capacities among local and regional governments, *inter alia* by providing training and development opportunities, as well as fora for developing policy (see Box 9.1 on the role of COFEMER to promote capacity-building in States and municipalities).

Box 10.1. **Regulatory institutions at the sub-national level in OECD countries**

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

The core responsibilities of Straightforward BC include developing and executing the government's regulatory reform strategy, maintaining the central database of regulatory counts, and producing reports for cabinet and quarterly reports for the public. Furthermore, under the Regulatory Reporting Act, enacted in November 2011, the province is now required to publish annual reports on its regulatory reform progress.

Regarding the challenging task, Straightforward BC requires a copy of the *Regulatory Criteria Checklist* (see Box 10.2) when regulation is going to be introduced. It also conducts spot checks of the central database to evaluate how well it is being kept up. Concerning the facilitating task, Straightforward BC does not see its role as that of gatekeeper, but of facilitator. A key role the office has played is to help staff in other ministries evaluate whether additional regulation is the right approach and understand the implications of regulating. In addition to specific training for the staff appointed by every ministry to handle regulatory reform, in the first few years of the reforms Straightforward BC organised workshops on specific topics such as plain language, cost-benefit analysis, and outcome-based regulation. An annual conference has provided a good opportunity to reinforce that regulatory reform is a priority all across the government. Going forward, one of the main strategies consists in developing in-house expertise in the use of continuous improvement methodologies and business process mapping to assist all ministries in advancing simplification initiatives.

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

In **Mexico**, the federal states usually appoint a unit within a ministry (often the State Ministry for Economic Development) or a commission as leaders of their regulatory policies. Currently, 20 states assign this leadership function to a ministry, 10 allocate it in a commission, and two more have selected a different alternative. In each state the role of the lead institution is different but it commonly includes facilitating the adoption of regulatory tools throughout the local administration and co-ordinating regulatory improvement initiatives. In a few states, where RIA is already being applied, they also fulfil the challenging task. However, their success in advancing a whole-of-government approach to regulatory quality has greatly depended on the leadership of key political figures (i.e., Governors, state ministers for economic development, and mayors).

Source: García Villarreal, J. P. (2010), "Successful Practices and Policies to Promote Regulatory Reform and Entrepreneurship at the Sub-national Level", *OECD Working Papers on Public Governance*, No. 18, OECD Publishing, doi: 10.1787/5kmh2r7qpstj-en.

Regulatory policy tools in a multi-level context

The implementation and use of policy and regulatory tools in a multi-level context presents some challenges. In terms of their design and the specific techniques needed to put them into practice, there is certain homogeneity between the tools used at central and sub-national levels of government. The big question, however, refers to the best strategy to maximise the benefits of certain tools and to make a coherent choice of which level should be in charge of their implementation. Tools for high quality regulation at different levels of government should be designed and used with the aim to reduce transaction costs and to identify the "optimal level" of application. The multi-level dimension requires that policymakers consider avoiding possible overlapping in the use of certain tools that could be costly if not used in a rational way.

Box 10.2. **The Regulatory Criteria Checklist of British Columbia, Canada**

In **British Columbia, Canada**, the *Regulatory Criteria Checklist* (RCC) replaced RIA in 2001. Ministers and heads of regulatory authorities must make sure that any proposed legislation, regulation and new policy are evaluated according to the criteria set out in the checklist. A signed copy of the RCC or exemption form must be included with any legislation submitted for Executive Council review and any Order in Council that is being recommended by the responsible minister to the Executive Council to enact a regulation. Copies of the signed RCC and exemption forms must be provided to Straightforward BC. In addition, the responsible minister or head of a regulatory authority must make the RCC available to the public, at no charge, on request.

The RCC itself is simple and includes several questions in eleven different categories: *i)* Reverse onus: Need is justified, *ii)* cost-benefit analysis, *iii)* competitive analysis, *iv)* streamlined design, *v)* replacement principle, *vi)* results-based design, *vii)* transparent development, *viii)* time and cost of compliance, *ix)* plain language, *x)* simple communications, and *xi)* sunset review/expiry principle.

Each category has a yes/no checkbox next to it. If the answers to the questions in any category are "no", then an explanation must be attached. At the end of the form, there is a box that asks how many regulatory requirements will be added and how many will be eliminated, as well as what the net change will be. When the reform policy was first introduced in 2001, two regulatory requirements had to be eliminated for every one introduced. Since 2004, when the original goal to reduce regulation by one-third was met, a target of no net increase has been in place and extended to 2015. The RCC encouraged a change in culture from one where regulation was seen as the answer to any problem and the private sector was viewed with some suspicion to one where questions are asked, alternatives are considered, and the contribution that businesses make to the economy is better understood.

Source: García Villarreal, J. P. (2010), "Successful Practices and Policies to Promote Regulatory Reform and Entrepreneurship at the Sub-national Level", *OECD Working Papers on Public Governance*, No. 18, OECD Publishing, doi: 10.1787/5kmh2r7qpstj-en.

For example, it is worth asking whether RIA should be undertaken at each level of government or what is the "optimal level" to do it. Solutions to these questions will depend on the specific context and sector regulated, but the usefulness of RIA for local regulations is unquestionable. Regulations produced by sub-national levels of government have normally a direct and decisive impact on citizens and businesses, generating substantial costs and benefits. Sub-national levels of government can tailor RIA to the specific needs of their economies, aspects that could be ignored by central levels. RIA at

sub-national levels of government also contributes to increase efficiency and transparency while considering consequences of proposed regulation. But finding the "optimal level" is not an easy task and so far there is no empirical evidence on how to define it. However, there are a few cases in which sub-national governments have designed simplified ex ante regulatory assessment methodologies to control the flow of regulations (see Box 10.2 on the case of British Columbia, Canada).

The need for a regulatory policy in Barranquilla

Barranquilla, just like the other sub-national units and the central government of Colombia, has not developed an explicit and comprehensive regulatory policy. The fact that a comprehensive regulatory policy does not exist at the central level might well be a reason why the District government has not developed its own policy. So far, regulatory improvement efforts in Barranquilla have limited to administrative simplification, while other tools such as RIA and regulatory reviews have not even been piloted.

Despite this fact, it is clear that the District requires a whole-of-government regulatory policy given that many of the offices of the local government perform regulatory functions, such as the following:

- The *Secretariat of Education* regulates the activities of private institutions and individuals in the field.
- The *Secretariat of Health* carries out duties of control and inspection. It is entitled to verify compliance with rules, for example, it oversees emergency services, it inspects and monitors health services and enforces sanitary controls on restaurants, barber shops, drugstores, etc.
- The *Secretariat of Urban Control and Public Spaces* ensures that construction companies comply with regulatory standards. It also regulates the activities of urban curators.
- The *Secretariat for Mobility* has some powers to issue regulations, but must also ensure compliance with the National Transit Code.

When rules are going to be introduced to regulate an activity, the District government follows a customary procedure. First, the office in charge develops the draft decree, which is reviewed by its own legal advisor. Once approved, the draft decree is sent to the Legal Office (*Oficina Jurídica*), which reviews it one more time and, if necessary, makes adjustments to the text. Finally, the draft decree is signed by the Mayor and is published in the Official Gazette and the website of Barranquilla's government. The process varies slightly when the regulatory attribution lies on the District Council (for a detailed explanation, see the section *administrative capacities of the local government for making new regulations*).

When new regulation is going to be introduced, its proponents use pre-determined formats, which are available in the Legal Office, and include sections to describe the justification for the regulation and its consistency with laws of higher hierarchy. Depending on the issue, some research, analyses, and *ex ante* meetings with the community are undertaken. However, the application of these tools is not mandatory and remains at the discretion of the head of the department or agency involved at the local government.

Despite the practices mentioned above, the process to issue regulation is more customary than formal. An explicit regulatory policy is needed to formalise the process, define criteria to analyse when regulation is the most appropriate solution to a public policy problem, mandate the consideration of alternatives and the implementation of specific tools, such as public consultation and RIA.

A formal regulatory policy is also needed to anchor reform initiatives beyond the term of a single administration. Some features of the current administration, such as a co-operative engagement with the business community, seem to depend more on the willingness of the Mayor than on institutionalised procedures. This may be a sign of the need to raise regulatory reform to the rank of a law or decree that establishes it as a permanent policy.

The experimentation undertook so far with simplification initiatives and the benchmarking studies performed in the sub-national edition of the *Doing Business* report provide some incentives for local governments to develop their own regulatory policies. In other countries, such as Mexico, administrative simplification, and the quick wins that it may imply, represented a good start for local governments to move towards developing a broader regulatory improvement policy.

Adopting a regulatory governance approach in Barranquilla will not be an easy task and will have to be an incremental process to develop capacities and nurture a regulatory improvement culture.

Institutional design in Barranquilla

Regulatory policy requires specific institutional arrangements in order to support efforts to improve the quality of regulations. This section revises the current institutional set-up of the District of Barranquilla and identifies potential areas for improvement.

Organisation of the local government

The legal basis of the central administration of the District of Barranquilla lies on Decree 868 of 2008,[6] while Decree 867 of 2008[7] establishes a value chain divided into macro-processes and processes for the management of the public administration of the District of Barranquilla. This model corresponds to the Technical Norm of Quality for Public Management NTCGP 1000:2009, which also tries to ensure sustainability in the institutional design of the public administration.

