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Regulatory policy in Latin America: An analysis of the state of play

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REGULATORY POLICY IN LATIN AMERICA: AN ANALYSIS OF THE STATE OF PLAY

Tobias Querbach* and Christiane Arndt*

JEL Classification: H11, K2, K4, N46

* OECD, France

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REGULATORY POLICY IN LATIN AMERICA: AN ANALYSIS OF THE STATE OF PLAY

By Tobias Querbach* and Christiane Arndt*

ABSTRACT

Regulation is a critical tool by which governments seek to foster economic growth and social well-being. Countries in Latin America are increasingly investing in processes and institutions that support regulatory quality. Based on the OECD Indicators of Regulatory Policy and Governance (iREG) for Latin America 2016, this paper explores the state of play of regulatory policy in seven countries in Latin America and identifies potential opportunities to improve. The annex includes individual profiles of each of the countries covered, highlighting key achievements and challenges. The analysis of the data shows that countries in the LAC region have taken steps to improve their regulatory governance framework but important gaps remain in most countries in terms of the implementation of key tools, such as consultation with stakeholders, Regulatory Impact Assessment (RIA) and *ex post* evaluation. Strengthening the institutional oversight of the regulatory process will be critical to ensure the consistent implementation of these tools in the future.

JEL Classification: H11, K2, K4, N46

Key words: regulatory policy, better regulation, stakeholder engagement, consultation, Regulatory Impact Assessment (RIA), evaluation, Latin America

* OECD, France

NOTE BY THE SECRETARIAT

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TABLE OF CONTENTS

INTRODUCTION 7

I. GENERAL TRENDS AND INSTITUTIONAL SETTING FOR REGULATORY QUALITY 9

LAC countries have taken steps to adopt a whole-of-government approach on regulatory quality and to ensure high-level political support 9
Bodies for regulatory quality are emerging but lack clear oversight functions 10

II. STAKEHOLDER ENGAGEMENT FOR INCLUSIVE RULE MAKING 13

Stakeholder engagement is used throughout the region but not systematically in most countries 13
Formal requirements are in place but implementation lags behind 14
The methodology of stakeholder engagement could be further improved 17
There is scope to strengthen openness and transparency of consultation 19
Establish effective oversight functions to ensure the implementation of stakeholder engagement 22

III. USE OF EVIDENCE IN THE REGULATORY PROCESS 24

LAC countries have started investing in the use of Regulatory Impact Assessment 24
Efforts to review existing regulations focus on administrative simplification 27

CONCLUSION 32

REFERENCES 34

ANNEX A: COUNTRY PROFILES 36

Brazil 37
Chile 40
Colombia 43
Costa Rica 46
Ecuador 49
Mexico 52
Peru 55

Figures

1. Explicit whole-of-government approach to regulatory quality 9
2. High-level responsibility and standard procedures 10
3. Areas of responsibility of regulatory oversight bodies 11
4. Location of oversight bodies 12
5. Composite indicator: stakeholder engagement in developing subordinate regulation 14
6. Requirement to conduct stakeholder engagement in the development of subordinate regulations 15
7. Consultation practice at different stages 16
8. Forms of stakeholder engagement 18
9. Consultations open to the general public 19
10. Forward planning of stakeholder engagement 21
11. Feedback mechanisms 22
12. Adoption of RIA: formal requirements and practice 25
13. Types of *ex post* evaluation 28
14. Administrative simplification 30

Boxes

1. Indicators of Regulatory Policy and Governance (iREG) for Latin America 2016 7
2. New Zealand Green Paper on Vulnerable Children 16
3. Consultation in RIA in Mexico 18
4. US public notice and comment 20
5. Paths to introduce RIA 25
6. *Ex post* reviews conducted by regulatory commissions in Colombia 28
7. The Law Evaluation Department of the Chilean Chamber of Deputies 29
8. International experiences in the use of the Standard Cost Model (SCM) to measure administrative burdens 30

INTRODUCTION

Regulation is, alongside fiscal and monetary policy, one of the key levers by which governments pursue policy objectives like economic prosperity and social well-being (OECD, 2015a). By setting the "rules of the game", governments foster the proper functioning of markets, protect the rights and safety of citizens and ensure the provision of essential public goods and services (OECD, 2011). If badly designed and enforced though, regulation creates costs for business and citizens and acts as a drag on competition, growth and investment. As illustrated by the 2008 global financial crisis, flawed regulatory regimes can potentially have far-reaching consequences on economic development and the social welfare of citizens.

For countries in Latin America, improving the quality of regulation is important to support efforts to raise productivity and potential growth as well as reducing the burden of administrative requirements on businesses. In this regard, investing in good regulatory practices helps ensure an institutional framework and business environment that stimulates competition, trade and investment to support inclusive growth and to raise living standards (OECD, 2016a).

Drawing on the Indicators of Regulatory Policy and Governance (iREG) for Latin America 2016 (Box 1), this paper explores the state of play of regulatory policy in seven countries in Latin America and identifies potential opportunities to improve. A comparison with OECD countries on the basis of the OECD Regulatory Policy Outlook 2015 (OECD, 2015a) and the Indicators of Regulatory Policy and Governance 2015 allows the countries covered in this paper to assess their own performance in a broader international perspective. By acknowledging the *2012 OECD Recommendation on Regulatory Policy and Governance* as a normative basis and taking into account performance in OECD countries, this paper highlights potential ways forward for countries in Latin America to improve their regulatory policy with a view to converging with international best practice.

The countries covered in this paper include Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico and Peru. All of them are part of the OECD-IDB LAC Network on Good Regulatory Practices, which provides a platform for dialogue on the progress and challenges to promote regulatory quality across the region. The analysis covers *i)* general trends and the institutional setting for regulatory policy, *ii)* how countries engage with stakeholders when developing regulation and *iii)* the use of evidence in the regulatory process, which covers both *ex ante* impact assessment and *ex post* evaluation of regulation, including strategies to reduce administrative burdens. The data collection underpinning this paper has placed a particular focus on stakeholder engagement, including the construction of a composite indicator, thus providing a valid baseline measurement of the implementation of good practices in this area.

Box 1. Indicators of Regulatory Policy and Governance (iREG) for Latin America 2016

The Indicators of Regulatory Policy and Governance (iREG) for Latin America 2016 provide an up-to-date overview of regulatory systems in selected Latin American countries, by which they develop, implement and evaluate regulations. They cover three principles of the 2012 OECD Recommendation on Regulatory Policy and Governance: stakeholder engagement, Regulatory Impact Assessment (RIA) as well as *ex post* evaluation and administrative simplification.

iREG for Latin America 2016 draws upon responses to the OECD-IDB Survey on Regulatory Policy and Governance 2015 from Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico and Peru. Responses to the survey were provided by government officials from the respective institutions responsible for regulatory policy in each country. Unless explicitly stated differently, survey answers refer to national regulations only, i.e. regulation enacted at the central or federal level of government. Survey answers on stakeholder engagement and Regulatory Impact Assessment (RIA) only cover subordinate regulations, which are defined as "regulations that can be approved by the head of government, by the cabinet or by an individual minister or high level official, i.e. by an authority other than parliament/congress". The information collected through the survey reflects the situation as of 31 December 2015.

Box 1. Indicators of Regulatory Policy and Governance (iREG) for Latin America 2016 (*cont.*)

The OECD-IDB Survey on Regulatory Policy and Governance 2015 is an adapted version of the 2014 OECD Regulatory Indicators Survey with a particular focus on stakeholder engagement. Direct comparison between survey results, notably in the form of a composite indicator on stakeholder engagement in developing subordinate regulations, has only been made based on identical questions.

The survey is based on an ambitious and forward-looking regulatory policy agenda and is designed to track progress in the implementation of regulatory policy over time. It captures progress in countries that already have advanced regulatory practices, whilst recognising the efforts of countries that are just starting to develop their regulatory policy. In addition to collecting information on formal requirements, the survey gathers evidence on the implementation of these formal requirements and the uptake of regulatory management practices.

Survey answers underwent a thorough data cleaning process carried out jointly by the OECD and IDB in close cooperation with the participating countries, which involved notably ensuring consistency between survey answers and the verification of examples provided by countries to support individual survey questions.

Following the established methodology of the OECD Indicators of Regulatory Policy and Governance, a composite indicator on stakeholder engagement in developing subordinate regulations was developed based on information collected through the survey.

The composite indicator on stakeholder engagement in developing subordinate regulations measures the adoption of good practices to engage with interested parties when developing new regulations, including different methods and openness of consultations as well as transparency and response to comments received. It consolidates information in four equally weighted categories: *systematic adoption*, *methodology*, *transparency*, and *oversight and quality control*.

The full dataset underlying the composite indicator can be accessed on the website dedicated to the OECD Indicators of Regulatory Policy and Governance for Latin America (www.oecd.org/gov/regulatory-policy/ireg-lac.htm). The complete methodology, including all underlying questions, can be found in "2015 Indicators of Regulatory Policy and Governance: Design, Methodology and Key Results" (Arndt, C., Custance Baker, A., Querbach, T., Schultz, R., 2015).

Source: www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm.

This analysis comes at a timely moment at which many countries in the LAC region carry out reforms to introduce and expand the use of tools aimed at improving regulatory quality. For the time being, major gaps remain in implementing key tools such as Regulatory Impact Assessment (RIA), stakeholder engagement and *ex post* evaluation and in mainstreaming their use based on a consistent methodology. An appropriate institutional framework for regulatory policy, including effective oversight mechanisms, will be needed to overcome those challenges.

Given countries' current reform efforts, future work should build on this baseline measurement to track progress over time and, in addition, spend further analytical attention supported by a more extensive data collection to the areas of RIA and *ex post* evaluation to allow for a consistent benchmark with international best practice for these regulatory management tools as well.

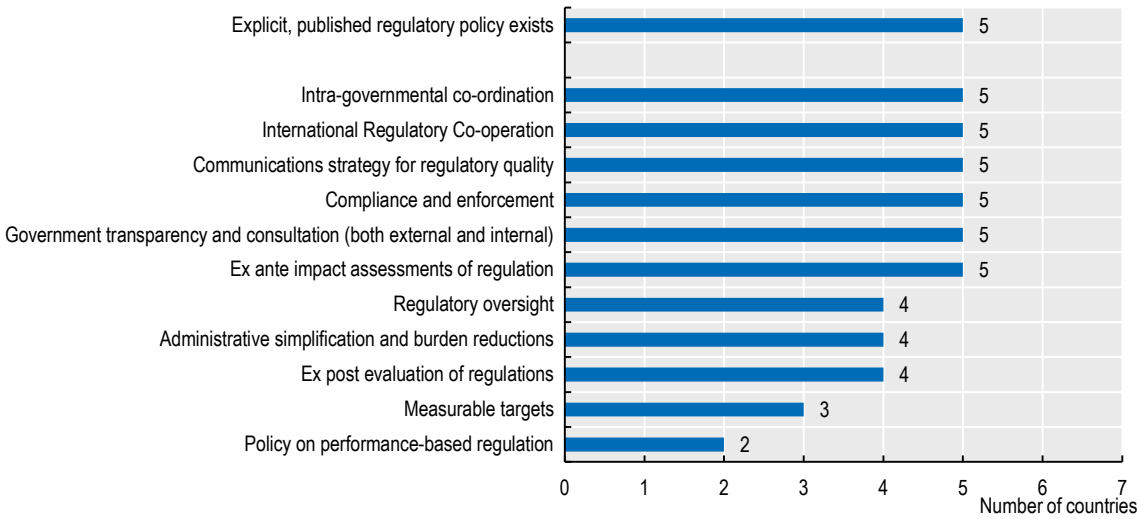
I. GENERAL TRENDS AND INSTITUTIONAL SETTING FOR REGULATORY QUALITY

LAC countries have taken steps to adopt a whole-of-government approach on regulatory quality and to ensure high-level political support

The *2012 OECD Recommendation* advises countries to "commit at the highest political level to an explicit whole-of-government policy for regulatory quality" that includes "clear objectives and frameworks for implementation" (OECD, 2012a) to foster high-quality rule making through the entire government. This whole-of-government approach is instrumental to ensure an effective co-operation of all institutions involved in the regulatory process and the consistent implementation of regulatory practices across the whole administration.

Countries in the LAC region have started adopting an explicit whole-of-government approach on regulatory quality covering a broad range of different regulatory disciplines, matching a trend amongst OECD countries. Five of the seven countries covered have issued one or more policy documents that spell out the principles of their regulatory policy, which are often linked to their respective National Development Plans (Figure 1). These policy documents cover *inter alia* government transparency and consultation, *ex ante* impact assessment and *ex post* evaluation. Chile and Peru, which have not yet established an explicit whole-of-government approach on regulatory quality, have nevertheless elements in place that could be part of such a policy.

Figure 1. Explicit whole-of-government approach to regulatory quality

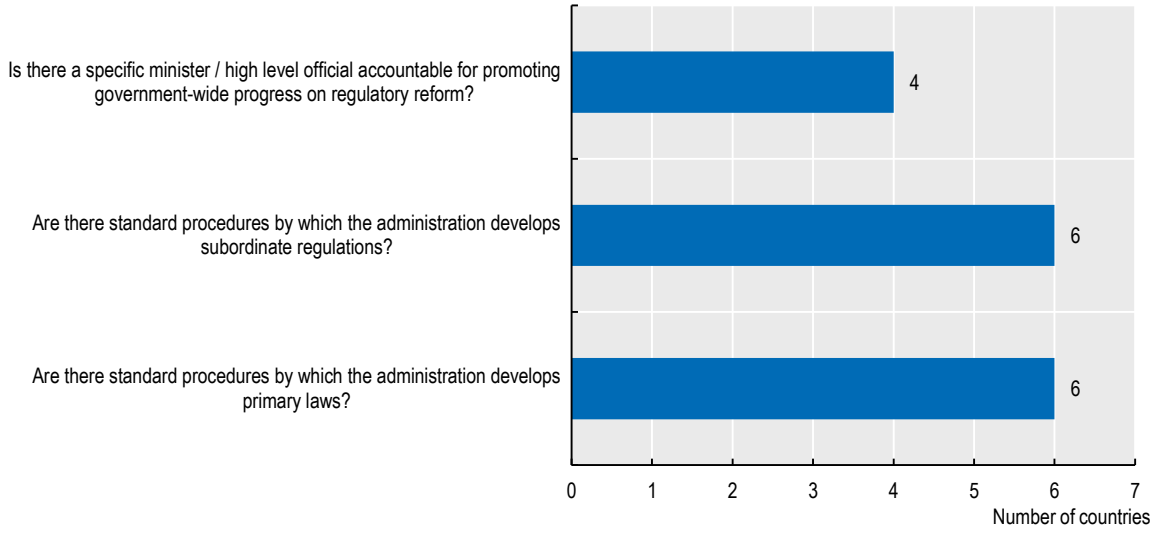


Source: Indicators of Regulatory Policy and Governance (iREG) for Latin America 2016. www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm.

In many LAC countries, the approach to regulatory quality remains narrow, focussing mostly on reducing regulatory costs and simplifying administrative procedures for citizens and business. For instance, Costa Rica has adopted a Law (8220) on Protection from the Excess of Requirements and Administrative Procedures. The law includes the use of *ex ante* impact assessment, but it only applies to regulation that creates new administrative procedures and formalities.

LAC countries have taken steps to ensure high-level political support for regulatory policy by assigning responsibility for promoting government-wide progress on regulatory reform to a specific minister or a high-level official (Figure 2). This supports improvements in regulatory policy and guarantees its consistent implementation over time (OECD, 2015b). In the case of Colombia, Costa Rica and Ecuador, high-level responsibility is vested with ministers (or public officials at ministerial level) from those institutions that host the oversight body in charge of regulatory quality (Figure 4). In Mexico, the Director General of the Federal Commission for Regulatory Improvement (COFEMER), who is appointed by the President, is directly responsible for regulatory policy.

Figure 2. High-level responsibility and standard procedures



Source: Indicators of Regulatory Policy and Governance (iREG) for Latin America 2016. www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm.