The organisational model of the public administration has been intended to advance efficiency, openness to citizens, and simplicity, as there were inefficiencies in the past that needed to be eliminated. According to this model, macro-processes are classified as follows:

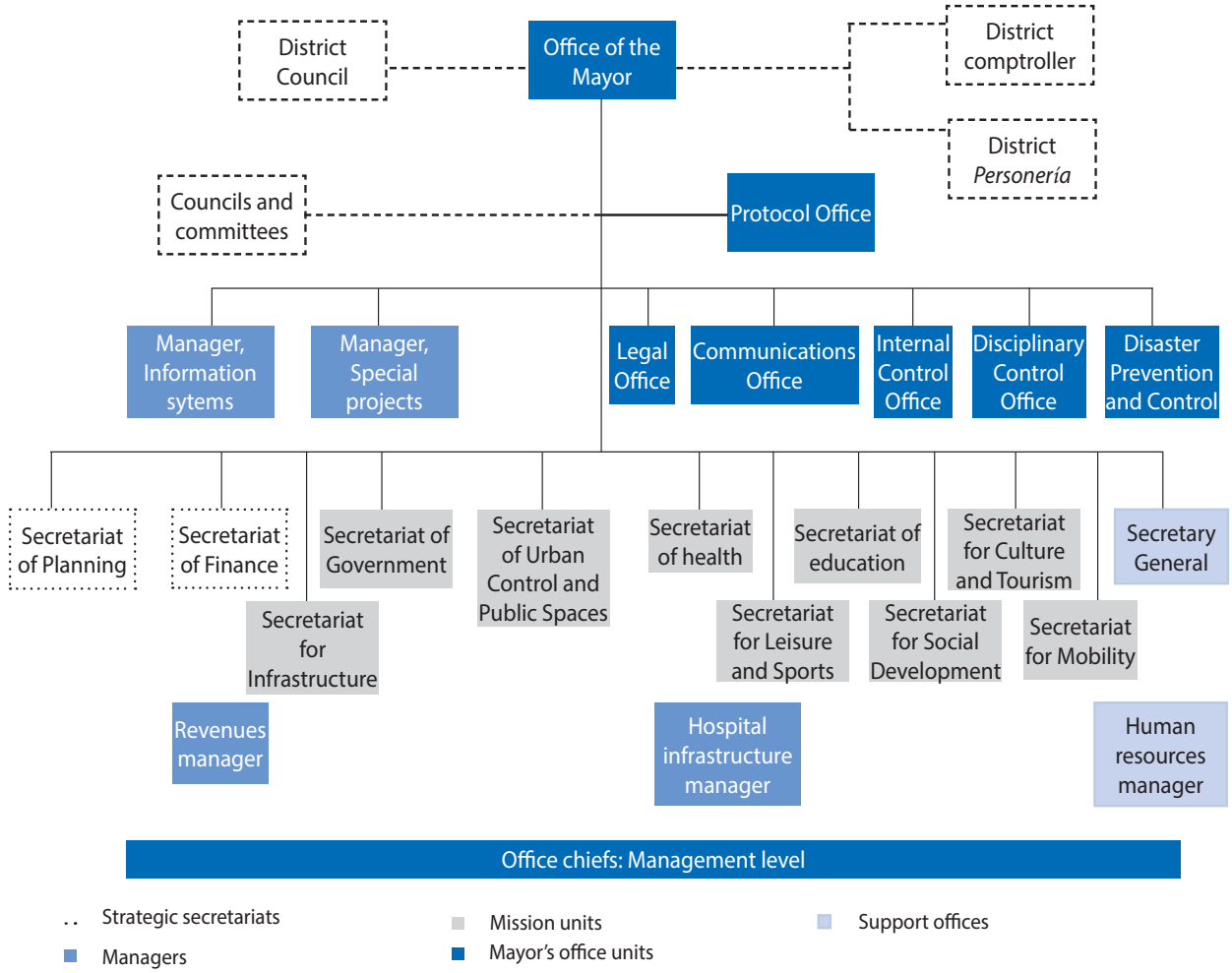
- Macro-processes of strategic management: strategic guidance, ethical management, public communication and human resources management.
- Mission macro-processes: Social development management, territorial administration, coexistence, justice and citizens´ security, and public participation.
- Support macro-processes: human administration, legal management, procurement, information systems, asset and document management.

To comply with its institutional mission, the central administration of the District deals with processes by management level:

- Global level, which has a comprehensive view of the district administration.
- Sector level, which corresponds to the secretariats (*Secretarías*) and other institutions part of a specific sector.
- Local level, which corresponds to municipalities and *Corregidurías* that are in charge of operational and administrative activities in close relationship with citizens and their organisations.

The organisation chart of the central administration of the District of Barranquilla is illustrated in the following Figure.

Figure 10.4. Organisation chart of the central administration of the District of Barranquilla



Note: In addition, decentralised entities include the Technical Administrative Department of the Environment (DAMAB), the Water Forum (*Foro Hídrico*), the Urban Development Enterprise of Barranquilla (EDUBAR), the Transport Terminal, and the District's Direction of Liquidations.

Source: Information provided by the Government of Barranquilla.

The following institutions support the District Mayor´s Office:

- The Coordination System and District Direction of the Administration, which handles the group of policies, strategies, administrative sectors and mechanisms that help articulate the management of institutions and district entities in order to ensure effectiveness, respect for human rights, and efficient service delivery.
- Secretariats (*Secretarías de Despacho Distrital*), which are attached to the Mayor´s Office, led by a secretariat, and in charge of designing and adopting public policies, plans, programmes and projects, as well as co-ordination and supervision of their implementation.
- Offices (*Oficinas*) and management departments (*Gerencias*), attached to the Mayor´s Office, in charge of formulating public policies and strategic actions. They also support secretariats.

Some of these institutions play key roles in the regulatory process. According to Article 10 of Decree 868 of 2008, secretariats are responsible, among other tasks, for preparing draft agreements and decrees, resolutions and other administrative acts that regulate the fields in their sectors. In some cases, secretariats are also responsible for supervising the correct implementation of regulations prepared by ministries and other institutions at the national level of government.

A very relevant unit for regulatory quality is the Legal Office, in charge of the following tasks:

- Advising the Mayor, secretariats, managers, and local mayors in all legal issues concerning the District, in case they submit cases for review.
- Preparing or reviewing all contracts and administrative acts that have to be approved and signed by the Mayor.
- Representing the Mayor´s Office in all legal matters. This function takes most of its capacities and it is conducted by a Legal Defence Group.
- Gathering, reviewing, and organising all norms and legal documents of interest for the District, and informing the Mayor about all draft laws or regulations that might have an impact on the District.

In addition, there are working groups that facilitate co-ordination among the various institutions and might also be responsible for specific projects.

The District Council

The District Council is the legislative power at District level. It is a popular-elected administrative corporation, whose members represent voters and are elected for periods of four years. Councils might have from seven up to 21 members, according to Article 312 of the Constitution of Colombia. The current District Council of Barranquilla has 21 members, divided as follows: President, Vice-President, 1st Commission of Planning, Infrastructure and Public Goods, 2nd Commission of Budget and Fiscal Issues, and 3rd Commission of Administrative and General Issues.

The District Council is the institution that co-manages the District, as it has competences in fiscal and administrative management, as well as regulatory powers in specific issues. According to Article 313 of the Political Constitution, the main functions of the District Council are:

- Regulating the efficient provision of the services in charge of the District.
- Adopting the corresponding plans and programmes for social, economic, and public works development.
- Authorising the Mayor to sign contracts.
- Voting, according to the Constitution and other laws, the law on taxes and local expenditures.
- Dictating rules on budgeting and issuing the annual budget of revenues and expenditures.
- Establishing the organic structure of the District administration.
- Regulating land use, supervising and controlling activities concerning construction and property transactions for housing purposes.
- Electing the District Comptroller.
- Dictating the necessary rules to control and preserve the environmental and cultural patrimony.
- Accepting the resignation of Council members while the Council is in session.
- Proposing a removal motion of the cabinet secretariats of the Mayor.
- Creating communes and *Corregimientos*.[8]

Some other legal attributions and powers of the Council relate to issues such as exerting political control over the executive, by demanding written reports or summoning District government officials, such as secretariats, directors of administrative departments, and the Comptroller, to declare in ordinary session on matters of interest for the District.

The District Council also regulates taxes, contributions and fees; police and traffic codes; touristic, cultural, sport and leisure activities on the beaches and other public spaces; preservation of ecological patrimony and natural resources; property taxes on buildings of public ownership that are used by the private sector; cultural and leisure activities and spectacles organised in the District; promotion of the construction industry; and rules related to misplaced communities.

Institutional factors required to advance regulatory reform

The District of Barranquilla acknowledges that regulatory reform is essential to ensure social progress and increase competitiveness. Providing legal certainty and clarity in regulatory frameworks, as well as achieving co-ordination among levels of government for regulatory management are goals of the local administration. Efforts have mainly concentrated so far on simplification of formalities, as it has been the case at the central level, but the Government of Barranquilla realises as well the relevance to move forward with a more comprehensive approach to regulatory reform.

In order for this to happen, several institutional factors should be taken into account. First, there is a need to establish a comprehensive regulatory policy at the local level, which would require specific institutional arrangements, in particular devoting time and resources to establish an oversight mechanism in charge of this policy field. Second, additional functions of this institutional set-up could be to promote regulatory quality,

conduct training for public servants and stakeholders, and advocate better practices of regulatory management within the administration.

Stakeholder participation

Stakeholder participation is essential to promote regulatory quality at the local level, where governments are closer to citizens´ demands and concerns.

The District Development Plan 2012-2015[9] establishes that citizen participation should be encouraged to improve decision making. Through the "Programme to Strengthening Citizens´ Participation: Active and Co-responsible Citizenship for Local Development", the Government of Barranquilla intends to strengthen public participation in the management of public affairs, which can then facilitate better service delivery and a more efficient and effective public administration. The programme includes various projects:

- Institutional strengthening of social and communitarian organisations. The programme looks to strengthen existing organisations and to promote and consolidate new forms of social participation that can improve their interventions in development management.
- Citizen formation and public leadership. The project intends to create public-private alliances to increase citizen and technical competences, as well as to encourage public participation of emerging local leaders to improve public management and the social conditions of their communities.
- Social capital and public dialog. The Government of Barranquilla intends to set specific agendas with various local sectors to establish social dialogue concerning the impacts of government initiatives that intend to transform the District. The objective is to support local actors that can participate in public initiatives and co-operation arrangements at the local level.

In addition to government efforts to improve social participation, various stakeholders engage in finding solutions to their concerns at the local level. Business associations, for instance, participate in the discussion of regulatory issues. The Chamber of Commerce of Barranquilla, established in 1916, has actively participated in the economic and social development of the city. In addition, like other chambers of commerce in Colombia, it has been key in promoting regulatory and administrative simplification.

The relationship between businesses and the District government has been fruitful in the current administration. However, this situation was not the case before, as much has depended on the figure of the Mayor and there are no institutionalised mechanisms to ensure systematic links with external stakeholders. In other countries, stakeholder participation in the regulatory process is promoted in a more structured way (see Box 10.3).

Box 10.3. **Citizen councils to promote regulatory quality at the sub-national level in Mexico**

In **Mexico**, several federal states have created councils and committees to promote improvements and continuity of reforms in regulatory management at local levels. In most cases, businesses and other stakeholders from private entities are represented and take part in the decision making process. Some examples are the following:

- The *Economic and Social Council of Mexico City* was established by Law in 2009 in order to support the Government of Mexico City in areas of sustainable development, fostering economic growth and job creation, and better income distribution that could reduce social gaps in Mexico City. The Council is a representative, as well as an economic and social participation body, with a consultative character that can make recommendations to the Government of Mexico City. The Council is composed by Government officials, seven business representatives, seven from academia, seven from civil society, seven from trade unions, and four from professionals associations.
- In the State of Colima, the State Law of Regulatory Improvement, issued in July 2011, established a *State Council for Regulatory Improvement*, which incorporates representatives from business, academia, and civil society associations. The various attributions of the Council include analysing and reviewing all valid regulations in the state's jurisdiction to make recommendations for improvement; helping elaborate and update the Registry of Formalities and Services; participating, in co-ordination with social and productive sectors, in the design of draft regulations that impact the activities of businesses and citizens; proposing regulatory improvements at municipal level; strengthening Municipal Business Centres or one-stop shops to promote economic activity; and publishing opinions on regulatory impact analyses.
- In Nuevo Leon, the *Citizen´s Council for Regulatory Improvement* is one of the leading institutional arrangements for regulatory policy in the state. Created by law, it includes representation from business, civil society, and academia. Among other functions, the Council issues opinions about the State Regulatory Improvement Programme, participates in the review of state-level regulation, promotes co-ordination between public, social and private sectors on issues pertaining to regulatory improvement, and promotes regulatory reform at municipal level.

Source: OECD (2012), *Guía para mejorar la calidad Regulatoria de trámites estatales y municipales e impulsar la competitividad de México*, OECD Publishing, Paris.

Multi-level co-ordination

As mentioned in Chapter 9, in Colombia, regulatory attributions of sub-national levels of government, which are called territorial entities (*Entidades Territoriales*), such as departments, municipalities and districts, are relatively limited, compared to other countries, and especially federal ones. Those attributions are generally defined in laws and other norms issued at national level. In many cases, implementation of those attributions is, however, done at the level of territorial entities, which calls for co-ordination among the various levels of government and a clear allocation of responsibilities.

Mechanisms/institutions to advance multi-level regulatory co-ordination

As there is no regulatory policy at the national level in Colombia, linkages between regulatory policy and multi-level co-ordination have been rather limited. The lack of a clear strategy to involve territorial entities in the discussion about regulatory quality and management has hindered the establishment of co-ordination mechanisms and institutions in charge of this task.

Since there is no institution responsible for regulatory quality at the central level, the lead on multi-level regulatory co-ordination is weak. Supervision and control on standards for regulatory quality applied by territorial entities and the central government depends on the efforts by individual institutions, which reduces their effectiveness.

There is, however, potential to discuss regulatory co-ordination in existing horizontal territorial mechanisms or associative schemes, regulated by Art. 10 of Law 1454 of 2001, in which the District of Barranquilla participates:

- The Colombian Association of Capital Cities[10] (*Asociación Colombiana de Ciudades Capitales*, ACCC) gathers Mayors of capital cities to share experiences and common challenges with the national government. The association discusses key topics, such as security, health, finance, housing, and social work in cities. UN-Habitat and the Bank for Development (*Financiera del Desarrollo*, FINDETER) constitute the Technical Secretariat for the ACCC and support the sustainability and development of urban centers. In April 2013, Barranquilla organised the 5th Summit of the ACCC, whose main thematic sessions were on health, security, and justice. The District of Barranquilla presented its health structure and the model for institutional management, security and citizens´ living together. The summit gathered 24 Mayors and delegates from capital cities, six ministers (Finance and Public Credit, Interior, Defence, Justice and Law, MCIT, and Transport), two Deputy ministers (Tourism and Defence) two senior presidential advisors (on security and regional matters), the Chief General of the Armed Forces, the Director of the National Police, the High-Level Commissioner for Peace, and the chief of the negotiating team in the peace process.
- The Metropolitan Area of Barranquilla (*Área Metropolitana de Barranquilla*, AMBQ), created in 1981 and composed by the municipalities of Soledad, Malambo, Puerto Colombia, Galapa and the Special, Industrial, and Port District of Barranquilla, is an administrative entity that has approximately 2 million inhabitants. It has a Metropolitan Board headed by the metropolitan Mayor, who is also the Mayor of the District of Barranquilla. The Secretary of the Metropolitan Board is its Director, who administers the implementation of programmes, plans and projects for an integral development of the metropolitan unit. The main functions of the Metropolitan Area are co-ordinating the integrated and harmonised development of the territory, streamlining public service delivery among the municipalities that integrate the Metropolitan Area, and executing public works, among others. One example of the co-ordination taking place among municipalities is the development of a massive public transport system at the metropolitan level. The Metropolitan Area is the transport authority, which has facilitated the integration of transport plans and the implementation of the Integrated System of Massive Transport of Barranquilla and its Metropolitan Area (TRANSMETRO). Other areas of co-ordinated action are public works, sanitation, road paving, highway administration, and sustainable development.

The Metropolitan Area has also established Metropolitan Councils for Planning, which meet monthly to review the metropolitan guidelines for sustainable development.

Other examples illustrate the potential for multi-level regulatory co-ordination. The Special, Industrial, and Port District of Barranquilla has established permanent communication with decentralised entities at local level, such as the Water Forum for issues concerning water sanitation and basin management, the Technical Administrative Department of the Environment (DAMAB), the Urban Development Enterprise of Barranquilla (EDUBAR), and the District Direction of Liquidations, which is in charge of addressing insolvency of local entities.

The organisation and functions of DAMAB illustrate its co-ordinating role for different levels of government. Its directive and management board is integrated by, among others, the Mayor of the District of Barranquilla and the Governor of the *Atlántico* Department. Its functions include the following:

- Steering, co-ordinating, and controlling environmental management in the District of Barranquilla.
- Steering and co-ordinating the design of the District's Environmental Management Plan and assessing its execution, according with the development plans of the District and the Metropolitan Area.
- Leading and co-ordinating, along with the District's Ministry of the Interior, the closure of businesses that repetitively transgress environmental regulations.
- Leading and co-ordinating activities for prevention, control, and punishment of pollution.
- Co-ordinating with the District's Secretariat of Health and other relevant authorities for the purpose of designing policies, regulations, and initiatives aimed at preventing and controlling negative effects on human health from environmental degradation.
- Steering and controlling the environmental zoning of the territory and basins, so that land use is maximised for well-being in the District.
- Co-ordinating and advising activities of the Metropolitan Area with impact on the District's environmental system.

Likewise, the structure and objectives of EDUBAR are oriented towards advancing multi-level co-ordination. Its directive board is integrated by the Mayor of the District of Barranquilla, the Governor of the *Atlántico* Department, the Director of the Metropolitan Area of Barranquilla, and the ministers of Finance, Planning, and Infrastructure of the District's government. Its functions include, among others, planning and executing public works and projects, along with other decentralised bodies of the District's government, the Metropolitan Area, other municipalities of the *Atlántico* Department, and the national government.