A large majority of countries covered have adopted standard procedures by which the administration develops primary laws and subordinate regulations (Figure 2). However, the use of good regulatory practices seems to be mostly focussed on subordinate regulations in LAC countries. Whilst procedures for primary laws also include some regulatory quality elements, such as explanatory memoranda that state the reasons and relevance of the proposal, there are usually no specific provisions as to the use of regulatory tools such as *ex ante* impact assessment and public consultation. All countries covered in this analysis operate under presidential systems of government, where parliament (or congress) has a prominent role in the development of primary laws. This matches the experience from many OECD countries, where legislatures have so far been less engaged than the executive in the application of practices aimed at improving regulatory quality (OECD, 2015a).

Bodies for regulatory quality are emerging but lack clear oversight functions

OECD countries have identified an appropriate institutional setting, including clear oversight functions, as a *sine qua non* for the effective and consistent implementation of regulatory policy. Though there is no blueprint of an ideal institutional arrangement applicable to all countries, because each country has its own administrative and legal culture, it is essential that roles of different institutions are clearly defined and specific key functions on regulatory policy covered (OECD, 2015b). The *2012 OECD Recommendation* cites oversight functions as a central pillar of a sound regulatory framework and recommends that governments "establish mechanisms and institutions to actively provide oversight of

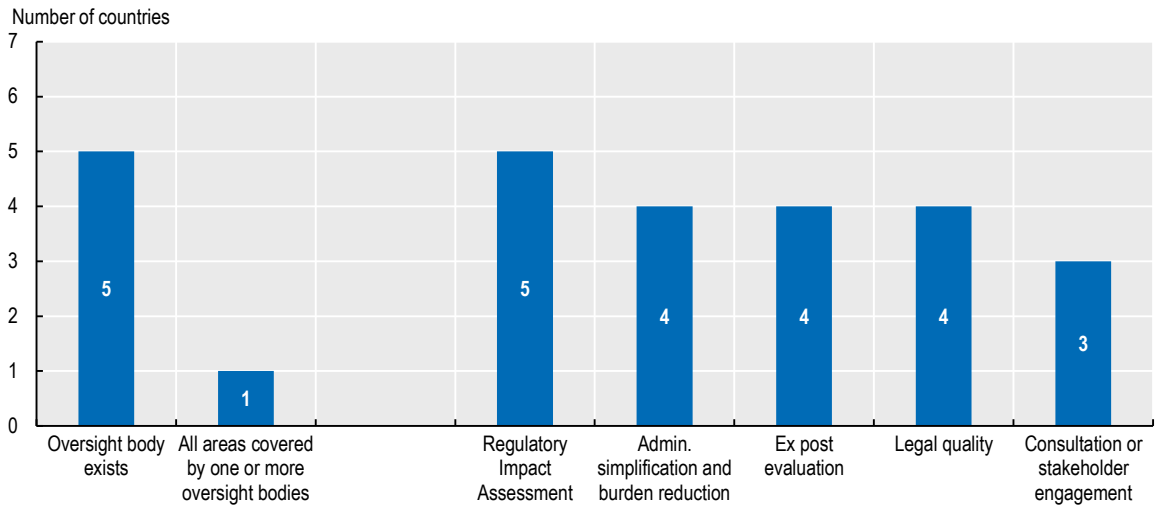
regulatory policy procedures and goals, support and implement regulatory policy, and thereby foster regulatory quality" (OECD, 2012a).

Countries in Latin America have started investing in an appropriate institutional framework for regulatory policy by establishing a dedicated body (or bodies) responsible for promoting regulatory quality. These bodies cover a broad range of different tools aimed at improving the quality of regulation, including RIA, administrative simplification, *ex post* evaluation and stakeholder engagement (Figure 3). The legal quality of regulations is in most cases ensured by a separate unit, such as a legal secretariat of the presidency, located at the centre of government.

The existing bodies for regulatory quality in Latin America focus mostly on promoting the countries' regulatory policy agenda and support the adoption of good regulatory practices across the administration, which is reflected in the functions they perform. They seek to ensure the co-ordination of regulatory tools between institutions involved in the regulatory process and provide guidance and training for public officials. These bodies also aim at advancing the systematic improvement of regulatory policy by monitoring and reporting on the progress of its implementation and by ensuring institutional relations. For instance, the bodies share insights and best practices with peers from other countries in international fora and networks, such as the OECD.

Despite the emergence of bodies responsible for promoting regulatory quality, most LAC countries still lack effective institutional oversight of the regulatory process. Most of them do not have a mandate to perform a quality control of the regulatory process, e.g. by reviewing the quality of impact assessments. COFEMER in Mexico is currently the only case of an oversight body in the region that performs a quality control of the regulatory process by reviewing the quality of impact assessments and helps identify potential areas for regulatory reform. The Better Regulation Unit at the Ministry of Finance, Industry and Trade (MEIC) in Costa Rica is also responsible for ensuring the quality of impact analyses. In addition, the government of Ecuador has planned that the Unit for Regulatory Improvement and Control, located within the Department of Planning and Development (SENPLADES), will take on such oversight functions.

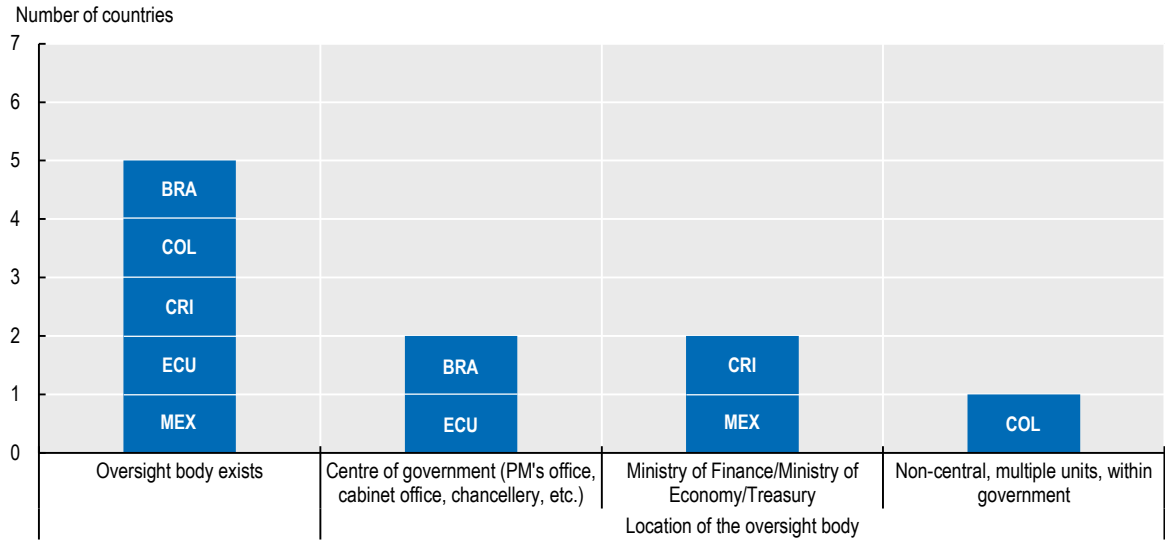
Figure 3. Areas of responsibility of regulatory oversight bodies



Source: Indicators of Regulatory Policy and Governance (iREG) for Latin America 2016. www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm.

Whilst the precise institutional settings vary across countries, oversight bodies in the LAC region are typically located either close to the centre of government or to the ministry of economy (Figure 4). In Ecuador, the Unit for Regulatory Improvement and Control is part of the Department of Planning and Development (SENPLADES), whilst in Brazil the Programme for the Strengthening of Institutional Capacity for Regulatory Management (PRO-REG) is located at the Civil House of the Presidency. Both are close to the centre of government. The Better Regulation Unit in Costa Rica and COFEMER in Mexico are located in the national ministries of economy.

Figure 4. Location of oversight bodies



Source: Indicators of Regulatory Policy and Governance (iREG) for Latin America 2016. www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm.

In many LAC countries, the institutional landscape for regulatory policy tends to be fragmented with responsibilities scattered across different portfolios. For instance in Peru, the Ministry of Economy and Finance leads efforts to implement *ex ante* and *ex post* assessment of regulation, whilst the Presidency of the Council of Ministers is responsible for administrative simplification. The Ministry of Justice and Human Rights is in charge out carrying of the constitutional and legal assessment of regulations. In Colombia, responsibilities for regulatory policy are split between the National Planning Department and the Administrative Department of the Public Function.

Key areas for improvement

Countries in the LAC region have the potential to further improve their overarching regulatory policy and institutional setting in several ways:

- There would be benefit in broadening the scope of their regulatory policy to ensure a holistic approach to regulatory quality that takes into account the potential costs as well as benefits of regulation. Countries that have yet to adopt an explicit regulatory policy could do so by pursuing efforts to consolidate and boost their existing programmes and initiatives.

- It is essential to invest in appropriate oversight functions that help ensure the consistent implementation of regulatory policy in practice. Assigning the mandate to perform a quality control of the regulatory process, e.g. by reviewing the quality of impact assessments, to a body outside the ministry preparing the regulation would help ensure it is of high quality.

- A clear definition of responsibilities between the different institutions involved in better regulation is needed to ensure their effective co-ordination and to guarantee a coherent approach and avoid duplicities.

- Countries in the region that have not yet assigned ministerial responsibility for regulatory policy would benefit from doing so to help secure the continuous high-level political leadership that is required to support the implementation and advance the reform agenda over time.

- In the longer term, investing in procedures and capacities beyond the executive would help support evidence-based policy making across all institutions involved in the regulatory process.

II. STAKEHOLDER ENGAGEMENT FOR INCLUSIVE RULE MAKING

Stakeholder engagement is a fundamental principle of a sound regulatory policy. OECD governments have therefore agreed in the *2012 Recommendation* to "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" (OECD, 2012a).

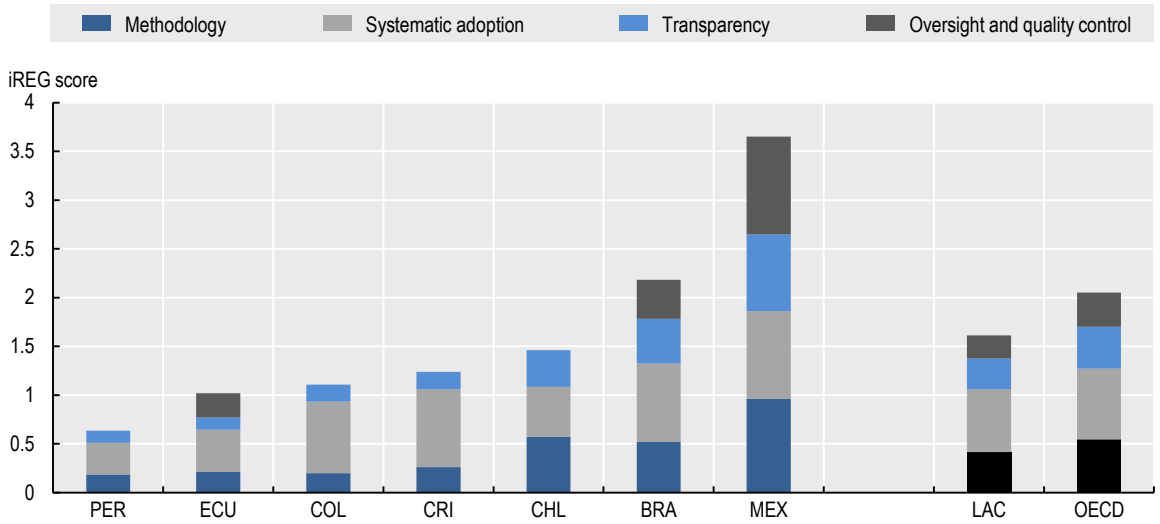
The objectives and benefits of engaging with stakeholders throughout the regulatory process are numerous. Feedback from those interested in, and affected by, regulation allows governments to improve the evidence base for their decisions and thus to ensure regulations are designed in the public interest (OECD, 2015a). Gathering inputs from different perspectives through an open consultation process helps highlight potential trade-offs and identify viable alternatives. In turn, involving stakeholders actively in the development of new rules facilitates public scrutiny and may stimulate a sense of ownership, increasing compliance with regulation. An effective engagement with stakeholders also has the potential to foster perceived fairness and yield higher acceptance of regulation (Lind and Arndt, 2016). More generally, a transparent and open consultation process can help enhance accountability and thereby trust in government and the regulatory process (OECD, 2012a).

Stakeholder engagement is used throughout the region but not systematically in most countries

Countries in Latin America are at different stages in the adoption of good practices to engage with interested parties when developing regulation. Whereas Mexico and Brazil have established fairly advanced consultation systems and score above or around the OECD average on the composite indicator on stakeholder engagement (Figure 5), other countries in the region are currently pursuing efforts to embed consultation more systematically in their rule-making process (Figure 5). Reforms to that end are underway in a number of countries. Ecuador is currently developing new legal requirements and guidance for the development of regulation by the executive that will also define procedures for public consultation. Colombia and Costa Rica are planning on implementing the systematic use of public consultation through online platforms.

The composite indicator shown in Figure 5 further breaks down stakeholder engagement practices into four categories: *systematic adoption* records formal requirements and how often and at what stage in the rule-making process these requirements are conducted in practice; *methodology* gathers information on the methods used to engage with stakeholders; *oversight and quality control* records the role of oversight bodies and publically available evaluations of the consultation system; *transparency* records information related to the principles of open government.

Figure 5. Composite indicator: stakeholder engagement in developing subordinate regulation



Note: The figure displays the total aggregate score across the four separate categories of the composite indicator. The maximum score for each category is one and the maximum score for the aggregate indicator is four. The more regulatory practices as advocated in the *2012 OECD Recommendation on Regulatory Policy and Governance* a country has implemented, the higher its indicator score. The data on LAC countries reflect the situation as of 31 December 2015. Data on OECD countries cover all OECD countries and reflect the situation as of 31 December 2014.

Source: Indicators of Regulatory Policy and Governance (iREG) for Latin America 2016. Indicators of Regulatory Policy and Governance (iREG) 2015. www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm.

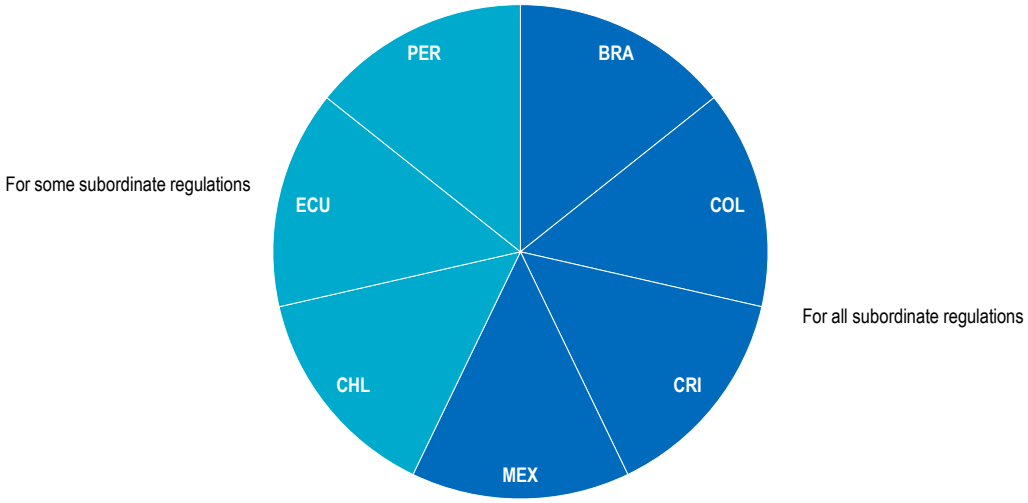
Though differences remain in terms of scope and implementation, all countries covered have taken some steps to integrate stakeholder engagement in their rule-making process. For example, they have adopted formal requirements to conduct consultation when developing subordinate regulations. As detailed below, the countries covered have also established, to varying degrees, methodologies to engage with stakeholders, including minimum periods and supporting documentation for consultation. Transparency of stakeholder engagement is less developed in most countries as information on planned or ongoing consultations is not always available and feedback mechanism are not systematically used. Whilst Mexico and Brazil – and to some extent Ecuador – have established oversight functions of stakeholder engagement, they are, for the time being, virtually absent in the other countries.