Limited technical capacities and economic resources at sub-national levels of government have hampered proper co-ordination mechanisms on regulatory reform. Territorial entities require additional resources and support to introduce principles and tools for regulatory management and reform, as well as capacity-building activities that foster change in the administrative culture.

Challenges in establishing co-ordination mechanisms between the central government and territorial entities certainly remain. For instance, there have been cases in which the central government has overtaken competences of the territorial entities and technical criteria are imposed, even if they do not correspond to local circumstances. In contrast, positive cases where co-ordination among different levels of government have been successful include the issue of *Ciénega de Mallorquín* (the Mallorquin Swamp)[11] and the Mobility Committee.

The Mallorquin Swamp is an estuary whose ecosystem is endangered due to the expansion of Barranquilla and where the Ministry of Environment and Sustainable Development, the Governorship of the *Atlántico* Department, the Regional Autonomous Corporation of the *Atlántico* Department, the District of Barranquilla Mayor´s Office, and DAMAB have been working together to find common solutions. Their action plan expands over three years and phases: Diagnosis of the status of the natural environment of the swamp (Phase I); three special programmes on sanitation, research and monitoring, and territorial realignment (Phase II); and two additional programmes on the alternative use of the natural environment of the swamp and follow-up and monitoring (Phase III).

Table 10.2. Decrees regulating the public service of motor transport

Regulation	Title of decree	Authority	Control and surveillance
Decree 170 of 2001	Decree that regulates the public service of collective motor vehicles at metropolitan, district, and municipal level	AMB	The metropolitan transport authority or the concerned mayors in co-ordination.
Decree 171 of 2002	Decree that regulates the public service of motor vehicles by highways	Ministry of Transport	*Superintendencia* of Ports and Transport
Decree 172 of 2003	Decree that regulates the public service of motor vehicles to transport individuals in taxis	The district or municipal mayors or the bodies to which they delegate this attribution	Mayors and municipal authorities
Decree 173 of 2004	Decree that regulates the public service of freight motor vehicles	Ministry of Transport	*Superintendencia* of Ports and Transport
Decree 174 of 2005	Decree that regulates the public service of special motor vehicles	Ministry of Transport	*Superintendencia* of Ports and Transport
Decree 175 of 2006	Decree that regulates the public service of mixed motor vehicles	In national jurisdiction: Ministry of Transport	*Superintendencia* of Ports and Transport
		In district or municipal jurisdiction: The district or municipal mayors or the bodies to which they delegate this attribution	*Superintendencia* of Ports and Transport
		In the metropolitan area's jurisdiction: The metropolitan transport authority or the concerned mayors in co-ordination.	*Superintendencia* of Ports and Transport

Source: Information provided by the Government of Barranquilla.

The Mobility Committee is an operative group which links the Secretariat for Mobility and the National Police to address issues concerning control in roads within the jurisdiction of Barranquilla. Agreements of this committee are recorded in minutes, indicating who is responsible for which actions, deadlines, and follow up mechanisms. Different decrees also allocate responsibilities concerning the public service of motor vehicles (see Table 10.2). This distribution illustrates the scope of the co-ordination challenge.

Inspections, compliance, and enforcement

In order to achieve policy goals, regulation must be adequately applied and enforced. This is an integral part of the regulatory cycle and fundamental for the quality of regulation. In a multi-level framework, the issue of compliance deserves detailed analysis for various reasons. First, compliance starts from a reaction from business and citizens that trust government. While sub-national levels of government tend to be closer to their needs, businesses and citizens will be able to respond only if there is a clear understanding of regulatory requirements and rules. Hence, local governments need to make an effort to ensure that stakeholders are not only well informed and know the rules, but also that regulations are simple to comply with. Second, sub-national levels of government should work on the feasibility of compliance. They must facilitate the assimilation of rules, the way citizens have to comply with them and the confidence in regulators and the normative structure. Otherwise, the complexity of rules can lead to non-compliance by encouraging evasion. Third, sub-national levels of government should have a strategy for monitoring and enforcement. These levels of government are in a good position to provide solutions during the enforcement and implementation phases, combining regulatory and non-regulatory measures to increase the opportunities for compliance, in particular when they are responsible for inspection and control.

In the District of Barranquilla, several secretariats, departments and local delegations of *Superintendencias* are responsible for enforcing regulation. In some areas, these institutions have specific attributions related to ensuring that citizens and businesses comply with regulations (see Box 10.4).

Box 10.4. **Enforcement attributions of selected secretariats in the Government of Barranquilla**

According to Decree 868 of 2008, different responsibilities of secretariats in the District government are clearly related to enforcement and supervision, such as the following:

- The *Secretariat of Education* is responsible, among other tasks, for organising, verifying, and executing an annual operational plan of inspection and surveillance in all educational establishments.
- The *Secretariat of Health* has to comply and enforce all scientific and technical norms that have been issued by other competent institutions, as well as all administrative procedures that derive from legal and complementary regulations.
- The *Secretariat for Mobility* is in charge of the implementation of the National Code of Road Traffic and its subordinate regulations.

Source: Decree 868 of 2008.

Ensuring enforcement might, however, be challenging for local levels of government, as they have to ensure the institutionalisation of their oversight mechanisms, so that they are effective and credible vis-à-vis society. The Secretariat for Mobility, for example, has conducted two rounds of massive fines collection, in 2010 and 2012, as 75% of infractions were not paid in due time.[12] Several regulations support this competence and allow the Secretariat to undertake such actions, as otherwise it would be impossible to enforce the National Code of Road Traffic.

Getting to know and understanding the universe of regulated bodies is a first essential step that might require significant capacities and political will. DAMAB, for instance, used to have limited information on the regulated bodies it has to control, supervise or monitor. In the current administration, the number of supervised bodies grew from 2 800 to 7 800 and there is potential to identify more actors that should also be monitored and supervised.

An additional element is the way institutions are structured to conduct inspections and monitoring activities. Some secretariats have Inspection Offices, such as the Secretariat of Education, dedicated exclusively to ensure society complies with regulations issued at the various levels of government. The Secretariat for Mobility has an Operational Office in charge of ensuring compliance with regulations and technical norms, while its Customer Service Office is in charge of registries and formalities. DAMAB has a unit in charge of control and surveillance. The approach of DAMAB to inspections is presented in Box 10.5.

Box 10.5. **DAMAB's approach to inspections, control, and supervision**

DAMAB conducts in average 4 500 annual inspections or visits to the different regulated entities in order to verify the application of environmental regulations. For this purpose, DAMAB has 16 officials in charge of environmental services and nine more for oversight and control.

DAMAB makes use of a number of instruments to conduct supervision and control over regulated entities, such as monitoring of regulations, educational and training activities, and coercive measures. DAMAB conducts visits for environmental inspections, in which two main approaches are followed: the first one has to do with compliance with regulation and it includes sanctions to those contravening the law; the second one follows a preventive approach in order to strengthen the capacity of regulated entities to self-regulate and of society to exert social control.

DAMAB's Office of Control and Surveillance is responsible for assessing the efficiency, pertinence, and scope of environmental management in the District of Barranquilla. Making use of the tools described above, it identifies and classifies activities that might have an impact on natural resources and social groups and makes proposals for improvement.

Between 7 and 10% of the inspections conducted by DAMAB end up in sanctions to presumed violations of environmental regulations. In case of non-payment of fines and once all appeal mechanisms have been exhausted by regulated entities, DAMAB can impose stronger sanctions, such as embargos. Suspension of this type of sanctions can be sought at the administrative contentious jurisdiction.

Source: www.damab.gov.co/damab/visita-de-inspeccion-ambiental.html., accessed 20 March 2013.

The Government of Barranquilla has been working since 2010 in a project to streamline and co-ordinate business inspections. This project, supported by the Chamber of Commerce of Barranquilla and the International Finance Corporation, is called

Inspection, Surveillance and Control System (*Sistema de Inspección, Vigilancia y Control*, IVC) and aims at designing and implementing a comprehensive but simplified and consolidated model to manage inspection and control procedures applied on businesses, so that there is co-ordination among the different entities responsible for these procedures. The system should help the local administration improve its *ex post* control activities on businesses and upgrade surveillance practices on commerce. The district's Secretariat of Government co-ordinates this initiative, based on Decree 308 of 2010.

The IVC requires the development of software to consolidate information on inspections and allow interoperability among the different agencies involved, as well as a consolidated inspection format, so that multidisciplinary inspections can be carried out in a single visit to a business. Then, the information collected is uploaded in the system and should be accessible and provide feedback to the different affiliated agencies. This information would include photos and commitments made by businessmen to comply with regulations, so that future control activities can follow up.

The IVC will allow public authorities to prioritise inspection, surveillance, and control activities on businesses by implementing a "risk matrix". This tool is applied by the CAE when a business is registered or when it renovates its licences, as established on Decree 658 of 2010. It defines risk levels assessing specific risk factors (i.e., public safety, health, sanitation, and environment) that indicate potential harm to the population and the city. The system then classifies businesses as high, moderate or low risk and informs the authorities to schedule their inspections: mandatory inspection for high risk businesses, periodic inspection for moderate risk, and random inspection for low risk.

Decree 658 also establishes an Advisory Committee on Inspections, Surveillance, and Control, whose objective is to assess the management of the system and adjust the risk matrix as required. This committee includes the secretariats of government, urban control and public spaces, health, planning, the Fire Department, and the Chamber of Commerce of Barranquilla.

Challenges of a special nature emerge when regulators and enforcers are at different levels of government. The relationship between local enforcers and those that regulated the matter originally, mostly at the central level, is not always easy to handle. The separation between the regulatory and the supervisory functions that characterises the Colombian system requires strong co-ordination among levels of government. Local governments, for instance, have to deal not only with the responsible ministries or regulatory commissions that issued rules, but also with the *Superintendencias* in charge of supervision. In some cases, *Superintendencias* have branches at the local level, but in some policy fields this is not the case, so communication on how to implement regulations and monitor compliance levels might require additional efforts to ensure the effectiveness of the normative framework.

In addition, local governments, when they are responsible for implementing regulations and ensuring that regulated entities comply, are under the supervision of *Superintendencias*. In the case of health, for instance, the *Superintendencia* of Health supervises the Secretariat of Health in the District of Barranquilla. According to Article 35 of Law 1122 of 2007, the *Superintendencia* of Health, among others attributions, is responsible for informing, preventing, orienting, and supporting that all entities in charge of finance, insurance, service delivery, customer service, and social participation comply with the norms that regulate the General System of Social Security

in Health to promote and ensure its development. The *Superintendencia* of Public Services, for example, requires municipalities to comply with information about socioeconomic stratification and street nomenclature and numbering. The Secretariat of Planning is responsible for introducing all changes in public services into the Single System of Public Services, under the supervision of the *Superintendencia* of Public Services, such as results of quality control of water, data of service providers, budget execution, and contracts.

Another aspect of enforcement and compliance has to do with powers to issue permits, licences and manage registries. Several secretariats issue local permits and licences for different economic activities. For instance, the construction permit is issued at local level in Colombia. According to the World Bank Doing Business sub-national report of 2013, Barranquilla ranked 19th among 23 Colombian cities, due to 9 procedures, 114 days to process the permit, and a cost of 144.8% of income per capita. The fact that 18 cities can issue a construction permit more efficiently than Barranquilla means that there is an opportunity to simplify or streamline the procedures associated with such permits without putting at risk the construction of safe places.

Administrative capacities of the local government for making new regulations

In Barranquilla there are procedures for preparing and designing new regulations but they have not been formalised. Two different types of legal acts can be introduced at the municipal level: decrees signed by the Mayor and agreements issued by the District Council. In the case of decrees, which are the attribution of the executive, the process is as follows:

- In the case of a need to prepare a Decree to regulate any administrative activity or formalities within the jurisdiction of the municipality, the responsible secretariat takes the lead in the process, a prerogative that has been delegated by the regulatory powers given to the Mayor. The responsible institution prepares the draft decree, which requires the agreement of the legal adviser of the secretariat.
- Once approved, the secretariat sends officially the draft decree to the Legal Office, which reviews it and might introduce amendments before it goes for signature to the Mayor.
- Once signed, the Decree is published in the official Gazette and the website of the secretariat to enter into force.

In the case of agreements, which are the attribution of the District Council, the legislative body at the municipal level, the process is as follows:

- In the case of a need to prepare an agreement, which is under the initiative of the District Council,[13] its members and the Mayor through his secretariats, head of administrative departments or legal representatives of the decentralised entities can present draft agreements. The Prosecutor, the Comptroller and the administrative boards can present draft agreements in their fields of competence.
- The draft agreement is then sent to the Legal Office, which reviews it and might introduce amendments before it goes for signature to the Mayor.
- The Office of the Mayor then sends it to the Presidency of the District Council, which follows an internal process for its approval.

The role of the Legal Office supporting the Mayor is relevant in the process of preparing new regulations, as it acts as a legal quality control mechanism. The Legal Office not only advises the Mayor and other institutions in the executive on the pertinence of legal acts, but also drafts or review those prepared by other institutions that have to be submitted to the final signature of the Mayor.

The application of regulatory consultation at the local level

In a multi-level dimension, network structures call for new consultation mechanisms and new bargaining processes to ensure horizontal and vertical co-ordination. Regulatory decisions require the involvement of different actors and stakeholders, much closer to the decision-making process, whose points of view and positions should be heard. However, consultation can only achieve its goals if transparency and openness are respected.

In Barranquilla, there is no systematic use of public consultation techniques in the preparation of new regulations. Some institutions, such as the Secretariat for Mobility and the Secretariat of Health, have made, however, attempts to include stakeholders´ views in the preparation of decrees through the set-up of working groups or roundtables, where community representatives participate voluntarily to provide feedback on draft decrees. Likewise, the DAMAB is developing a module called "public consultation" in its website, which will help to open the discussion and collect opinions from the wider public on plans, policies, and programmes. These institutions have made improvements in the process in order to make it more effective (see Box 10.6).

Box 10.6. **Consultation practices in selected secretariats of the Government of Barranquilla**

The Secretariat for Mobility has integrated consultation in its regulatory process. Public consultation is undertaken through roundtables with stakeholders and publication of draft regulations. In some cases, when there is potential for conflicts, the head of the secretariat meets with particular stakeholders that are involved in the situation in order to identify risks and the best way to provide a solution. For instance, the secretariat restricted the circulation of motorcycles through decrees 091 of 2011, 0506 of 2011, 1019 of 2011 and 1152 of 2012. In the case of moto-taxis, the secretariat established a working group in order to socialise the regulations and ask for alternatives to the employment problem for those who use a motorcycle for a service that is not legally authorised. The technical office of the secretariat undertakes analyses and prepares concepts that are part of the information serving as basis for draft regulations.

The Secretariat of Health has also conducted consultations on draft regulations with interested parties. For instance, Resolution No. 02302012 of 17 July 2012, which assigned users from the health company EMDISALUD to the Subsidised Health Promoting Entity (*Entidad Promotora de Salud Subsidiada*, EPS-S) of the District, was subject to consultation. EMDISALUD had been revoked its mandate and it was disqualified to operate and manage the subsidised regime.

Source: Information provided by the Government of Barranquilla.

Barranquilla has a Citizen Participation Office (*Oficina de Participación Ciudadana*), which enables interaction between citizens and the local government. This office facilitates the discussion of issues concerning the improvement of service delivery and the fulfillment of citizen needs. This has led to make more concrete studies on issues of concern, establish strategic partnerships, and take decisions on issues that require

government intervention. For instance, when taxes issues were introduced, this mechanism allowed for meetings with NGOs, trade unions, and business representatives to listen to their concerns and opinions.

Ex ante *impact analyses*

In OECD countries the use of RIA at the central level of government has expanded in the last few decades. In those countries where sub-national levels of government have the prerogative to produce regulation, RIA can contribute to the policy and decision making process by providing valuable empirical data about the consequences of regulation (see Box 10.7).

Box 10.7. **International experiences with RIA at the sub-national level of government**

In **Australia**, states have engaged in regulatory policy and management for many years. Most states established RIA for subordinate legislation in the late 1980s and 1990s. RIA was mainly required for subordinate legislation or statutory rules. States have moved toward systematically including tools to assess business costs of relevant regulations and to extend the scope of RIA to primary legislation. The Australian Capital Territory, New South Wales, Victoria, Queensland, and Western Australia have provided guidance to consider national and cross-jurisdictional effects when assessing costs and benefits of regulation. Tasmania also considers costs imposed by new or amended regulation on other jurisdictions or national markets. Furthermore, cross-jurisdictional co-ordination appears to have accelerated the pace of reform. States originally introduced RIA during a long period between 1985 (Victoria) and 2001 (Australian Capital Territory). The timeline of the new wave of RIA reforms has been shorter, spanning from mid-2006 to mid-2009.

In **Italy**, several regions have also started using RIA. In a few of them, RIA was made obligatory by law: Basilicata pioneered this approach in 2001; Lombardy and Piedmont followed in 2005. The region of Tuscany has a longer-standing practice with impact assessment, with experience dating back to 2001. Overall, the region has carried out 15 trials since 2000. This region appears to be the most advanced in terms of *ex ante* evaluation practices, which involve stakeholders and formal consultation processes. The selection of the proposals subject to RIA takes place annually and follows a set of criteria for exclusion and inclusion. A technical unit at the Presidency's Directorate General of the *Giunta* serves as the steering committee and contributes to the analytical work. The findings are collected in a final technical report attached to the legislative proposal. Besides Tuscany, Emilia-Romagna has introduced forms of "feasibility analysis", which also represent an interesting attempt, even if this is not a full-fledged RIA system.

Source: OECD (2010c), *OECD Reviews of Regulatory Reform: Australia 2010: Towards a Seamless National Economy*, OECD Publishing, doi: 10.1787/9789264067189-en; OECD (2010a), *OECD Reviews of Regulatory Reform: Italy 2009: Better Regulation to Strengthen Market Dynamics*, OECD Publishing, doi: 10.1787/9789264067264-en.