Formal requirements are in place but implementation lags behind

All countries covered have taken steps to set the basic legal foundations to embed consultation in their rule-making process by establishing formal requirements, but their scope varies across countries (Figure 6). Formal requirements help entrench consultation in the rule-making process and safeguard against a 'regulatory reflex' (OECD, 2015b). In the case of Brazil, Colombia, Costa Rica and Mexico, the requirement to engage stakeholders covers all subordinate regulations that are being developed by the executive and is typically enshrined in a general law prescribing administrative procedures. In other countries, consultation requirements only apply to a specific subset of regulation (in Chile only those

related to indigenous people's rights, some environmental issues and international trade), regulations issued by particular regulatory agencies (Ecuador) or leave substantial leeway to public officials in their decision to use consultation (Peru). Notably, none of the LAC countries surveyed indicated using a proportionate approach by soliciting opinions from the public on major regulatory proposals based on clearly defined thresholds.

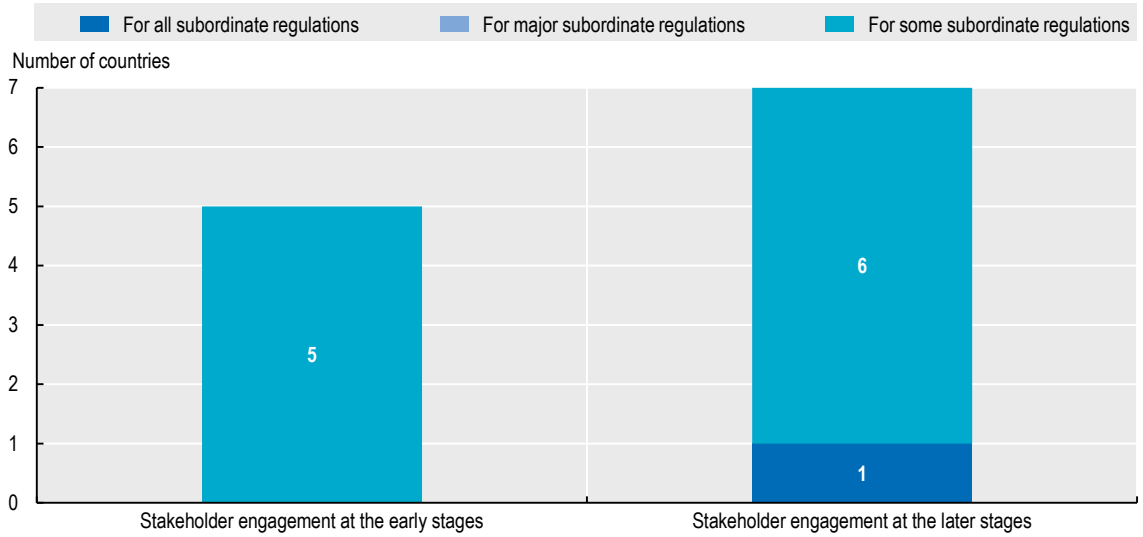
Figure 6. Requirement to conduct stakeholder engagement in the development of subordinate regulations



Source: Indicators of Regulatory Policy and Governance (iREG) for Latin America 2016. www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm.

The implementation of formal requirements lags behind in the region and thus stakeholder engagement is not yet systematically used to inform the development of regulations in practice. With the exception of Mexico, where all draft regulatory proposals undergo public consultation, the countries covered only solicit stakeholders' views on some subordinate regulations (Figure 7). This reveals a persistent implementation gap with regards to the formal requirements in the region. This contrasts with the experience in OECD countries, a large majority of which consult with stakeholders in the development of all regulations or those likely to have major impact (OECD, 2015a).

Figure 7. Consultation practice at different stages



Note: Early stage refers to stakeholder engagement that occurs at an early stage, to inform officials about the nature of the problem and to inform discussions on possible solutions. Later stage consultation refers to stakeholder engagement where the preferred solution has been identified and/or a draft version of the regulation has been issued.

Source: Indicators of Regulatory Policy and Governance (iREG) for Latin America 2016.

Countries in the LAC region engage stakeholders at different stages in the rule-making process, but consultation usually takes place when the decision to regulate has been taken and/or a draft regulation has already been prepared (Figure 7). All countries covered consult with stakeholders at this later stage, albeit with differences in terms of scope and depth. In some cases, consultation takes place only shortly before the planned entry into force of the regulation as in the case of the compulsory pre-publication of regulations in Peru, which happens only 30 days before the planned entry into force. This leaves very limited time to take stakeholders' views into consideration and potentially revise the regulatory proposal.

Consultations at an earlier stage, i.e. before a preferred option has been identified are not used in all countries and, if so, only sporadically, consistent with observations amongst OECD countries (OECD, 2015a). Systematically engaging with stakeholders early on would help governments to gather inputs on the nature of the problem and potential solutions. Making relevant documentation, including supporting analyses, available to the public may greatly enhance the effectiveness of stakeholder engagement (OECD, 2012a). At the early stage, the use of a green paper in New Zealand is a good example of providing stakeholders with appropriate background about the issue at hand and to stimulate informed discussions around possible solutions (Box 2).

Box 2. New Zealand Green Paper on Vulnerable Children

The Green Paper for Vulnerable Children was launched by the New Zealand Ministry of Social Development in 2011 as a discussion document to outline ideas, potential policy and service delivery changes prior to drafting policy in order to address the issue of vulnerable children in New Zealand. It included 43 questions to stakeholders and invited the general public to provide feedback on the ideas on future policy that were outlined in the Paper in the period between July 2011 and February 2012. Following an introductory chapter on the background of the topic and on the consultation process, the ideas presented were clustered in four chapters ("Share responsibility", "Show leadership", "Make child-centred policy changes" and "Make child-centred practice changes"). Each chapter included specific questions to stakeholders as a basis for their submissions. Further links to references on the topics were included within the paper.

Box 2. New Zealand Green Paper on Vulnerable Children (*cont.*)

Stakeholders were able to engage by submitting comments via email, mail, or by using a form with nine priority questions and single-question postcards which could be sent in free of charge. In order to increase awareness and to encourage comments, the campaign also included two dedicated websites (www.childrensactionplan.govt.nz and www.saysomething.org.nz), a Facebook page, a Twitter account and pop-ups on media websites. Locally, the campaign engaged stakeholders through 17 in-person events as well as a Green Paper Campervan Drive around New Zealand to collect submissions. To facilitate stakeholder engagement, three "Green Paper Champions" who had shown commitment to children's welfare were chosen to serve as a public face for the consultation process and generate interest with the public.

Stakeholders were also engaged in the drafting process of the Green Paper through the establishment of advisory groups. A "Scientific Panel" ensured there was scientific rigour to the Green Paper and a "Frontline Panel" provided insights from providers directly working with vulnerable children.

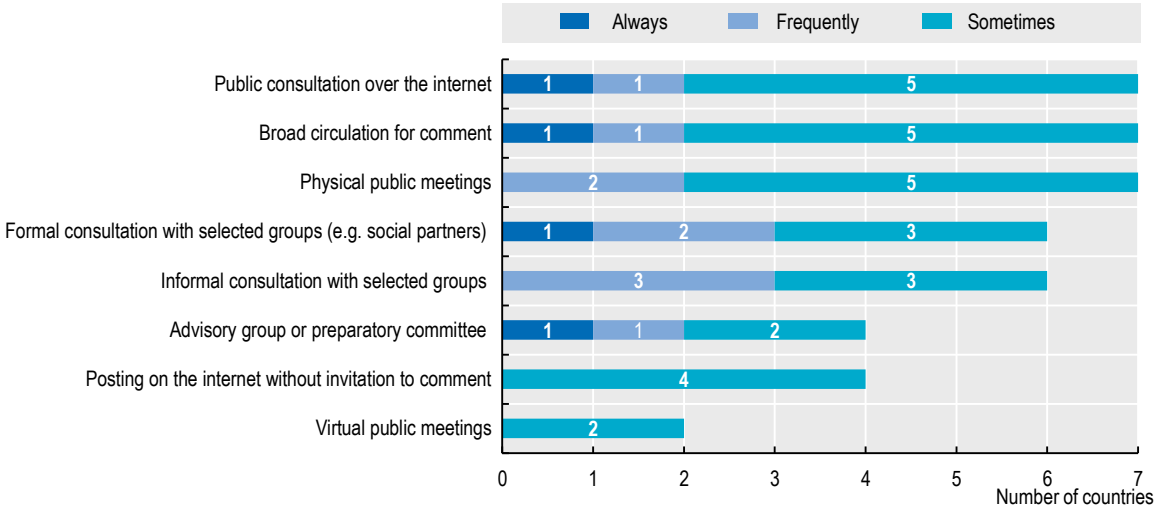
Throughout the campaign, almost 10,000 submissions were collected from the general public, civil society, frontline workers, academia and other organisations. Submissions were received in the format of "question and answer" (responding to specific questions in the Green Paper) or as "free-form submissions" on issues covered by the Green Paper. Contributions were read, coded and analysed in order to identify themes and recurring suggestions. A summary of submissions was made publicly available, including a description of the consultation process, the methodology of analysis and a detailed overview of summarised stakeholder submissions. The insights from the consultation process informed a White Paper which was released one year after the Green Paper and paved the way for the Vulnerable Children Bill in 2013 and the Vulnerable Children Act in 2014.

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

The methodology of stakeholder engagement could be further improved

Countries in the LAC region make use of a variety of mechanisms to engage with stakeholders (Figure 8). The most commonly used forms of stakeholder engagement are public consultations over the internet and broad circulation for comments. Government institutions also use physical public meetings to gather feedback from affected parties. For instance, regulatory agencies in Brazil, Colombia and Ecuador organise such meetings, including regional visits in some cases, to engage with stakeholders. Consultations with selected groups are used across countries in the region both on a formal and informal basis. These groups include representatives from business and organised labour, chambers of commerce and civil society organisations. In many countries covered, the development of technical regulations and standards is informed by inputs brought forward by specialised committees, technical roundtables and working groups.

Figure 8. Forms of stakeholder engagement



Note: This figure is based on information on forms of stakeholder engagement used at early and later stages of the development of subordinate regulations. Early stage refers to stakeholder engagement that occurs at an early stage, to inform officials about the nature of the problem and to inform discussions on possible solutions. Later stage consultation refers to stakeholder engagement where the preferred solution has been identified and/or a draft version of the regulation has been issued. The higher value of either stage has been taken into account for a given form of stakeholder engagement for each country.

Source: Indicators of Regulatory Policy and Governance (iREG) for Latin America 2016. www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm.

Countries in the LAC region could further improve the methodology of their stakeholder engagement by providing additional documentation to support consultation. All countries covered usually make available the draft regulatory proposal to support consultations with stakeholders. Additional documentation, including analytical material, the reasons for the suggested regulatory proposal as well as relevant data, has the potential to inform the consultation process (OECD, 2012a). For instance, COFEMER in Mexico makes the RIA available to support public consultations on their website (Box 3).

Box 3. Consultation in RIA in Mexico

Consultation in Mexico is strongly influenced by the requirements formally established in two separate pieces of legislation. First, the Federal Law of Administrative Procedures sets out specific public consultation requirements as an integral part of the RIA process. Second, more recently adopted transparency legislation has established more general consultation requirements that are independent of the RIA process itself. In particular, this law requires all regulatory proposals to be published on the website of the relevant ministry or regulatory agency.

The RIA process itself provides important public consultation opportunities, as well as important safeguards to ensure that adequate account is taken of comments received from stakeholders. In particular, COFEMER publishes in their website www.cofemer.gob.mx all draft RIA as soon as they are received, as well as its comments on the draft RIA and all inputs received from stakeholders. This generalised publication of a wide range of RIA-related documentation is possibly unique among OECD member countries. Importantly, publication of COFEMER's response to the draft RIA provides stakeholders with additional information that can potentially allow them to participate more effectively in the process. For example, by highlighting weaknesses in the analysis, this material may assist stakeholders to identify data or other materials they possess which could be fed into the analysis to enhance its quality. More generally, the publication of all stakeholder comments on the proposal provides the basis for a more detailed dialogue on its merits among interested parties. COFEMER believes that the publication of this wide range of RIA-related documents is a key factor in ensuring that regulators take account of COFEMER's opinions and, hence, that it is a critical success factor for the RIA process.

Box 3. Consultation in RIA in Mexico (*cont.*)

The draft RIA is required to be open to consultation for at least 20 working days but, in practice, much longer consultation periods appear to be the norm. This reflects, in part, the need for COFEMER to undertake its initial analysis of the RIA document and publish its response. Consequently, it appears that the process provides extensive opportunities for stakeholder input. COFEMER also supports effective engagement in consultation by actively providing the draft RIA to key stakeholders and soliciting their inputs in many cases.

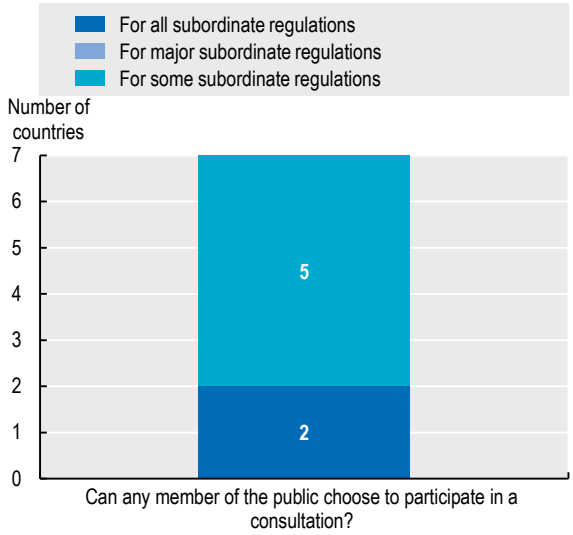
Source: OECD (2014), *Regulatory Policy in Mexico: Towards a Whole-of-Government Perspective to Regulatory Improvement*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264203389-en.

Stakeholder engagement in the development of regulation could also be improved by ensuring the consistent application of minimum periods for public consultation. Amongst the countries covered, only Mexico consistently applies minimum periods for public consultations on all regulations prepared by the executive. In other cases, such as Brazil and Ecuador, requirements for minimum periods only apply to regulations issued by specific regulatory agencies. A majority of OECD countries has established binding minimum periods for public consultation of 4 weeks or longer.

There is scope to strengthen openness and transparency of consultation

There is scope for countries in the LAC region to strengthen the openness and transparency of their consultation systems (Figure 9). Making consultations open to all members of the public is crucial in ensuring views from the widest possible spectrum of stakeholders are taken into account. Only Mexico and Brazil have systematically opened up consultation to the general public, for example, through consultations conducted over the internet or in public hearings. Although these forms of engagement are also used in other countries in the region, they cover only some regulations in specific policy areas or institutions.

Figure 9. Consultations open to the general public



Source: Indicators of Regulatory Policy and Governance (iREG) for Latin America 2016. www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm.

All countries covered already make use of online tools to gather feedback from the general public, but their use varies across countries and between different institutions. In most cases, only some government

institutions have a webpage for ongoing consultations. Furthermore, in Brazil and Ecuador, regulatory agencies make more systematic use of this tool than line ministries.

Most countries in the LAC region do not yet make use of a single, centralised government website listing all ongoing consultations to reach out to the widest possible audience and ensure easy access to consultation. The US administration, for example, makes use of the *Regulations.gov* website to solicit comments on all federal rules and regulations under development (Box 4). Mexico is the only country covered that stores all ongoing consultations on a single centralised government website through the regulatory oversight body COFEMER. However, Costa Rica is currently rolling out its new Preliminary Control System (SICOPRE), which will also feature online consultation through a centralised platform. Similarly, Colombia is planning on implementing a new centralised online system (SUCOP) that will make all ongoing consultations accessible for a minimum period of 30 days. Peru is also planning on putting in place a centralised government consultation website to support a more comprehensive strategy involving mandatory consultation of regulatory proposals.

Box 4. US public notice and comment

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

Agencies are required to publish a Notice of Proposed Rulemaking (NPRM) in the Federal Register. The NPRM comprises the draft regulatory text, a summary of the issues and actions under consideration and the rationale for the rule. It also contains supplementary information, including a discussion of the merits of the proposed solution, important data and other information used to develop the action, and details its choices and reasoning. Before starting the consultation process based on the NPRM, agencies may publish an Advance Notice of Proposed Rulemaking (ANPRM). In the ANPRM, an agency describes the intended rulemaking and then requests the public to submit comments that would be used if the agency develops a draft proposal. Between 2011 and 2013, ANPRMs were published for about 6% of proposed rules.

Stakeholders can comment on ANPRMs and NPRMs in various ways. In general, the comment period ranges between 30 and 60 days and all "interested persons", regardless of domicile, may participate. Many agencies give several options for submitting comments, including U.S. mail, private courier, email, and electronic submissions on the website *Regulations.gov*. In addition, an agency may hold public hearings during the comment period, where people can make statements and submit data. Sometimes, webcasts and interactive internet sessions are also used to provide information to the public on the substance of the proposed rule.

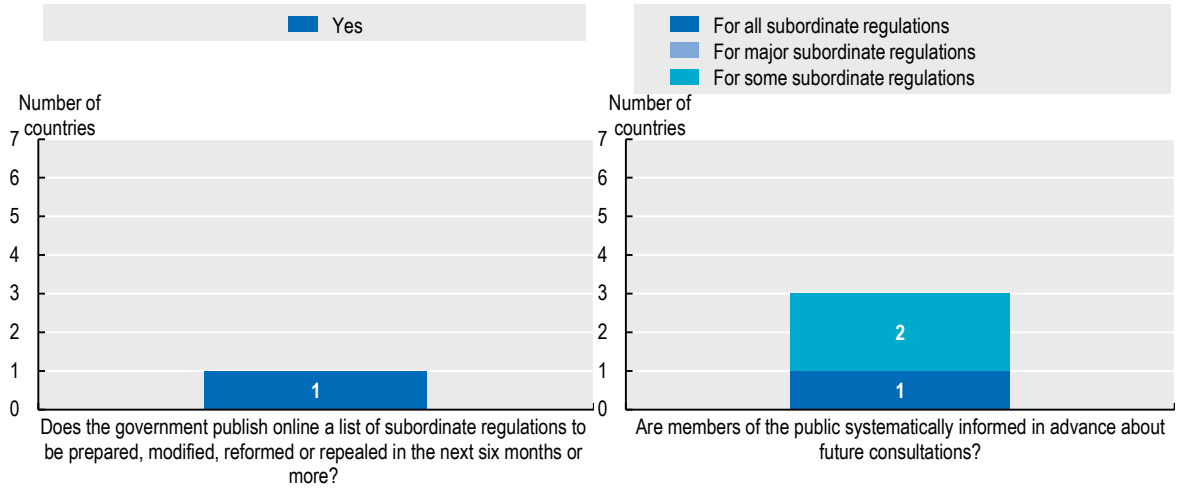
The government portal *Regulations.gov* supports the public notice and comment process and provides access to all publicly available regulatory materials, e.g. final rules and supporting analyses, as well as ANPRMs and NPRMs. Stakeholders can directly provide electronic comments on regulations through the portal. More than 5 million documents are posted on *Regulations.gov*, 80% of which are public submissions. Nearly half a million comments are submitted through *Regulations.gov* each year by nearly 4 million annual visitors.

Changes are frequently made to proposed rules in response to public comments. On the basis of information and comments received, agencies may decide to proceed to a final rule if changes to the proposed rule on the basis of comments received are minor, revise the proposed rule and publish an updated proposed rule for comment, or terminate the rulemaking. Following the consultation process based on the NPRM, final regulations are published in the Federal Register, and become effective usually 30 to 60 days after the publication date. The final rule includes the final regulatory text, as well as a summary of significant issues raised by commenters and an explanation of how the agency addressed those public comments, the objectives and rationale for the regulation, and relevant facts and data the agency relied on. Together with the proposal and supporting analyses, the comments comprise the public record that serves as the rational basis for each final regulation. The APA also allows for judicial review of the final rule to ensure compliance with this process.

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

Forward planning and regulatory agendas are not yet commonly used in the LAC region (Figure 10). Yet, informing stakeholders about regulations under development and upcoming public consultations is fundamental in ensuring interested parties have sufficient time to prepare their inputs and thus ensure a meaningful consultation can take place. In some cases, like Brazil, individual regulatory agencies issue regulatory agendas that indicate when public consultations are planned to take place. This is not, however, a consistent practice conducted with a whole-of-government perspective. Mexico is, for the time being, the only country covered that publishes an online list of subordinate regulations to be prepared, modified, reformed or repealed in the next six months.

Figure 10. Forward planning of stakeholder engagement

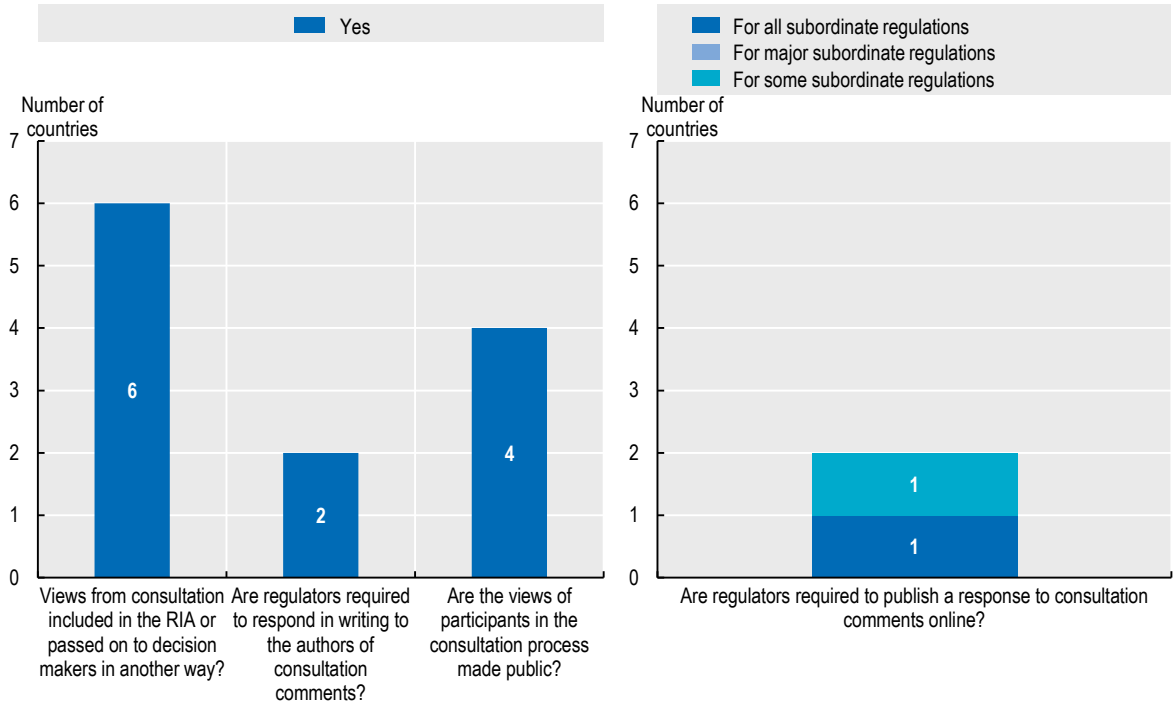


Source: Indicators of Regulatory Policy and Governance (iREG) for Latin America 2016. www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm.

Feedback mechanisms to disclose how and why stakeholders' comments have been taken into consideration are not commonplace in the LAC region. Regardless of whether or not the regulator retains the comments and suggestions gathered through the consultation process, there is an intrinsic value in explaining consultation participants and the broader public the reasons for the final decision. This strengthens the transparency of the regulatory process and may avoid stakeholders' potential scepticism of consultation (OECD, 2015a). Though many countries covered publish the views expressed by participants in the consultation process, written responses to participants, either in form of individual answers or summaries, are not systematically provided (Figure 11).

Despite the lack of feedback mechanisms for consultation participants, most LAC countries covered have put in place means to make sure that consultation comments are passed on to decision makers. This helps prevent consultation from becoming a simple formality and ensures that decision makers take into account stakeholders' views. So far, consultation comments are usually made available to decision makers through consultation reports or included in the regulatory preamble. In future, as the implementation of RIA expands in countries, it would be useful to also include views gathered through consultation in the RIA or RIA summary.

Figure 11. Feedback mechanisms



Source: Indicators of Regulatory Policy and Governance (iREG) for Latin America 2016. www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm.

Establish effective oversight functions to ensure the implementation of stakeholder engagement

Effective oversight functions, located outside the institution preparing the regulation, are essential to ensure the consistent implementation of formal requirements in practice (OECD, 2015b). This is particularly relevant in the context of the LAC countries covered with a view to overcoming the observed implementation gap.

Only a few countries in the region have established oversight bodies with a responsibility in the areas of stakeholder engagement and consultation and often these institutions do not have a sanctioning function to ensure formal requirements are met. In Brazil and Ecuador, the role of such institutions is primarily to advocate good regulatory practices, including consultation, across the administration by developing guidelines and offering training for public officials. In Costa Rica, oversight of consultation is only ensured for technical regulations through the Technical Regulation Unit at the Ministry of Economy, Trade and Industry, which coordinates the development of this type of regulation. Mexico remains thus a singular case where the oversight body acts as an effective gatekeeper ensuring that formal requirements are implemented in practice before a given regulation can be enacted.

The lack of effective oversight functions in the LAC countries covered confirms a situation observed in OECD countries where *oversight and quality control* is the least developed dimension of stakeholder engagement across countries (Arndt et al., 2016). For the time being, effective institutional oversight is mostly limited to countries with well advanced consultation system, whilst it is virtually absent in countries that score below the average in the composite iREG on stakeholder engagement. Yet, OECD countries

have identified oversight functions as essential to bridge the gap between formal requirements and actual practice (OECD, 2015b).

Key areas for improvement

LAC countries may consider a number of potential ways to better embed their engagement with stakeholders in the rule-making process and make it more open, transparent and effective:

- Ensuring legal requirements are in place and cover the whole administration is fundamental to make consultation with stakeholders an integral part of the development of regulations from a whole-of-government perspective. For some countries, this may involve introducing or consolidating and expanding existing requirements.

- Investing in oversight functions to review whether or not stakeholders' views have been effectively taken into account in the development of regulations is essential to address the existing gap between formal requirements and practice.

- Systematically consulting with stakeholders also early in the process would help regulators gather inputs on the nature of the problem and potential solutions before deciding on whether and how to regulate. When conducting consultation on draft regulatory proposals, countries should provide for sufficient time to take stakeholders' comments into account before a final decision is taken.

- The use of single centralised government websites listing all ongoing consultations would help reach out to the widest possible audience and ensure easy access to consultations. Current initiatives in this direction should be pursued with the required resources and co-ordination.

- Introducing binding requirements for minimum periods for all consultations and applying them consistently in practice to ensure stakeholders have sufficient time to prepare their contributions is instrumental in ensuring a meaningful consultation process. Informing the public in advance about consultations planned to take place and about regulations to be introduced, amended or repealed in the future would further strengthen the stakeholder engagement process.

- The methodology of stakeholder engagement could be improved by providing systematically additional documentation that help stakeholders better understand the issue at hand and make informed comments. One way of achieving this and better embed consultation in the rule-making process would be to tie it closely to the RIA process.

- The transparency of stakeholder engagement in LAC countries could be greatly enhanced by providing consultation participants with feedback and how their comments were used, for instance through online summaries.

III. USE OF EVIDENCE IN THE REGULATORY PROCESS

Evidence-based policy making is a key principle of regulatory policy and helps ensure regulations are of high quality and in the public interest. A process based on objective evidence enables policy makers to make informed decisions and thus greatly contributes to better regulatory outcomes (OECD, 2011). It also helps avoid a reflex by policy makers to regulate and safeguards against ad hoc decision making (OECD, 2015b). Through the adoption of the *2012 Recommendation*, OECD countries have agreed to adopt processes and institutions that support evidence-based policy making, including the systematic use of both *ex ante* impact assessment and *ex post* evaluation of regulations (OECD, 2012a).

LAC countries have started investing in the use of Regulatory Impact Assessment

Ex ante Regulatory Impact Assessment (RIA) provides a framework that explores the potential consequences of different policy options on a broad range of issues such as economic development, social well-being and environmental sustainability and is thus a core tool of evidence-based policy making. It is defined as the "systematic process of identification and quantification of benefits and costs likely to flow from regulatory or non-regulatory options for a policy under consideration" (OECD, 2015a). By providing detailed empirical evidence, RIA helps decision makers identify the most efficient and effective approach before a decision is made.

RIA can also be considered as supporting evidence-based decision making that has the potential to strengthen transparency and accountability and helps ensure policy coherence across government. By forcing regulators to disclose information and motivate their decisions based on empirical evidence, RIA fosters transparency and may thus bolster public trust in regulatory institutions and policy makers (OECD, 2015a). The formulation of objectives and desired targets also promotes the accountability of decision makers. As part of the decision-making process, RIA also highlights trade-offs stemming from different policy options thereby ensuring the alignment of regulatory interventions with the broader government agenda (OECD, 2009).

Most LAC countries do not yet make systematically use of evidence through RIA to inform the development of subordinate regulations (Figure 14). Amongst the countries covered, only Mexico has established a well-developed RIA system covering all regulatory proposals put forward by the executive. Costa Rica has put in place a requirement to conduct a RIA, which is limited however to those regulations that create new administrative procedures and formalities. In Brazil, some regulatory agencies have picked up the use of RIA, but it is not a consistent practice across the administration. The limited use of RIA in the LAC region contrasts with the experience in OECD countries, where RIA has come to be universally used by almost all countries (OECD, 2015a).

Figure 12. Adoption of RIA: formal requirements and practice

Source: Indicators of Regulatory Policy and Governance (iREG) for Latin America 2016. www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm.

Despite the lagging implementation of RIA in LAC countries, there have recently been encouraging developments such as pilot projects and the development of guidance, which might facilitate the adoption of the tool in the future. Written guidance that helps officials prepare impact analyses is available in all countries covered, except Peru. Governments should actively encourage the dissemination and use of these methodologies within the executive and ensure methodologies are in line with international best practice.

Countries have also embarked to different degrees on practical experience with RIA through initiatives in specific institutions or pilot projects. Colombia has conducted in 2014-2015 a first series of RIA pilots in different institutions of the executive. In Peru, the Ministry of Economy and Finance has conducted *ex ante* impact assessments on some of the regulations they have issued and the government embarked on a pilot programme to introduce RIA in four ministries, with the advice of the OECD Secretariat. In addition, Ecuador is currently developing new requirements for the development of regulations, which will also include RIA. Chile has some initial experience with *ex ante* impact assessment in the areas of environmental regulation and those affecting SMEs and is about to make RIA a formal requirement. In the past, OECD countries have chosen different paths to introduce RIA (Box 5).

Box 5. Paths to introduce RIA

- **Path 1. A pilot phase, then the institutionalisation of RIA for all regulations**. This has been a largely recurrent way of seeking the introduction of RIA. However, many countries have struggled to capitalise on the pilot phase towards a more general application of RIA as a mandatory administrative requirement.

- **Path 2. Start with the least intrusive methodology, and then expand**. For example, the measurement of administrative burdens through the Standard Cost Model (SCM) is widely seen as a less intrusive method to assess a specific set of impacts of legislation, since the measurement phase is mostly left to external consultants, and no major revolutions in the administrative culture of civil servants are needed in order to bring clear results. That said, the move from the SCM towards a more complete RIA system might take years and a careful management of expectations inside and outside of the administration.

Box 5. Paths to introduce RIA (*cont.*)

- **Path 3. Start from some institutions, and then expand RIA to others**. Government might decide to introduce RIA – whether complete or limited to specific tests e.g. administrative burdens – by looking at the administrations in which the most advanced skills and the most concentrated external stakeholders are located. This would typically be a department or minister in charge of business regulation, of retail trade.