Impact analysis is not systematically used in Colombia, neither at national nor at local level. In the District of Barranquilla, however, it is possible to conduct studies, analyses and research prior to the preparation of draft regulation to ensure that it meets its intended objectives. The Secretariat for Mobility has already conducted studies prior to the approval of new regulation, in order to have technical evidence on possible effects of the intervention. For instance, it prepared a technical report called "Analysis of transport in bici-taxis and wheelbarrows in the District of Barranquilla", which provides background

on this problem, assesses its extent based on empirical research, and recommends specific actions to control the risks implied by such transport means, including, but not limited to regulating.

Regulations prepared in the District require a statement of purpose and they are reviewed against higher-level norms to ensure legal coherence. In addition, when financial issues are involved, particularly for implementation, a budget analysis is required. It is expected that these tools help identify opportunities and reasons for regulation, legal feasibility, budget availability, co-ordination among institutions involved in the regulatory intervention, and possible impacts on citizens, businesses, and the environment.

The use of alternatives

There is no systematic use of alternatives in Barranquilla. However, alternatives have been used for regulatory purposes in specific cases, such as education and public campaigns in the fields of taxation and transport, specifically to reduce the degree of traffic accidents and increase the collection of transit fees. For instance, the Secretariat for Mobility of the District of Barranquilla has established, in specific cases, periods of several days for adjustment with the aim to raise awareness among citizens about new or amended regulations. For this purpose the secretariat prepares brochures, socialises regulations among enterprises, households, and other stakeholders that are potentially affected, develops mobility guides, sets up publicity, and follows up through the Transit Police.

In the case of the report "Analysis of transport in bici-taxis and wheelbarrows in the District of Barranquilla", the recommendations include alternatives to regulation, such as undertaking informative campaigns targeted at commerce to raise awareness about the importance of using appropriate transport means for their goods, and the use of incremental prohibitions to their circulation. The adjustment period to raise awareness of the decree that regulates the use of bici-taxis and wheelbarrows will be of eight days. Even though some alternatives were considered in this specific case, they were not assessed in terms of cost-benefit and potential impact.

The use of risk analysis

Initial efforts to incorporate risk analysis before regulation is issued can be found in Barranquilla. Some cases related to transport measures have been based on risk assessments to justify the need to regulate. For instance, the Secretariat for Mobility has regulated the use of bici-taxis and wheelbarrows as transport means for people and goods in the center of Barranquilla. As mentioned previously, the Technical Office of the secretariat prepared an analysis that integrated risk considerations. Not only the risk for vehicles and pedestrians is constant, as drivers and users of bici-taxis do not respect any transit rule, but there is also the risk of using transport means that do not comply with any safety measure and are not liable in case of accidents. The regulation proposed by the Secretariat for Mobility framed the use of these transport means, before they are gradually eliminated, indicating where and when they are accepted to circulate, and helped citizens to get used with the new regulatory framework through an awareness campaign. Furthermore, the decree establishes fines up to the equivalent of four times the daily minimum wage.

The local government has made efforts to develop integrated management systems that help identify risks for citizens and society. Risk management in case of emergencies, following rules set by the national government, has been integrated at the District level.

Communication and transparency of regulatory decisions

The District government has several channels to communicate regulatory decisions to citizens and businesses. The most widely used channels are the following:

- Website: The local government secretariats use websites where they post regulatory amendments and proposals.
- Social media, particularly *Twitter*.
- Billboard in the secretariat: Any regulatory change or new proposal is published in the billboard of each secretariat and it can be consulted *in situ*.
- Notices through communication means, e.g. proclamations: In some cases, a secretariat can publish regulatory initiatives or amendments in the local press through proclamations, which present the draft regulation under discussion or final regulatory decisions.
- Fair "BiBa" (*Feria del Bienestar Barranquillero*): Every Friday, the Secretariat of Social Management (*Secretaría de Gestión Social*) organises a fair in a selected neighbourhood, where a communication specialist might explain to the community new regulatory proposals or amendments to existing regulations.

Despite these mechanisms, the Government of Barranquilla has acknowledged that proper management systems to improve transparency in the regulatory process are required. Upgraded information management and documentary systems could help make information available to citizens and encourage social participation at early stages of the regulatory process.

The District Council has collected all the agreements issued since 2000 in its website.[14] There is not, however, systematic information about the preparation process of agreements and their respective stages. Information about current discussions taking place in the Council is published in the news section. This might provide some insight of the topics under review by the Council, but in any case, the information is not extensive.

Administrative simplification initiatives

Anti-formalities policy

In parallel to the situation prevailing at the central level, the Government of Barranquilla has concentrated its regulatory improvement efforts on administrative simplification, based on the "chains of formalities" methodology. The local government applied specific criteria to define which chains to address, among them formalities included in *Doing Business* measurements, those that require the most steps, days to complete, higher costs, and those that are used the most by citizens and businesses.

A first set of five chains of formalities has been identified:

- Stratification certificate.
- Inspection, surveillance and control certificate (public health).

- Massive events permit.
- Cross border trade.
- Construction permit.

In addition, Barranquilla established its own anti-formalities committee, which meets once a month and includes one representative from each of the local government's departments, who receive training and advice for the advancement of the policy. This committee represents a network of local officials who are sensitive to the need to improve regulatory quality. In other countries, these network structures, supported by a coherent policy and adequate institutions, have been successful in creating a regulatory improvement culture.

Government online

On 25 September 2012 the Government of Barranquilla signed the inter-administrative agreement with the ICT Fund to implement the Government online strategy. Government online is pursued in Barranquilla to contribute to a more effective, efficient, agile, competitive, transparent, and democratic public administration that offers improved public services through the use of ICT. The objectives of the local administration concerning Government online are increasing administrative efficiency and the capacities to address citizen requests via electronic means, creating conditions for competitiveness, and improving transparency and citizen participation through the use of ICT.

So far, ICT have contributed to communication and transparency initiatives, as well as to facilitating tax payments. In terms of communication and transparency, for example, citizens can consult on the local government's website the list of affiliates to the Solidarity Fund and verify which health provider is the one they are entitled to. The website also provides information about the formalities and services managed by Barranquilla's government and a link to the portal of the Colombian State (www.gobiernoenlinea.gov.co). The SUIT contains information about 60 of the formalities managed by Barranquilla's government, but it does not yet cover the existing 140 formalities. Furthermore, Barranquilla has developed a Geographic Information System, which consists of a digital map concentrating databases from different offices, such as taxes, health, education, social development, public spaces, and transit, among others. This system is open to the community and citizens can consult, for example, land use and urban alignment.

Concerning tax management, Barranquilla's portal allows citizens to verify the status of property tax accounts, as well as the balance of other taxes due (i.e., industry and trade, and transit).[15] Notaries can access online the City Tax Information System to obtain the property tax certificate. The portal allows users to fill out the format to declare the industry and trade tax, but payment must be done in a banking institution. By the contrary, the transit tax (*derechos de tránsito*) can be paid online from the local government's website, as well as fines with sanction resolutions. In addition, the portal allows notaries to issue certificates (*Paz y Salvos*) concerning the payment of ownership taxes, valuing contributions, and pro-hospital stamps, which are required for property transactions.

In general terms, it can be said that the Government of Barranquilla is mostly using ICT for information purposes or simple interactions with citizens (one-way interaction). Transactional capabilities are limited to a few formalities and services. Consequently,

extending transactional capacities (the capacity to manage a citizen application or request completely online, without any need of physical presence at a counter) and advancing interoperability are the main challenges for the Government online strategy in Barranquilla.

VUR

The process to implement the VUR in Barranquilla starts in 2009, with the signature of the inter-administrative agreement by the local government and the *Atlántico* Department. The VUR has been successful in terms of reducing formalities, time, and steps required for property registration in Barranquilla, as shown in Table 10.3:

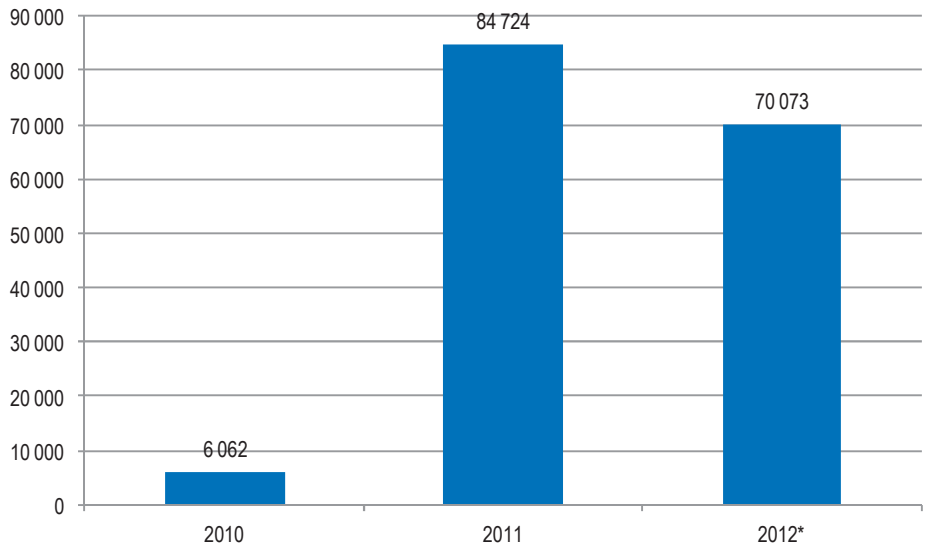
Table 10.3. Property registration process in Barranquilla

Indicator	Before VUR	After VUR	Percentage change
Formalities	12	6	-50
Entities involved	6	5	-17
Time (days)	23	15	-35
Steps	19	9	-53
Documents required	23	9	-61
Requisites	7	6	-14

Source: Information provided by SNR.