- **Path 4. Start from major regulatory proposals and then lower the threshold to cover less significant regulations**. The European Commission launched its IA system in 2000 by focusing (after two years of pilot phase) at all major proposals included in its yearly work programme. The requirement to carry out an impact assessment relies on whether initiatives are envisaged to have significant economic, social or environmental impacts. Over the years, the system has been gradually extended to cover major delegated and implementing acts (subordinate legislation). On average, around 100 impact assessments have been produced yearly over the past years.

- **Path 5. Start with binding regulation and move to soft-law**. Some countries have realised after years of implementation of the RIA system that soft law, private standards, self- and co-regulation are sometimes more important than traditional, command and control legislation in terms of impacts on the economy and on the incentives of economic agents

- **Path 6. Start with single- or multi-criteria qualitative analysis, and then gradually move to quantitative analysis (for instance Cost-Benefit Analysis or other)**. When a country lacks specific quantitative skills that would enable Cost-Benefit Analysis or similar, this does not mean that no RIA can be introduced, or that RIA will ultimately lose its "scientific" appeal. Adopting a general procedure based on qualitative analysis and requiring administrations to motivate the adoption of a specific course of action as opposed to available alternatives in words or through qualitative-quantitative analysis (e.g. scorecards) is a very valuable step in the introduction of RIA. With the right governance and institutional settings, the move towards more evidence-based, quantitative analysis (if needed) will be dictated, over time, by the need to make the case for regulation against counter-analyses provided by stakeholders, experts or other institutions.

- **Path 7. From concentrated RIA expertise to more distributed responsibilities**. An administration might well lack RIA skills, and the gap might be difficult to fill in the short term. That said, many governments can rely on public or private institutions that can assist in the performance of specific calculations, thus supporting regulatory proposals with evidence. Likewise, some countries have started piloting RIA by training a limited number of employees in the central oversight body, and have then moved towards the appointment of contact persons or reference units for RIA in each of the departments with regulatory power.

Source: Renda, A. (2015), "Regulatory Impact Assessment and Regulatory Policy", in *Regulatory Policy in Perspective: A Reader's Companion to the OECD Regulatory Policy Outlook 2015*, OECD Publishing, Paris.

Whilst RIA methodology and implementation may vary across countries, certain key features ensure the effectiveness of a RIA framework. Experience from OECD countries has shown that the design of the RIA system varies depending on the institutional, social, cultural and legal context of each country (OECD, 2011). Despite these differences, RIA typically follows a common structure, including a problem definition, identification of regulatory options, data collection, assessment of alternative options, identification of the preferred policy option and provisions for monitoring and evaluation (OECD, 2015a).

RIA methodology should take a holistic approach that helps identify the highest net benefits and side effects of potential policy options. There is a tendency amongst OECD countries to put stronger emphasis on regulatory costs rather than the benefits, especially amongst those countries that have less developed RIA systems, thus creating the risk of a "least cost" appraisal exercise (OECD, 2015a). Therefore, RIA should include a systematic comparison of potential positive and negative impacts of a given regulation.

RIA may also be used as a tool to promote broader policy objectives such as inclusive growth and competition through better regulation. Recent OECD research (Deighton-Smith et al., 2016) has highlighted the potential contribution of RIA as a tool to support inclusive growth by including the regulations' impacts on dimensions related to inclusive growth such as the impact on inequality, poverty, unemployment, or specific social groups. A number of OECD countries have taken steps to use RIA in this way. In the LAC region, Mexico is currently planning on including a gender impact assessment in its RIA framework. There is also potential to integrate a systematic competition assessment into the broader RIA process to identify and limit undue restrictions arising from regulations before they are adopted.

The development of an appropriate institutional framework for regulatory oversight greatly supports the implementation of a fully fledged RIA system. In line with the *2012 Recommendation*, the responsibilities of regulatory oversight bodies should include "quality control through the review of the quality of impact assessments and returning proposed rules for which impact assessments are inadequate" (OECD, 2012a). Such oversight functions are critical to ensure the effectiveness of the RIA system and to guarantee regulations are fit-for-purpose.

In the LAC region, these mechanisms are not yet fully developed in most countries. Only COFEMER in Mexico and the Better Regulation Unit at the Ministry of Finance, Industry and Trade in Costa Rica have a clear mandate to review the quality of impact assessments. In Ecuador, it is envisaged that the Unit for Regulatory Improvement and Control, located within the Department of Planning and Development (SENPLADES), will take on these functions.

Efforts to review existing regulations focus on administrative simplification

Ex post evaluation is a critical tool to ensure existing regulations are fit-for-purpose and avoid unintended consequences. The fundamental value of assessing regulations after they have come into force stems from the fact that their full impact, including direct and indirect consequences – intended and unintended – can only be appreciated at the time they have been implemented in practice (OECD, 2015a). The *2012 OECD Recommendation* therefore holds that "the evaluation of existing policies through *ex post* impact analysis is necessary to ensure that regulations are effective and efficient" (OECD, 2012a). *Ex post* evaluation helps thus close the 'regulatory governance cycle' by creating a feedback loop that supports the continuous improvement of the existing regulatory framework. It also has the potential to bolster transparency and accountability, thereby increasing trust in regulatory institutions (OECD, 2015a).

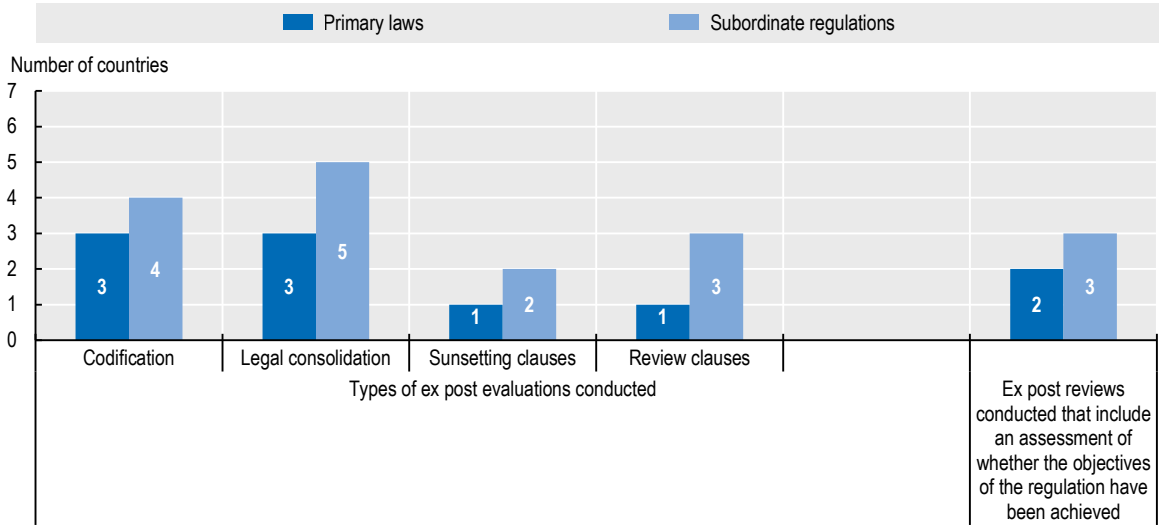
Whilst countries in the LAC region have invested substantially in administrative simplification programmes with a view to reducing burdens for businesses and citizens, most countries have yet to explore the benefits of assessing whether regulations work in practice through periodic *ex post* evaluations of regulations. This is in line with observations in OECD countries where *ex post* evaluation remains the least developed regulatory tool, as compared with *ex ante* RIA and stakeholder engagement (OECD, 2015a).

Introduce systematic ex post *evaluation to ensure regulations achieve their objectives*

Only a few countries in the LAC region have made use of *ex post* evaluation to verify whether regulations have met their intended objectives and to identify potential shortcomings that could help improve the regulatory framework (Figure 13). For instance, Regulatory Commissions in Colombia (*Comisiones Reguladoras*) are legally required to carry out a review of the existing regulatory framework every three years (Box 6). In Mexico, technical standards (*Normas Oficiales Mexicanas*) are by default reviewed every five years and those with 'high impacts' within one year after their implementation. In addition, COFEMER has also carried out ad hoc reviews of existing regulations with the aim to strengthen competition and reduce administrative burdens. Chile presents a unique case in the region as it has

established a dedicated unit in Congress, the Law Evaluation Department, in charge of reviewing primary laws (Box 7).

Figure 13. Types of *ex post* evaluation



Source: Indicators of Regulatory Policy and Governance (iREG) for Latin America 2016. www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm.

The limited experience with *ex post* evaluation to assess the effectiveness of regulations in achieving their goals is also reflected by the different legal instruments used in LAC countries (Figure 13). Whilst a number of countries have engaged in codification and legal consolidation efforts, only Chile and Mexico have made use of 'sunsetting' (i.e. the automatic repeal of regulations a certain number of years after they have come into force) and review clauses.

Box 6. *Ex post* reviews conducted by regulatory commissions in Colombia

The **Communications Regulatory Commission** (CRC) 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 Colombian Pesos237 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** (CRA) 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.

There are many different approaches to conduct *ex post* evaluation, such as programmed reviews of laws and regulations, ad hoc reviews and ongoing 'management' of the regulatory stock (OECD, 2015a). In-depth reviews analyse the accumulated impacts of regulation in a certain sector of the economy rather than evaluating individual regulations in isolation. Experience from OECD countries has shown this type of review yields high returns by identifying areas for potential reform to improve the regulatory framework (OECD, 2013). For example, the Australian Productivity Commission regularly conducts such reviews and makes recommendations to government on how the existing regulatory framework could be improved (Productivity Commission, 2011). In Chile, the National Productivity Commission, which has been established in 2015, also prepares in-depth reviews in pursuing its mandate to advise the government on policies to promote productivity (OECD, 2016b).

Box 7. The Law Evaluation Department of the Chilean Chamber of Deputies

The Chamber of Deputies has made relevant progress in setting up a Law Evaluation Department (LED) that conducts *ex post* evaluations of selected laws. The LED developed a three-stage methodology to evaluate the effectiveness of laws, consisting of a technical analysis of the law, citizens´ perception, and the preparation of a final report. The LED has also designed tools to collect information about citizen perception, such as online questionnaires, online chats, focus groups, and workshops. In addition, it built a database containing registries of civil organisations and experts that regularly participate in legislating, supervising, or representing stakeholders. Reports are published and used as input for discussions on law amendments. The Department is exploring the possibility to also conduct reviews on secondary regulations.

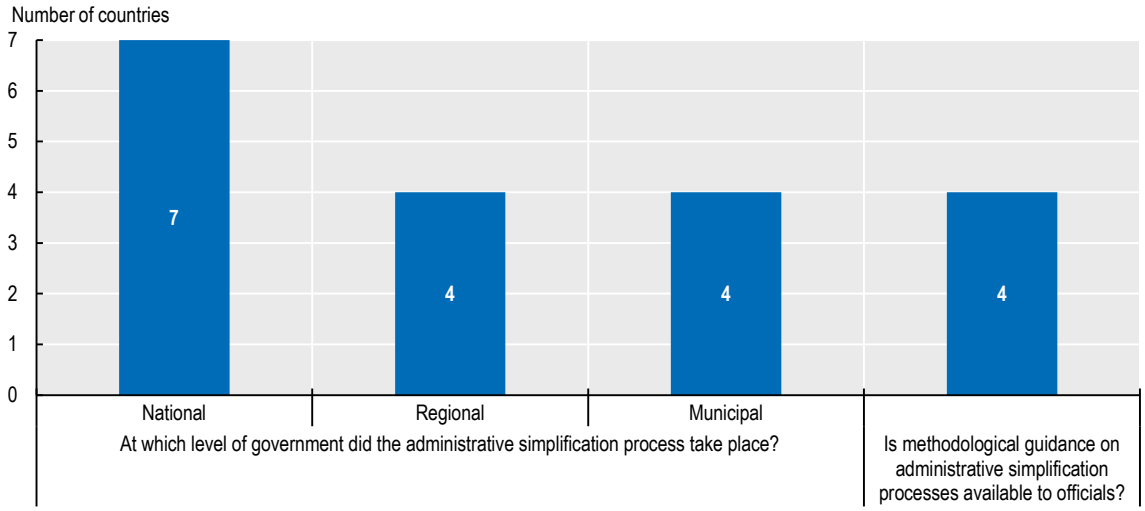
Source: OECD (2015a), *OECD Regulatory Policy Outlook 2015*, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264238770-en.

Ensure a targeted approach to administrative simplification

Administrative simplification attempts to address widespread complaints from business and citizens about red tape and high amounts of paperwork (OECD, 2011). Indeed, the time and resources spent by business and citizens on filling out forms, applying for permits and licences, and on reporting information can produce significant costs to individuals and the economy as a whole. This seems of particular relevance in the LAC region, where the high complexity of regulation and licence and permits systems has been found to be considerable barriers entrepreneurial activity and competition (OECD/IDB, 2016).

All countries covered have taken steps to simplify administrative procedures, including at different levels of government (Figure 14), even though these initiatives mostly take place on an ad hoc basis. In Costa Rica, for instance, several institutions at different levels of government were involved in a process to simplify 41 prioritised procedures to facilitated construction and operation permits. In 2014, the Chilean government set up the *Tu empresa en un día* ("Your Business in one Day") programme destined to facilitate the start-up of new businesses through an online platform (www.empresasenundia.cl). In addition, countries have also made efforts to harmonise all existing formalities and administrative procedures and make them easily accessible online, e.g. through the use of the Single Text of Administrative Procedure in Peru (*TUPA*).

Figure 14. Administrative simplification



Source: Indicators of Regulatory Policy and Governance (iREG) for Latin America 2016. www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm.

Administrative simplification programmes in the LAC region are not systematically targeted on the most burdensome areas of regulation. Methodological guidance on administrative simplification is available in some countries (Figure 14), but in many cases, administrative simplification is carried out on an ad hoc basis without clear target areas or prior engagement with stakeholders. The definition of target areas helps to direct simplification efforts where they have the highest impact. Engaging with stakeholders, for example through the use of perception surveys, can support the identification of the most irritating areas of regulation to make sure simplification programmes are business- and citizen-centred (OECD, 2012b). In addition, quantitative targets strengthen the effectiveness of simplification programmes and foster accountability. The use of such targets could be supported by the use of methodologies like the Standard Cost Model (Box 8). One noticeable example of an administrative burden reduction programme is that of Ecuador. The Unit for Regulatory Improvement and Control is currently assisting the National Transport Agency in its efforts to measure administrative burdens in the transport sector, and to develop a simplification programme.

Box 8. International experiences in the use of the Standard Cost Model (SCM) to measure administrative burdens

Denmark has used the SCM to measure administrative burdens, and committed to a reduction of 25% between 2001 and 2010; whilst recently developing two new projects to address irritants and to match its burden reduction policy more closely to real business needs.

Germany chose the SCM to measure the administrative costs resulting from information obligations included in federal legislation. The target was to reduce administrative costs by 25% between 2006 and the end of 2011 as one of the cornerstones of its Bureaucracy Reduction and Better Regulation programme.

Sweden announced a national net reduction target of 25% by 2010 of business administrative costs stemming from compliance with information obligations in legislation, as defined by application of the SCM for measuring administrative burdens.

Box 8. International experiences in the use of the Standard Cost Model (SCM) to measure administrative burdens (*cont.*)

Portugal set up the objective to reduce administrative burdens on businesses by 25% by 2012. The goal was applicable to all laws, decree laws and decrees of national origin, which have an impact on the life cycle of businesses. It is based on an adapted version of the SCM and its selective application to key legislative and administrative simplification measures. The adjusted SCM includes full compliance costs and covers burdens for citizens. It focuses on information obligations and integrates delays and waiting times to capture the effects of e-government initiatives.

Finland adopted in 2009 one of the most recent programmes aiming at reducing administrative burdens on business by 25% by 2012, among other measures, following a pilot SCM measurement of VAT legislation. The action plan focuses on eight priorities: taxation; statistics; agricultural subsidisation procedures; food safety and quality; employers' reporting obligations; financial reporting legislation; public procurement; and environmental permit procedures. The development of e-government services for businesses is a horizontal priority of the action plan.

Source: OECD (2010), *Why Is Administrative Simplification So Complicated?: Looking beyond 2010, Cutting Red Tape*, OECD Publishing, Paris, pp. 20-22, http://dx.doi.org/10.1787/9789264089754-en.

LAC countries may also consider strengthening the use of ongoing feedback mechanisms that would help identify the most burdensome obligations from the perspective of businesses and citizens. The Commission of Elimination of Bureaucratic Barriers in Peru has put in place an ongoing complaint mechanism by which citizens can flag obligations stemming from regulation that constitute a bureaucratic barrier (OECD, 2016c). When a rule is considered both a "bureaucratic barrier" and not legal, rational or proportionate, the commission can stop its application. Countries in the LAC region would benefit from setting up feedback mechanisms that help ensure stakeholders' views are taken into account when designing administrative simplification programmes.

Key areas for improvement

LAC countries have the potential to improve the quality of regulations by pursuing their current efforts to establish comprehensive RIA systems to make systematic use of evidence when developing and reviewing regulation:

- Expanding formal requirements to encompass all regulations is an essential step to effectively embed RIA in the regulatory process and the use of threshold tests and clear criteria to determine the depth of the analysis would help channel resources where they have the highest impact. In many countries, there is an opportunity to capitalise on existing initiatives and expertise when introducing a fully fledged RIA system.

- With a view to ensuring a smooth implementation of the emerging RIA systems, it is critical to provide for effective mechanisms of quality control of impact assessments carried out by a unit outside the ministry developing the regulation.

- When setting up or further developing their RIA system, it would be beneficial for governments to take a holistic approach to regulatory quality and systematically assess both positive and negative impacts of regulation to help identify the most effective and efficient solution. Given the pressing social policy challenges of persistently high levels of inequality and poverty in the LAC region, countries may also consider using RIA to assess regulations' impacts on dimensions related to inclusive growth.

- Establishing binding legal requirements for *ex post* evaluation is an essential step to ensure laws and regulations are systematically assessed once they have come into effect. Threshold tests for

ex post evaluation could help ensure resources are spent where they yield the highest benefit. Countries might also consider the use of review or 'sunsetting' clauses.

- The comprehensive evaluation of the accumulated effects of regulations in a specific sector or industry through in-depth reviews would help LAC countries to identify reform priorities and enhance the existing regulatory framework.

- Systematically targeting the most burdensome and irritating areas of regulation could increase the effectiveness of their administrative simplification efforts significantly. The active engagement with stakeholders, for example through the use of perception surveys, would greatly support the identification of such target areas.

- Once specific target areas of administrative simplification are identified, the use of quantitative burden reduction targets would help LAC countries to boost the effectiveness of simplification programmes and foster accountability.

CONCLUSION

Countries in Latin America have taken steps to improve their regulatory governance framework by investing in processes and institutions that support inclusive and evidence-based policy making. However, important gaps remain in most countries in terms of the implementation of key tools, such as consultation with stakeholders and Regulatory Impact Assessment (RIA). An appropriate institutional framework, including oversight of the regulatory process, is needed to support the systematic implementation of regulatory policy from a whole-of-government perspective. Governments in the LAC region should pursue and boost current reform efforts and further invest in place processes and institutions that support regulatory quality. Whilst drawing some general conclusions for the LAC region, this paper has focussed in particular on regulatory policy developments in seven countries (Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico and Peru) covered by an in-depth survey on regulatory practices. The analysis of tools supporting the development of regulations (RIA and consultation) focusses on subordinate regulations, which are a substantial part of regulations in LAC countries.

Countries in the LAC region have started developing a whole-of-government approach to regulatory quality, though in many countries the existing programmes and efforts still need to be streamlined into a more consistent and comprehensive strategy. In particular, countries' strategies often focus on reducing administrative burdens of administrative procedures. Countries in the LAC region would benefit from adopting a more holistic approach to regulatory quality that ensures that both costs as well as benefits arising from regulation are systematically assessed. High-level political support will be needed to sustain and further develop such a whole-of-government approach to regulatory quality.

All countries covered in this paper have put in place practices to consult with stakeholders in the development of regulation, but important differences remain in terms of scope and implementation across countries and institutions. They have all adopted formal requirements to engage with stakeholders in the development of subordinate regulations, but in some countries they do not apply to all regulations or leave substantial leeway to the regulator. In these cases, consolidating and expanding existing requirements would help LAC countries set clear and binding criteria for the whole administration. In most countries, the implementation of formal requirements lags behind and, thus, stakeholder engagement is not yet

systematically used in practice to inform the development of regulations, revealing a persistent implementation gap.

LAC countries could improve the methodology and transparency of stakeholder engagement and better embed it in the rule-making process. Whilst consultation in all LAC countries focusses primarily on draft regulatory proposals, engaging with stakeholders also at an earlier stage would allow governments to gather views on the nature of the problem and possible solutions before a decision is taken. Countries would benefit from consistently applying minimum periods for consultation to allow for sufficient time when soliciting comments from the public. Although Brazil and Mexico have already done so, other countries would benefit from systematically opening consultations to the general public and raising awareness about the opportunity to participate. One option would be centralised government websites that list all ongoing consultations. Finally, although countries covered usually publish the views expressed in the consultation process, they can foster transparency by providing written response, either individually or in form of an online summary.

Except for Mexico, most countries in the LAC region do not make systematic use of evidence through RIA across the administration to inform the development of regulations and ensure they are fit-for-purpose. However, pilot projects or initiatives in specific sectors as well as the development of guidance in some countries are encouraging developments. LAC countries would benefit from establishing or expanding formal requirements to encompass all regulations with a view to embed RIA in their regulatory process. LAC countries have an opportunity to capitalise on the existing initiatives and expertise to facilitate the introduction of a fully-fledged RIA system. A holistic approach to regulation looking at both benefits and costs of regulation would help identify the most efficient and effective solution. The consistent implementation of RIA needs to be supported by the development of an appropriate institutional framework.

Countries in the LAC region have focussed their efforts of reviewing the existing stock of regulation on administrative simplification and most of them do not assess whether laws and regulations achieve their objectives in practice. All countries covered in the analysis have conducted administrative simplification procedures, including at different levels of government. These efforts could be better targeted by soliciting stakeholders' views on the most burdensome areas of regulation and quantified reduction targets would enhance the effectiveness of such programmes. Only a few LAC countries have made use of *ex post* evaluation to ensure regulations are fit-for-purpose. Introducing binding legal requirements to carry out periodic reviews of laws and regulations would help ensure they achieve their objectives in practice and limit negative side-effects. Threshold tests may help channel resources where they have the highest impact. In-depth reviews of the accumulated impacts of regulation in specific sectors can inform regulatory reform and yield high benefits.

An appropriate institutional framework, in particular oversight of the regulatory process, is needed to overcome the existing implementation gap and ensure the effective application of good regulatory practices. Although most countries in the region have established bodies responsible for regulatory policy, their functions often focus on promoting the adoption of good regulatory practices by providing guidance and training. Most LAC countries still lack effective institutional oversight of the regulatory process. As of now, oversight bodies do not have a mandate to review the quality of impact assessments and ensure consultation requirements have been met. Countries in the LAC region should invest in regulatory oversight functions performed by a body outside the ministry preparing the regulation to ensure that formal requirements for the use of regulatory tools, like public consultation and RIA and *ex post* evaluation, are implemented in practice.

REFERENCES

Arndt, C., Custance Baker, A., Querbach, T., Schultz, R. (2015), "2015 Indicators of Regulatory Policy and Governance: Design, Methodology and Key Results", *OECD Regulatory Policy Working Papers*, No. 1, OECD Publishing, Paris. http://dx.doi.org/10.1787/5jrnwqm3zp43-en.

Deighton-Smith, R., A. Erbacci and C. Kauffmann (2016), "Promoting inclusive growth through better regulation: The role of regulatory impact assessment", *OECD Regulatory Policy Working Papers*, No. 3, OECD Publishing, Paris. http://dx.doi.org/10.1787/5jm3tqwqp1vj-en.

Lind, A. and C. Arndt (2016), "Perceived Fairness and Regulatory Policy – A behavioural sciences perspective on government-citizen interactions", *OECD Regulatory Policy Working Papers, No. 6*, OECD Publishing, Paris, Forthcoming.

OECD/IDB, (2016), *Government at a Glance: Latin America and the Caribbean 2017*, OECD Publishing, Paris, Forthcoming.

OECD (2016a), *Promoting Productivity for Inclusive Growth in Latin America*, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264258389-en.

OECD (2016b), *Regulatory Policy in Chile: Government Capacity to Ensure High-Quality Regulation*, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264254596-en.

OECD (2016c), *Regulatory Policy in Peru: Assembling the Framework for Regulatory Quality*, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264260054-en.

OECD (2015a), *OECD Regulatory Policy Outlook 2015*, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264238770-en.

OECD (2015b), "Embedding Regulatory Policy in Law and Practice", 7th OECD Meeting on Measuring Regulatory Performance: Policy Findings and Workshop Proceedings. www.oecd.org/gov/regulatory-policy/Reykjavik-workshop-proceedings.pdf.

OECD (2013), "Assessing progress in the implementation of the 2012 Recommendation of the OECD Council on Regulatory Policy and Governance", 5th OECD Meeting on Measuring Regulatory Performance: Policy Findings and Workshop Proceedings. www.oecd.org/regreform/regulatory-policy/Proceedings-Sweden-Workshop.pdf.

OECD (2012a), *Recommendation of the Council on Regulatory Policy and Governance*, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264209022-en.

OECD (2012b), *Measuring Regulatory Performance: A Practitioner's Guide to Perception Surveys*, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264167179-en.

OECD (2011), *Regulatory Policy and Governance: Supporting Economic Growth and Serving the Public Interest*, OECD Publishing. http://dx.doi.org/10.1787/9789264116573-en.

OECD (2010), *Why Is Administrative Simplification So Complicated?: Looking beyond 2010, Cutting Red Tape*, OECD Publishing, Paris, pp. 20-22, http://dx.doi.org/10.1787/9789264089754-en.

OECD (2009), *Regulatory Impact Analysis: A Tool for Policy Coherence*, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264067110-en.

Productivity Commission (2011), *Identifying and Evaluating Regulation Reforms*, Research Report, Canberra. www.pc.gov.au/inquiries/completed/regulation-reforms/report.

ANNEX A

COUNTRY PROFILES

Brazil

Broaden the scope of regulatory policy

The regulatory policy agenda in Brazil has so far strongly focussed on regulatory agencies. In 2007 the Brazilian government established the *Programme for the Strengthening of Institutional Capacity for Regulatory Management* (PRO-REG). Coordinated from within the Civil House of the Presidency close to the centre of government, PRO-REG seeks to promote the use of good regulatory practices by training officials in regulatory agencies and strengthening the coordination between regulatory institutions. There is need to broaden the scope of PRO-REG and the regulatory policy agenda in general from its current focus on regulatory agencies to ensure an integrated whole-of-government approach to regulatory quality supported at the highest political level.

Align the use of public consultation across the administration

Brazil has established a fairly advanced system to engage with stakeholders in the development of regulations but practices vary across the administration. Formal requirements to conduct consultation with the public are spelled out in the Federal Administrative Procedures Law and in the respective laws and regulations that establish and govern regulatory agencies. Whilst regulatory agencies usually conduct public consultation over the internet and in some cases public hearings on all regulations they issue, the practice in ministries is less coherent even though proposals of major importance usually undergo public consultation. To ensure a meaningful stakeholder engagement process, it would be important to consolidate existing requirements and align practices across the whole administration.

Expand the use of Regulatory Impact Assessment gradually

The use of evidence in the regulatory process through *ex ante* Regulatory Impact Assessments (RIA) has been picked up by several regulatory agencies, where it also supports the consultation process. However this is not yet a consistent practice across the whole administration. It would thus be important to harmonise RIA methodology and expand its use with a focus on regulations with major impacts. Establishing independent quality control through a body outside the institution preparing the regulation would support the effective implementation of RIA.

Invest in ex post *evaluation*

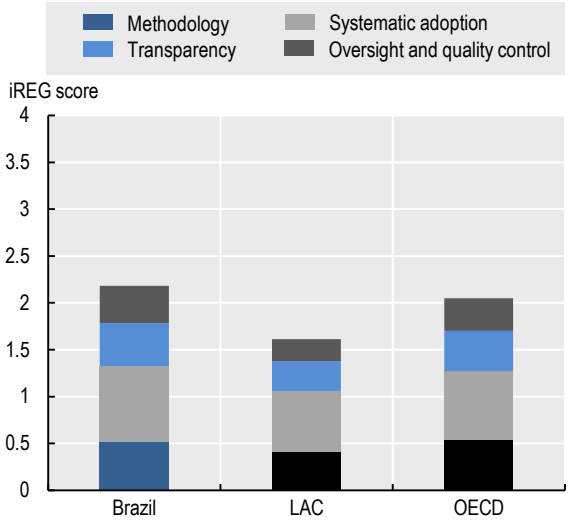
Whilst some regulatory agencies have started investing in administrative simplification processes, including by consulting with stakeholders, the systematic use of *ex post* evaluation to assess whether regulations achieve their objectives is mostly unexplored. The introduction of a threshold test for *ex post* evaluation might help allocate resources where they have the biggest impact. In addition, in-depth evaluations of regulations in specific sectors might help identify potential areas for reform.

Spotlight: Public consultation and discussion forum by Anatel

The Brazilian National Telecommunications Agency (Anatel) conducts public consultations on regulatory interventions through its online platform, SACP (www.sistemas.anatel.gov.br/SACP). During a minimum period of at least 10 days every citizen has the opportunity to provide comments and suggestions on all regulatory proposals under development. This minimum period can be longer depending on the complexity of the issue at hand and may be extended upon request. Documentation such as the explanatory memorandum, RIA and the draft regulation itself supports the consultation process. Anatel also publishes biennial regulatory agendas to inform stakeholders about regulations in advance. In a final report, the agency responds to the contributions made justifying why comments were or were not accepted. In addition, users have the opportunity to discuss and provide feedback on regulatory proposals by reacting to each other's comments on the interactive forum *Diálogo Anatel* (www.anatel.gov.br/dialogo).

Stakeholder engagement in developing subordinate regulation: Brazil

Composite indicator



Note: The figure displays the total aggregate score across the four separate categories of the composite indicator. The maximum score for each category is one and the maximum score for the aggregate indicator is four. The more regulatory practices as advocated in the *2012 OECD Recommendation on Regulatory Policy and Governance* a country has implemented, the higher its indicator score.

The data on LAC countries include: Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico and Peru. They reflect the situation as of 31 December 2015. Data on OECD countries cover 34 OECD countries and reflect the situation as of 31 December 2014.

Source: Indicators of Regulatory Policy and Governance (iREG) for Latin America 2016. Indicators of Regulatory Policy and Governance (iREG) 2015. www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm.

Regulatory Impact Assessment (RIA)

	Brazil	LAC	OECD
Requirement to conduct RIA	Some subordinate regulations	All (2); Major (0); Some subordinate regulations (1); Never (4)	All (22); Major (6); Some subordinate regulations (4); Never (2)
RIA conducted in practice	Some subordinate regulations	All (1); Major (0); Some subordinate regulations (3); Never (3)	All (16); Major (8); Some subordinate regulations (7); Never (3)
RIA quality check by government body outside the ministry preparing the regulation	No	Yes (2); No (5)	Yes (25); No (9)
Written guidance on the preparation of RIA provided	Yes	Yes (6); No (1)	Yes (33); No (1)

Note: The data on LAC countries include: Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico and Peru. They reflect the situation as of 31 December 2015. Data on OECD countries cover 34 OECD countries and reflect the situation as of 31 December 2014.

Source: Indicators of Regulatory Policy and Governance (iREG) for Latin America 2016. Indicators of Regulatory Policy and Governance (iREG) 2015. www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm.