The take up of the VUR in Barranquilla increased significantly from 2010 to 2011, as depicted in Figure 10.5, which illustrates the value granted by users.

Figure 10.5. Number of consultations in VUR Barranquilla



* Up to July 2012.

Source: Superintendencia de Notariado y Registro (2012), "Informe Estadístico: Proyecto Ventanilla Única de Registro – VUR – Versión 1.0".

Total quality management

The Government of Barranquilla is committed to advance a policy for total quality and continuous improvement. It has already received certifications GP1000, granted by the Colombian State, and ISO 9001:2008, particularly for activities dealing with social development management; security, justice, and coexistence; integrated planning; and social promotion. The ISO 9001:2008 certification is currently valid until 25 January 2014.

As mentioned in Chapter 6, TQM systems impose discipline on government processes, leading to improved services and certitude for business and citizens. The fact that the local government already has experience managing TQM systems could facilitate implementation in formalities and services directly linked to business activities. Furthermore, TQM systems, supported in the information provided by the website of the Government of Barranquilla concerning the requisites and the management of formalities and services, can advance regulatory transparency and prevent practices of corruption.

The DAMAB, for example, has improved its discipline on internal procedures through the following TQM tools:

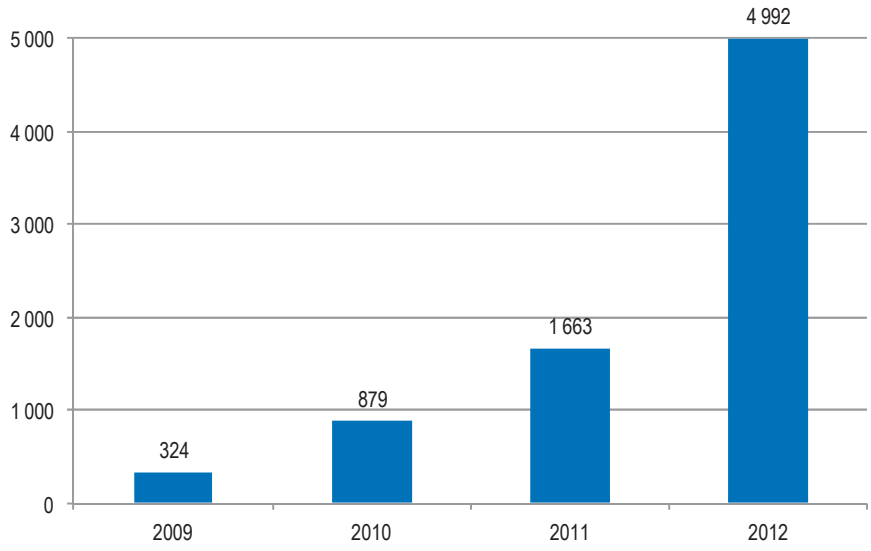
- Process mapping, which establishes a systemic approach to the achievement of the institutional mission and objectives.
- Internal audits to identify corrective and preventive measures (improvement plans) and control of non-conformity.
- A new software developed to facilitate the timely management of applications and complaints, ensuring meeting deadlines.
- Client surveys to measure perceptions regarding the services offered, particularly those concerning environmental licences, inspections, and citizen participation.
- Control matrix and performance indicators.

CAE

The first CAE in Barranquilla was established in 2009 and currently there are three CAE operating in the District. The main result is that individual entrepreneurs need only to fulfil one step to set up a company, while business societies need to complete two basic steps. The main business formalities can be completed online in the National Start up Portal and the process takes approximately 20 minutes for individual entrepreneurs and 40 minutes for business societies.

The success of CAE in Barranquilla can also be assessed in terms of the volume of services delivered, which is illustrated in Figure 10.6.

Figure 10.6. Services delivered by CAE in Barranquilla



Source: Information provided by the Chamber of Commerce of Barranquilla.

Assessment and recommendations

The Government of Barranquilla should develop a clear and simple regulatory policy that goes beyond simplification by formally establishing the process by which regulation is designed, a co-ordinating unit in charge of regulatory policies, and the tools that will be implemented to ensure compliance with regulatory quality criteria, as well as the role that stakeholders should play to strengthen regulatory management practices

As mentioned previously, the process to issue regulation in Barranquilla has not been formalised and responds more to a routine practice rather than a standard procedure. A regulatory policy should establish this process formally, including an explanation of how tools such as consultation and *ex ante* regulatory assessment will be used. In doing so, the regulatory policy of Barranquilla does not have to be a very extensive document, but rather should strive to set a standard procedure in simple and clear language, so that officials of the local government can understand the idea behind it. This is particularly important in a context where capacities are still to be developed and regulatory management experience is limited.

Furthermore, clear and simple language can be useful to engage other stakeholders in regulatory improvement initiatives. Citizen and business participation has not always been the rule in Barranquilla, even when the current administration has significantly improved the interactions of the local government with different stakeholders. In addition, a straightforward regulatory policy should enhance the chances of continuity of regulatory quality practices, not only by formally and explicitly establishing them as binding procedures, but also by creating incentives for citizens to demand new administrations to continue such efforts.

Finally, Barranquilla's regulatory policy should outline the basic institutional arrangements to move forward. This is essential to ensure that the policy is in fact converted into day to day practices; otherwise, there is a risk that the processes and tools established by it remain only in the "letter of the law".

Box 10.8. **The regulatory policy of British Columbia, Canada**

The regulatory policy of **British Columbia** is contained in a seven page document, which was revised on February 2008. It clearly establishes the process to be followed by ministers and heads of regulatory authorities to issue legislation and secondary regulations, the scope of application of the policy itself, the use of the *Regulatory Criteria Checklist* (RCC), the role of Straightforward BC in reviewing the RCC accompanying draft regulatory proposals, and the exemptions to this policy. In addition, the document contains an annex that explains the logic behind the system implemented to establish a count of regulatory requirements and practical examples.

In November 2011, the Government of British Columbia re-confirmed its commitment to regulatory reform by becoming the first jurisdiction in Canada to put into law a requirement to report annually on regulatory reform progress. Each June, in accordance with the Regulatory Reporting Act, it publishes an annual report, including the status of the regulatory count.

Source: Government of British Columbia, www2.gov.bc.ca/gov/topic.page?id=AE6F6EBC8B394BDC8B71883FB0942F70, accessed 8 March 2013.

Based on already existing good practices, the Government of Barranquilla should promote a more systematic process to prepare new regulations and review existing ones, in order to increase their quality. The use of consultation and RIA should be an integral part of that process.

Several institutions in the District of Barranquilla have established mechanisms and processes to design and review regulation, despite the fact of not having a single formalised procedure for that purpose. Those practices could be strengthened and improved by formalising them in a coherent, comprehensive, and more evidence-based process that would increase the quality of regulation.

The already existing process to prepare and review decrees, agreements and resolutions could benefit from the following actions:

- Defining core areas or regulations that might be reviewed in the course of the following year by preparing regulatory agendas. Secretariats and departments should identify potential issues that require regulatory intervention in the short and medium-terms, providing information to potentially affected parties, and advancing legal predictability. Upgraded co-ordination with other institutions and levels of government would also be helpful, as problems could be identified earlier and in a more consistent way.
- Integrating current technical studies and concepts into a simple, but well-structured process of *ex ante* impact assessment. Regulatory decisions will be smarter if information about possible impacts is presented to decision makers and proper participatory mechanisms are in place to ensure that all stakeholders are heard.

- RIA should be introduced in a way that human and technical capacities, as well as information availability, are carefully taken into account. Local governments tend to be constrained in various ways to conduct proper and sophisticated RIA, but there is always an opportunity to start with simple tests that can be further expanded into more comprehensive analyses.
- It is essential for Barranquilla to move towards more systematic assessment of potential regulatory impacts when secretariats, departments, and other institutions prepare regulations. There is already some expertise in conducting technical analyses, but this is not a regular practice. Establishing clear criteria for regulatory decisions can refine those technical analyses and transform them gradually into RIA. Introducing some forms of quantification of costs and benefits could also help increase evidence-based decision making.
- The RIA model to be used in the District of Barranquilla, and other municipalities in Colombia, should correspond to its capacities and institutional conditions. Starting with a more structured regulatory process could facilitate the introduction and systematic use of RIA. Regulators should also be trained to develop the required capacities to conduct proper analyses, and the criteria and conditions to conduct RIA should be at the level of such technical competences, which can gradually be expanded. In addition, establishing an institutional mechanism in charge of ensuring quality control of the analyses is required. In many countries with RIA systems, and also at sub-national levels of government, one key responsibility of the unit in charge of promoting regulatory improvement is the quality control of RIA. Therefore, RIA should be seen as an integral part of improving the quality of regulation.
- Introducing compulsory public consultation mechanisms when designing and reviewing regulations. Giving the opportunity to stakeholders to be heard during the regulatory cycle is a good practice in regulatory management. But consultation is not an easy task, as it requires preparation and commitment. Asymmetries among stakeholders are one of the most difficult challenges regulators face when it comes to consult a draft regulation.
- In the District of Barranquilla there are already some practices of consultation that could be further expanded and standardised. Consultation should be compulsory in the regulatory process, and exemptions should be clearly stated by regulators. Guidance on how to conduct consultation and the various techniques that can be used, in addition to capacity building activities, would help regulators use this tool.
- Stakeholder participation should also be promoted and strengthened. Consultation is an opportunity for affected parties to provide information and evidence on how they might be impacted by regulations. Informed and encouraged stakeholders tend to be important vehicles for providing sound information and making commitments that can lead to higher degrees of compliance, once regulation is approved. They can also point at risks and challenges that have to be overcome to make efficient decisions. The District of Barranquilla should therefore concentrate on strengthening existing consultation practices, refining them to make them more efficient and transparent, and engage in capacity building with stakeholders.