Ex post evaluation and administrative simplification

		Brazil	LAC
Administrative simplification processes in the last four years		Yes	Yes (7); No (0)
Ex post reviews conducted that include an assessment of whether the objectives of the regulation have been achieved	Primary laws	No	Yes (2); No (5)
	Subordinate regulations	No	Yes (3); No (4)

Note: The data on LAC countries include: Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico and Peru. They reflect the situation as of 31 December 2015.

Source: Indicators of Regulatory Policy and Governance (iREG) for Latin America 2016. Indicators of Regulatory Policy and Governance (iREG) 2015. www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm.

General trends and institutional setting

	Brazil	LAC	OECD
Explicit, published regulatory policy exists	Yes	Yes (5); No (2)	Yes (32); No (2)
Minister / high-level official accountable for promoting regulatory reform	No	Yes (4); No (3)	Yes (28); No (6)
Body responsible for promoting regulatory policy and reporting on regulatory quality	Yes	Yes (5); No (2)	Yes (32); No (2)

Note: The data on LAC countries include: Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico and Peru. They reflect the situation as of 31 December 2015. Data on OECD countries cover 34 OECD countries and reflect the situation as of 31 December 2014.

Source: Indicators of Regulatory Policy and Governance (iREG) for Latin America 2016. Indicators of Regulatory Policy and Governance (iREG) 2015. www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm.

Chile

Consolidate existing efforts and establish oversight functions

Chile lacks a comprehensive approach to regulatory quality, but elements that could support such a strategy can be found in existing documents and practices. For instance, the National Agenda for Productivity, Innovation and Growth 2014-2018 lays out measures to improve regulatory governance and the quality of regulation. Also institutional responsibility for regulatory management is scattered across the administration. The Ministry General-Secretariat of the Presidency (SEGPRES) is responsible for legal quality and digital government, whilst the Ministry of Economy, Development and Tourism is in charge of policies related to productivity, including current regulatory instruments for SMEs. Chile should consolidate and foster the existing schemes by adopting an explicit whole-of-government policy and support its implementation by establishing an oversight body.

Make systematic use of consultation to strengthen transparency

In Chile, there is no general requirement for stakeholder engagement and, in practice, consultation is not systematically used. However, there are specific requirements to engage with stakeholders on matters related to indigenous people's rights, some environmental issues and international trade. The Open Government portal (*Gobierno Abierto*) includes a webpage, which is also used to solicit comments on draft regulatory proposals. Chile would benefit from using consultation more systematically and could, for that purpose, introduce formal requirements and guidelines to ensure taking into account stakeholders' views and boost transparency of the regulatory process.

New ex ante *impact assessment of primary legislation*

Chile does not yet make systematically use of evidence in the development of new regulations through Regulatory Impact Assessment but there are targeted initiatives to assess likely impacts in specific cases, such as the environment and SMEs. In November 2016, a new presidential instruction was issued requiring ministries to prepare a report on the impacts on productivity of draft primary legislation. Pending the development of a methodology, the new requirement is expected to be implemented in early 2017. Chile may wish to consider expanding the new requirement to also cover subordinate regulation and assess further impacts.

Introduce ex post *evaluation for subordinate regulations*

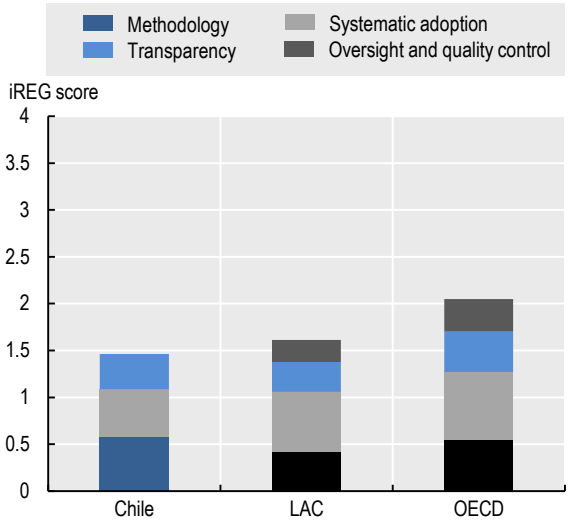
Though regulations are not systematically reviewed *ex post*, some encouraging initiatives have been taken forward. The Law Evaluation Department of the Chamber of Deputies conducts *ex post* evaluations of selected laws and the new National Productivity Commission advises the government on how the regulatory framework can boost productivity (see below). Chile has also undertaken different administrative simplification measures such as the recently launched *Escritorio Empresa* ('Business Desk'), a systematic effort to simplify procedures and integrate them in a digital one-stop-shop. Chile may consider the introduction of periodic reviews of subordinate regulations to complement the existing efforts for primary laws.

Spotlight: National Productivity Commission

In February 2015, the National Productivity Commission (CNP) was created as a permanent body to provide independent advice to government on policies designed to increase long-term growth and the wellbeing of citizens through productivity gains. The CNP carries out analyses and makes recommendations relating to the design, implementation and evaluation of policies and reforms to stimulate productivity. It may also prepare studies, publish data and information and make proposals in areas it identifies as priorities. Consultation will be a central tool to inform the Commission's analyses. This new body has considerable potential to inform regulatory reforms in a wide range of areas.

Stakeholder engagement in developing subordinate regulation: Chile

Composite indicator



Note: The figure displays the total aggregate score across the four separate categories of the composite indicator. The maximum score for each category is one and the maximum score for the aggregate indicator is four. The more regulatory practices as advocated in the *2012 OECD Recommendation on Regulatory Policy and Governance* a country has implemented, the higher its indicator score.

The data on LAC countries include: Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico and Peru. They reflect the situation as of 31 December 2015. Data on OECD countries cover 34 OECD countries and reflect the situation as of 31 December 2014.

Source: Indicators of Regulatory Policy and Governance (iREG) for Latin America 2016. Indicators of Regulatory Policy and Governance (iREG) 2015. www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm.

Regulatory Impact Assessment (RIA)

	Chile	LAC	OECD
Requirement to conduct RIA	Never	All (2); Major (0); Some subordinate regulations (1); Never (4)	All (22); Major (6); Some subordinate regulations (4); Never (2)
RIA conducted in practice	Never	All (1); Major (0); Some subordinate regulations (3); Never (3)	All (16); Major (8); Some subordinate regulations (7); Never (3)
RIA quality check by government body outside the ministry preparing the regulation	No	Yes (2); No (5)	Yes (25); No (9)
Written guidance on the preparation of RIA provided	Yes	Yes (6); No (1)	Yes (33); No (1)

Note: The data on LAC countries include: Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico and Peru. They reflect the situation as of 31 December 2015. Data on OECD countries cover 34 OECD countries and reflect the situation as of 31 December 2014.

Source: Indicators of Regulatory Policy and Governance (iREG) for Latin America 2016. Indicators of Regulatory Policy and Governance (iREG) 2015. www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm.

Ex post evaluation and administrative simplification

		Chile	LAC
Administrative simplification processes in the last four years		Yes	Yes (7); No (0)
Ex post reviews conducted that include an assessment of whether the objectives of the regulation have been achieved	Primary laws	Yes	Yes (2); No (5)
	Subordinate regulations	Yes	Yes (3); No (4)

Note: The data on LAC countries include: Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico and Peru. They reflect the situation as of 31 December 2015.

Source: Indicators of Regulatory Policy and Governance (iREG) for Latin America 2016. Indicators of Regulatory Policy and Governance (iREG) 2015. www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm.

General trends and institutional setting

	Chile	LAC	OECD
Explicit, published regulatory policy exists	No	Yes (5); No (2)	Yes (32); No (2)
Minister / high-level official accountable for promoting regulatory reform	No	Yes (4); No (3)	Yes (28); No (6)
Body responsible for promoting regulatory policy and reporting on regulatory quality	No	Yes (5); No (2)	Yes (32); No (2)

Note: The data on LAC countries include: Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico and Peru. They reflect the situation as of 31 December 2015. Data on OECD countries cover 34 OECD countries and reflect the situation as of 31 December 2014.

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Colombia

Consolidate oversight functions with a clear mandate

Colombia has adopted different policies aiming to improve the quality of regulation but these efforts are not yet consolidated in a consistent approach. Conpes document 3816 from 2014 sets the agenda for the introduction of Regulatory Impact Assessment (RIA) whilst the National Development Plan 2014-2018 covers consultation and administrative burden reduction. Likewise, the institutional landscape for regulatory policy is fragmented. The National Planning Department (DNP) leads the implementation of the Conpes 3816 and is responsible for the diffusion of good regulatory practices across the government, whilst the Administrative Department of the Public Function (DAFP) has a leading role in reducing administrative burdens. In addition, the Ministry of Trade, Industry and Tourism co-ordinates and reviews proposed technical regulations. Consolidating oversight functions in a single institution backed up with a clear mandate would support the effective implementation of good regulatory practices.

Open up consultation on a systematic basis

In line with the Code of Administrative Procedure and Disputes, all regulators are formally required to consult with stakeholders in the preparation of regulation but this is not consistently implemented in practice. Various forms of stakeholder engagement, including consultation with interest groups and technical roundtables, are used at different stages of the regulatory process. Ministries also use their own consultation websites to seek comments from the general public on draft regulatory proposals. Colombia is currently developing a centralised public consultation system (SUCOP), which is expected to feature the use of regulatory agendas and RIA. The effective implementation of SUCOP has the potential to strengthen the transparency and openness of stakeholder engagement and ensure its systematic use.

Introduce a RIA system to support evidence-based policy making

Colombia is currently undertaking efforts to introduce a RIA system to support evidence-based policy making. The government has developed methodological guidance and has run a first set of four RIA pilots in different institutions of the executive. To ensure a consistent implementation of the planned RIA system, oversight functions to check the quality of RIA outside the ministry developing the regulation is needed.

Expand the use of ex post *evaluation to ensure regulations work in practice*

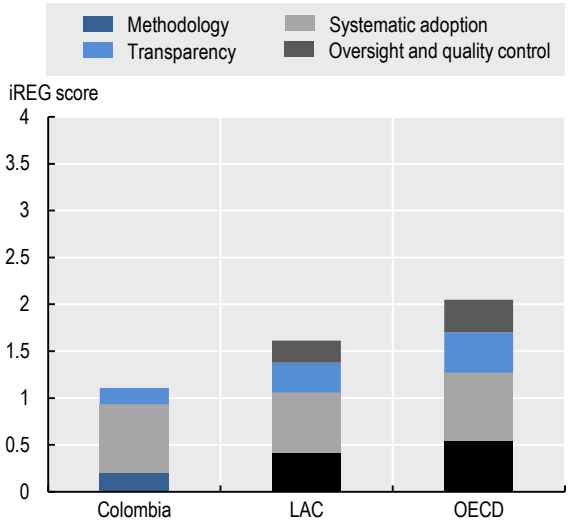
In the recent past, administrative simplification measures have been carried out at different levels of government, but the potential of *ex post* evaluation to systematically assess how regulations work in practice is not yet fully exploited. Whilst regulatory commissions in Colombia carry out an *ex post* evaluation of the regulatory framework of their respective sector every three years, a more systematic approach to *ex post* evaluation across the administration, would help ensure regulations achieve their objectives in practice.

Spotlight: Online participation through *Urna de Cristal* (Glass Case)

Urna de Cristal (www.urnadecristal.gov.co), a presidential initiative, is an online platform for civic participation and government transparency with the objective to inform citizens about the government's activity and to stimulate discussions and collect citizens' views on a wide range of topics. Discussions are structured around specific questions that can either be brought forward by the government or by citizens and that allow for an interactive exchange between the users. Feedback received through the use of *Urna de Cristal* informed the development of the 'Anti-paperwork Law' (*Ley anti-trámites*) by identifying formalities that were not necessary or leading to corruption and inefficiency.

Stakeholder engagement in developing subordinate regulation: Colombia

Composite indicator



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Regulatory Impact Assessment (RIA)

	Colombia	LAC	OECD
Requirement to conduct RIA	Never	All (2); Major (0); Some subordinate regulations (1); Never (4)	All (22); Major (6); Some subordinate regulations (4); Never (2)
RIA conducted in practice	Never	All (1); Major (0); Some subordinate regulations (3); Never (3)	All (16); Major (8); Some subordinate regulations (7); Never (3)
RIA quality check by government body outside the ministry preparing the regulation	No	Yes (2); No (5)	Yes (25); No (9)
Written guidance on the preparation of RIA provided	Yes	Yes (6); No (1)	Yes (33); No (1)

Note: The data on LAC countries include: Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico and Peru. They reflect the situation as of 31 December 2015. Data on OECD countries cover 34 OECD countries and reflect the situation as of 31 December 2014.

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Ex post evaluation and administrative simplification

		Colombia	LAC
Administrative simplification processes in the last four years		Yes	Yes (7); No (0)
Ex post reviews conducted that include an assessment of whether the objectives of the regulation have been achieved	Primary laws	No	Yes (2); No (5)
	Subordinate regulations	Yes	Yes (3); No (4)

Note: The data on LAC countries include: Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico and Peru. They reflect the situation as of 31 December 2015.

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General trends and institutional setting

	Colombia	LAC	OECD
Explicit, published regulatory policy exists	Yes	Yes (5); No (2)	Yes (32); No (2)
Minister / high-level official accountable for promoting regulatory reform	Yes	Yes (4); No (3)	Yes (28); No (6)
Body responsible for promoting regulatory policy and reporting on regulatory quality	Yes	Yes (5); No (2)	Yes (32); No (2)

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Costa Rica

Embrace an all-encompassing approach to regulatory quality

The regulatory policy agenda in Costa Rica is closely tied to the government's strategy to limit burdens for citizens and business from administrative procedures and formalities, which is articulated through Law 8220 on Protection from the Excess of Requirements and Administrative Procedures. Institutional responsibility for regulatory policy lies with the Better Regulation Unit, located at the Ministry of Economy, Industry and Trade (MEIC). Having set the necessary institutional and legal foundations, Costa Rica would benefit from broadening the scope of its regulatory policy agenda from its current focus on administrative procedures and formalities to embrace an all-encompassing approach to regulatory quality.

Ensure the systematic use of consultation

In Costa Rica, stakeholder engagement takes place at different stages of the rule-making process but not yet on a systematic basis. In line with the General Law of Public Administration, interested parties should be given the opportunity to comment on draft regulations for a period of 10 days but, in practice, consultation with the general public is only used to inform the development of some regulations. The administration also uses other forms of engaging stakeholders such as working groups with industry and labour representatives. Consultation needs to be better embedded in the rule-making process to ensure it is systematically used in practice. Linking it to Regulatory Impact Assessment (RIA) through the implementation of the new digital Preliminary Control System (SICOPRE) is a good way forward.

Extend the scope of Regulatory Impact Assessment

As per Law 8220, all public entities must carry out an *ex ante* cost-benefit analysis of those regulations that establish administrative procedures and formalities. The standardised form includes amongst others an appreciation of the expected impacts, costs and benefits, and MEIC is responsible to ensure the accomplishment and quality of the analysis. The implementation of SICOPRE has the potential to greatly enhance the transparency of the RIA process and support evidence-based decision making. It would be important to extend the use of RIA to cover all regulations rather than to focus only on administrative procedures and formalities.

Focus ex post *evaluation on the achievement of objectives*

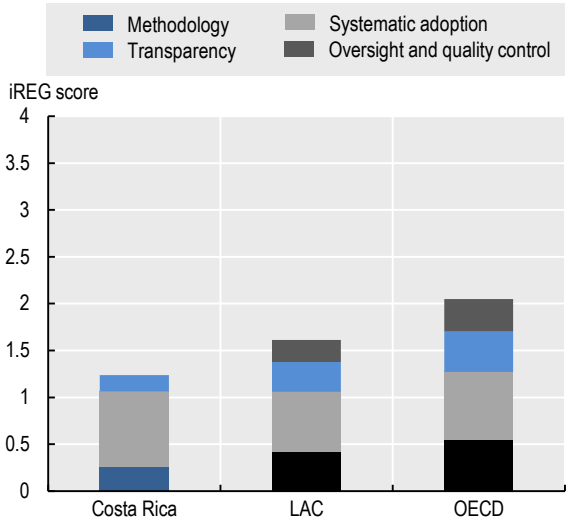
The review of existing regulations in Costa Rica focusses chiefly on reducing administrative burdens. Though Law 8220 also provides the Better Regulation Unit at MEIC with the authority to conduct *ex post* evaluations of regulations, this has not been fully realised yet in practice as the unit lacks capacities. It would be important to endow the unit with sufficient resources and include in evaluations an assessment of whether regulations achieve their objectives to ensure there are no unintended consequences and the regulation is the best solution to the problem.