- Leveraging on the use of ICT for communication purposes. There are currently channels for informing citizens and businesses about upcoming regulatory procedures or amendments, but there is also potential to expand the use of ICT for this purpose. Websites of various institutions should be regularly updated and provide all information about legal frameworks. Institutions should inform about the status of the regulation, in case it is being prepared or reviewed. A single website consolidating all draft proposals could be established to centralise the information on regulations prepared by the District of Barranquilla.

The introduction of these procedures should be clearly stated in a legal document and be compulsory for all entities with regulatory powers.

The Government of Barranquilla should provide momentum to its simplification initiatives by extending the transactional capacities of its web-based tools.

One of the most effective strategies to streamline formalities is the use of e-government tools. However, so far only a limited number of web-based tools have transactional capacities, for example, to fulfil tax duties. The dramatic increase in the use of VUR is illustrative of the potential to incorporate electronic tools in the management of formalities.

However, reaching transactional capacities is not an easy task. A roadmap towards this stage should include at least four dimensions: interoperability, information security, setting the legal framework for electronic transactions, and actively promoting the take up of electronic tools. Interoperability means that public offices have the capacity to exchange and transfer data among their information systems. This requires standardising data and setting up the right infrastructure to allow communication among the different information systems.

Data security is not only a technical issue, but requires policies and security procedures, institutions that oversee the implementation of security policies, and an organisational culture that values and promotes data security. A key barrier to advance platforms for data-sharing is lack of trust on how government will handle data. The international experience illustrates that it is absolutely relevant to have the infrastructure and guidelines required to guarantee information security and protection of personal data. Users should be certain that their personal information can only be accessed in an authorised manner and that it is impossible for anyone to assume another person's identity.

In countries like Belgium and Norway there are well established policies that have nurtured trust in government. Cultural differences and their resulting impact on perceived levels of trust towards government influence the capacity to undertake data-sharing. In fact, experience shows that it has been easier to enable data-sharing as the level of confidence towards government is higher. The level of trust might not be strong enough in the case of Colombia and reformers pushing for data-sharing systems must be aware of this problem. An information security policy must be developed to guarantee availability, confidentiality, integrity, authenticity, and auditability of the information systems. The policy should take the form of an integrated set of measures that warrant the basic principles with regards to information security.

E-government tools will not be very useful if citizens and businesses do not use them to complete their formalities. The Netherlands faced this problem and made use of surveys to adjust strategies, planning, design, and implementation of e-services according

to user needs (user-focused services). To this end, the Netherlands has established an e-Citizen Charter to ensure that e-government develops with a citizen focus. Norway's policy also establishes the use of systematic user surveys for public agencies in order to understand user needs and stress the importance of adjusting services to individual needs.

A "stick and carrot" strategy could also be considered to move towards mandatory electronic communication with public authorities. It is important to be very clear and open about what citizens stand to gain if they deal with government electronically rather than traditionally (Is the service better?, do they save money and/or time?, do they potentially get more or better services?, what do they miss if they do not use electronic tools?). Furthermore, it is important to remember that if people do not learn about innovations in services and their benefits, in a form and language they can understand, they cannot take advantage of them. Offering a large number of e-services for businesses is not equal to getting a high take-up level. Denmark, Italy, and Spain have many services online, but show comparatively low take-up of e-services. Expected benefits from e-government can only materialise if the degree of take up increases.

Box 10.9. **Leveraging on e-government for simplification purposes: The case of Spain**

As in several other European countries, e-Government has expanded significantly in **Spain** within the public administration, especially in the national government where nearly 90% of all administrative procedures (equivalent to 98% of cases handled) have a fully implemented online version, and in so doing has helped to support aspects of Better Regulation. One clear internal driver is a growing awareness that the government needs to tackle legal complexity, including the density arising from decentralisation and the distribution of legislative and administrative competences between levels of government.

In Spain, e-Government has become a driver to unlock blockages and introduce change. This policy rests on well rooted and wide ranging policies and programmes, within a strong legal framework. The emphasis is explicitly on improving the transparency, efficiency and quality of the assistance and services provided to citizens and businesses. In fact, online public services have been significantly developed in the recent past.

Source: (OECD, 2010b), *Better Regulation in Europe: Spain 2010*, OECD Publishing, doi: 10.1787/9789264095076-en.

The Government of Barranquilla should devote efforts and resources to improving enforcement and compliance levels with regulation.

The Government of Barranquilla would benefit from assessing in more detail the extent to which institutions can handle enforcement and compliance practices, integrating new tools, such as risk assessment and reducing, where possible, the exclusive use of "command-and-control" regulation. Exchanging good practices in the areas where this is already conducted (i.e., those agencies involved in the IVC system) could contribute to share experience and illustrate how risk assessment has worked in particular contexts. It is also important to develop capacities to ensure proper implementation of regulations and combine measures that help increase enforcement. A proper balance between "stick and carrots" is essential to establish sound regulatory mechanisms and sanctions.

It is also important to understand the extent to which the use of some instruments, such as registries, licences, and inspections are contributing to increase compliance. It seems there is scope to improve practices and procedures, integrating additional tools, such as risk-assessment, transparency practices, or ICT mechanisms to make it easier for businesses and citizens to comply with regulation.

But above all, regulatory institutions in the District of Barranquilla should recognise enforcement and compliance activities as a key responsibility that requires intelligent and structured practices, instead of relying only on the traditional sanction powers and looking for non-compliant entities. The potential success of the IVC system could significantly improve enforcement and compliance, while addressing risks faced by Barranquilla's population.

Notes

1. District Agreement No. 006 of August 2006 established the organisation of the District in five localities: *Murillo Sur-Occidente, Murillo Sur-Oriente, Norte-Centro Histórico, Metropolitana* and *Riomar*.
2. Departments in Colombia have administrative autonomy for planning and promotion of economic and social development within their territories. They undertake administrative and co-ordination functions, in addition to complementing municipal operations and being an intermediary between the central government and municipalities. Departments also provide some services according to the Constitution and specific laws.
3. The Political Constitution of Colombia establishes two types of territorial entities at the local level of government: districts and municipalities. Districts are created by constitutional amendment and have territorial boundaries and some particular attributions. In some cases, districts have more regulatory attributions than municipalities, and in terms of budget issues, they receive resources as if they were Departments. In the case of Barranquilla, the District has attributions on port and environmental matters.
4. Art. 311 of the Political Constitution of Colombia.
5. This section relies heavily on Rodrigo, D., L. Allio, and P. Andres-Amo (2009), Multi-level Regulatory Governance: Policies, Institutions, and Tools for Regulatory Quality and Policy Coherence, *OECD Working Papers on Public Governance*, No. 13, OECD Publishing.
6. Decree 868 of 23 December 2008 that adopts the organic structure of the central administration of the Special, Industrial and Port District of Barranquilla.
7. Decree 867 of 23 December 2008 that adopts the value chain of the central administration of the Special, Industrial and Port District of Barranquilla.
8. *Corregimientos* are small communities that do not have the necessary number of citizens to become a municipality.

9. Development Plan 2012-2015 of the Special, Industrial and Port District of Barranquilla "*Barranquilla Florece para Todos*".

10. Art. 95 of Law 489 of 1998, Law 1454 of 2011 or Art. 3, 14 and 17 of the Law of Territorial Order and Art. 95, par. a) and h) of Law 1551 of 2012.

11. The Mallorquin Swamp is a region of 650 hectares shared by the District of Barranquilla and Puerto Colombia that was historically used as a solid waste dump, producing serious environmental effects in the swamp and health concerns in coastal populations. The lack of adequate wastewater management plants had also contributed to the deterioration of the region.

12. From February to June 2010, the Secretariat for Mobility initiated coercive collection for fines imposed from January 2009 to January 2010, implementing 100 251 processes, corresponding to the same number of infractions. From September to October 2012, the Secretariat for Mobility initiated 68 394 processes on a total of 105 120 infractions committed from January 2010 to June 2011.

13. Article 27 of Law 768 of 2002.

14. www.concejodebarranquilla.gov.co/documentos/acuerdos.html?limitstart=0.

15. In 2008, Barranquilla reduced the number of categories for the industry and trade tax in order to eliminate administrative burdens on businesses.

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