Spotlight: Preliminary Control System (SICOPRE) and cost-benefit form

Costa Rica is currently implementing its new Preliminary Control System (SICOPRE), which will digitise and integrate the cost-benefit forms of all new regulations on a single electronic platform (controlprevio.meic.go.cr). On this platform, government officials will answer a set of checking questions and, if applicable, fill in the full cost-benefit analysis. The analysis includes a description of the objectives of the regulation, alternatives considered, expected impacts, which are quantified by different groups if possible, and considerations regarding compliance and enforcement. The platform will also support public consultation by making all ongoing consultations and supporting documentation accessible on a single website.

Stakeholder engagement in developing subordinate regulation: Costa Rica

Composite indicator



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Regulatory Impact Assessment (RIA)

	Costa Rica	LAC	OECD
Requirement to conduct RIA	All subordinate regulations	All (2); Major (0); Some subordinate regulations (1); Never (4)	All (22); Major (6); Some subordinate regulations (4); Never (2)
RIA conducted in practice	Some subordinate regulations	All (1); Major (0); Some subordinate regulations (3); Never (3)	All (16); Major (8); Some subordinate regulations (7); Never (3)
RIA quality check by government body outside the ministry preparing the regulation	Yes	Yes (2); No (5)	Yes (25); No (9)
Written guidance on the preparation of RIA provided	Yes	Yes (6); No (1)	Yes (33); No (1)

Note: The data on LAC countries include: Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico and Peru. They reflect the situation as of 31 December 2015. Data on OECD countries cover 34 OECD countries and reflect the situation as of 31 December 2014.

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Ex post evaluation and administrative simplification

		Costa Rica	LAC
Administrative simplification processes in the last four years		Yes	Yes (7); No (0)
Ex post reviews conducted that include an assessment of whether the objectives of the regulation have been achieved	Primary laws	No	Yes (2); No (5)
	Subordinate regulations	No	Yes (3); No (4)

Note: The data on LAC countries include: Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico and Peru. They reflect the situation as of 31 December 2015.

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General trends and institutional setting

	Costa Rica	LAC	OECD
Explicit, published regulatory policy exists	Yes	Yes (5); No (2)	Yes (32); No (2)
Minister / high-level official accountable for promoting regulatory reform	Yes	Yes (4); No (3)	Yes (28); No (6)
Body responsible for promoting regulatory policy and reporting on regulatory quality	Yes	Yes (5); No (2)	Yes (32); No (2)

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Ecuador

Institutional foundations for regulatory quality are in place

Whilst Ecuador has already adopted some core principles and laid the institutional foundations for regulatory policy, the country is currently in the process of embedding the use of regulatory tools in law and in practice. The National Development Plan 2013-17 establishes the objective to improve the state's regulatory capacity and the government is currently implementing technical tools for *ex ante* and *ex post* evaluation and capacity building amongst stakeholders. A new legal instrument will spell out the specific requirements for the development of new regulations. The Unit for Regulatory Improvement and Control, located within the Department of Planning and Development (SENPLADES), is responsible for the design of regulatory policies and strategies to improve regulatory capacities within the executive, for instance by issuing guidelines and methodologies.

Engage with stakeholders systematically at all stages

Stakeholder engagement is not systematically used to inform the development of regulations across the whole administration and focusses exclusively at a late stage in rule-making process. There is no requirement to conduct consultation that covers the whole administration and practices vary greatly. Some regulatory agencies make frequently use of public consultations and have put in place dedicated websites, but this is not the case for other parts of the administration. A new legal instrument is currently under development to define the criteria and procedures for public consultation, which has the potential to harmonise consultation and systematically implement it in practice. It would be important to also seek stakeholders' views early on the nature of the problem and potential solutions before taking a decision to regulate.

Take steps to embed RIA in the rule-making process

Whilst the use of evidence through *ex ante* Regulatory Impact Assessment (RIA) is not yet embedded in the rule-making process, there are some encouraging developments that could support the systematic adoption of RIA. It is planned that the new proposed legal instrument will make RIA mandatory for those regulatory proposals that the Unit for Regulatory Improvement and Control considers relevant on basis of their expected impact. It is also planned that the Unit for Regulatory Improvement and Control will be responsible for revising the quality of RIAs to ensure its consistent implementation in practice.

Make use of ex post *evaluation to ensure regulations work in practice*

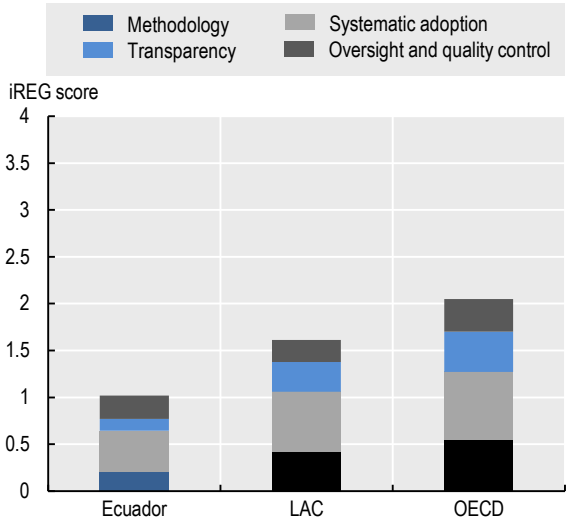
Ecuador has focussed their efforts to review the stock of regulation on reducing administrative burdens. In the recent past, different regulators carried out administrative simplification programmes, for instance in the areas of transport or oil and gas. In addition, an Inter-institutional Committee for Simplifying Formalities was established in 2013 with the objective to better coordinate, simplify and streamline administrative procedures. Ecuador would benefit from the introduction of systematic *ex post* evaluation, which should include an assessment on whether regulations achieve their objectives.

Spotlight: Arcotel online system for public hearings

In May 2015, the Ecuadorian telecommunications regulator Arcotel adopted its own legal requirements for public consultation, which is based on guidance provided by the Unit for Regulatory Improvement and Control. In line with the requirement, every regulatory proposal brought forward by Arcotel needs to undergo public consultation over the internet followed by a physical public hearing. Members of the public can submit their comments through the online system for public hearings (sisap.arcotel.gob.ec). The consultation process is supported by the draft proposal and a report, which states the objective and a justification of the regulatory response. After the online and physical hearings, Arcotel publishes a summary of comments received and the institution's response.

Stakeholder engagement in developing subordinate regulation: Ecuador

Composite indicator



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Regulatory Impact Assessment (RIA)

	Ecuador	LAC	OECD
Requirement to conduct RIA	Never	All (2); Major (0); Some subordinate regulations (1); Never (4)	All (22); Major (6); Some subordinate regulations (4); Never (2)
RIA conducted in practice	Never	All (1); Major (0); Some subordinate regulations (3); Never (3)	All (16); Major (8); Some subordinate regulations (7); Never (3)
RIA quality check by government body outside the ministry preparing the regulation	No	Yes (2); No (5)	Yes (25); No (9)
Written guidance on the preparation of RIA provided	Yes	Yes (6); No (1)	Yes (33); No (1)

Note: The data on LAC countries include: Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico and Peru. They reflect the situation as of 31 December 2015. Data on OECD countries cover 34 OECD countries and reflect the situation as of 31 December 2014.

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***Ex post* evaluation and administrative simplification**

		Ecuador	LAC
Administrative simplification processes in the last four years		Yes	Yes (7); No (0)
Ex post reviews conducted that include an assessment of whether the objectives of the regulation have been achieved	Primary laws	No	Yes (2); No (5)
	Subordinate regulations	No	Yes (3); No (4)

Note: The data on LAC countries include: Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico and Peru. They reflect the situation as of 31 December 2015.

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General trends and institutional setting

	Ecuador	LAC	OECD
Explicit, published regulatory policy exists	Yes	Yes (5); No (2)	Yes (32); No (2)
Minister / high-level official accountable for promoting regulatory reform	Yes	Yes (4); No (3)	Yes (28); No (6)
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Mexico

Promote strategies for regulatory quality at all levels of government

The principles of regulatory policy in Mexico are enshrined in the Federal Law of Administrative Procedures (LFPA). It lays down the use of different regulatory tools and established the Federal Commission for Regulatory Improvement (COFEMER) as a gatekeeper for the flow of new regulations to ensure consistent implementation. Mexico is currently contemplating a comprehensive strategy to promote regulatory quality at the state level by *a)* reviewing and strengthening the regulatory framework, *b)* embedding regulatory reform as an explicit state policy and *c)* promoting the creation of a Regulatory Reform Act at national level incorporating all existing instruments and programmes including those at state level.

Engage with stakeholders at all stages of the regulatory process

Closely tied to the Regulatory Impact Assessment (RIA), consultation is a well-established part of the rule-making process in Mexico. In line with the LFPA, all draft regulations are published alongside the corresponding RIA on COFEMER's website for a minimum period of 30 working days allowing for comments. The comments received are taken into account when COFEMER draws up its final opinion. In order to ensure meaningful inputs into the rule-making process, stakeholders should be involved at all stages of the process. Mexico might thus further strengthen their consultation system by systematically consulting stakeholders early on to gather opinions on the nature of the problem and potential solutions, including through the use of green papers.

RIA covers a broad range of impacts – including human rights

Over the past decades, Mexico has established a well-developed RIA framework covering a broad range of impacts. The 'Regulatory Impact Calculator' is an automated online tool that helps regulators determine which different elements need to be assessed, thereby ensuring the efficiency and proportionality of the system. Recently, a new 'Human Rights verification' filter has been added to the Impact Calculator, which may trigger an 'Analysis on Human Rights and its implementation principles'. The Ministry of Interior may issue an opinion on this analysis, which will be integrated in COFEMER's final opinion. After adding gender and consumer impact assessments, Mexico will shortly expand the list of impacts assessed by incorporating a trade impact assessment.

Use thresholds to trigger **ex post** *evaluations of major regulations*

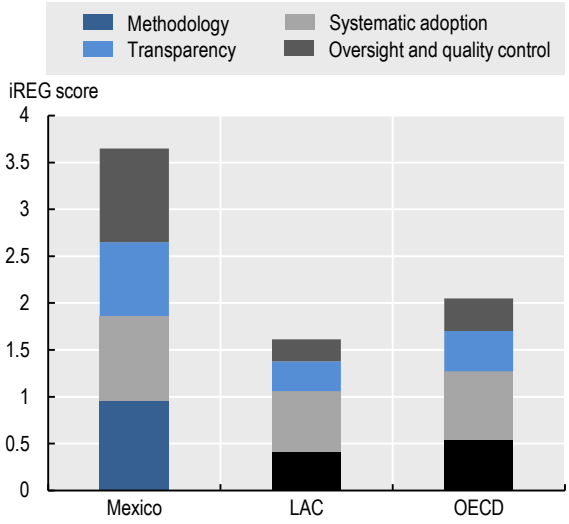
Mexico made use of a wide range of instruments to review the existing stock of regulation, including reviews based on competition, administrative burden reduction programmes and public stocktakes. In addition, COFEMER has carried out 'in-depth reviews' of the accumulated effect of regulations in specific sectors. Whilst specific provisions for periodical review are in place for technical regulations, Mexico might consider the introduction of a threshold in terms of regulatory impacts for *ex post* evaluation covering all regulations to ensure they achieve their objectives in practice.

Spotlight: COFEMER-INEGI Regulatory Quality Indicator

COFEMER and the National Institute of Statistics and Geography (INEGI) developed a Regulatory Quality Indicator with the aim of measuring the quality of the regulatory framework, formalities, payments, inspections and public services. The indicator will build on the results of the National Survey on Regulatory Quality and Government Impact on Enterprises (ENCRIGE) 2016, which collects information from 34,681 firms across the country and various industries and regarding their experience with *a)* administrative procedures, *b)* the delivery of public services, and *c)* the regulatory framework under which they operate. Results should be presented over the course of 2017.

Stakeholder engagement in developing subordinate regulation: Mexico

Composite indicator



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Regulatory Impact Assessment (RIA)

	Mexico	LAC	OECD
Requirement to conduct RIA	All subordinate regulations	All (2); Major (0); Some subordinate regulations (1); Never (4)	All (22); Major (6); Some subordinate regulations (4); Never (2)
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Written guidance on the preparation of RIA provided	Yes	Yes (6); No (1)	Yes (33); No (1)

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***Ex post* evaluation and administrative simplification**

		Mexico	LAC
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General trends and institutional setting

	Mexico	LAC	OECD
Explicit, published regulatory policy exists	Yes	Yes (5); No (2)	Yes (32); No (2)
Minister / high-level official accountable for promoting regulatory reform	Yes	Yes (4); No (3)	Yes (28); No (6)
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Peru

Issue a policy statement on regulatory policy and establish an oversight body

While several policies with the aim of improving the quality of regulation are in place, Peru is currently still in the process of streamlining these into an explicit whole-of-government regulatory policy. Likewise, institutional responsibility is scattered across the government. The Secretariat of Public Management within the Presidency of the Council of Ministers is responsible for administrative simplification while the Ministry of Economy and Finance (MEF) has a leading role with regards to *ex ante* impact assessment. The Ministry of Justice and Human Rights is in charge of the constitutional and legal assessment of regulation. In order to ensure the effective implementation of good regulatory practices, Peru should consolidate and boost the existing efforts by issuing a policy statement on regulatory policy and establish a regulatory oversight body to co-ordinate and monitor the regulatory policy agenda.

Consult with stakeholders systematically and early enough

Whilst Peru has adopted the basic legal requirements to engage stakeholders, consultation is not yet used systematically in practice. In line with Supreme Decree No. 001-2009-JUS, regulations have to be pre-published for comments 30 days before the planned entry into force. Whilst being an important tool for transparency, the pre-publication occurs at a late stage and leaves limited room for stakeholders' feedback to be considered and incorporated. It would thus be important to systematically consult with stakeholders, including earlier in the process when policy options are being defined.

Introduce a RIA system to support evidence-based policy making

Although some elements for an *ex ante* assessment of regulations are in place, it is not systematically used to inform the development of regulations. Regulators are formally required to conduct a cost-benefit analysis when preparing regulation but no common methodology or oversight mechanisms are in place and it is not properly implemented in practice. Peru should introduce a Regulatory Impact Assessment (RIA) system with a standardised methodology covering the whole administration. Establishing an oversight body with the responsibility to check the RIA quality would help ensure an efficient implementation.

Make use of ex post *evaluation to ensure regulations are fit-for-purpose*

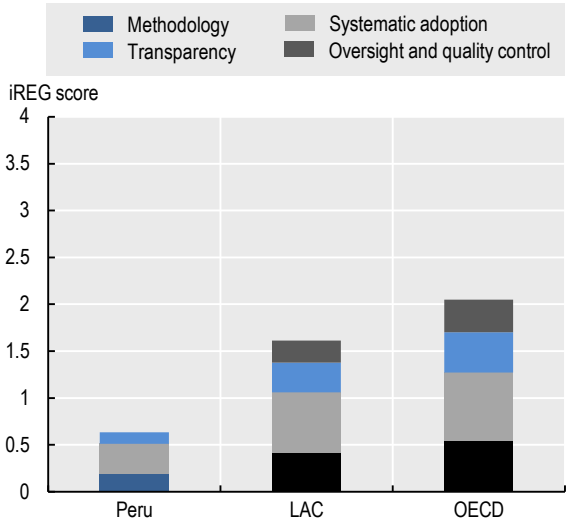
Peru has started investing in administrative simplification but the use *ex post* evaluations to ensure regulations achieve their objectives is yet unexplored. The National Plan on Administrative Simplification 2013-2016 requires the administration at all levels of government to reduce burdens from formalities and information obligations for citizens and business. However, the lack of a baseline measurement of existing burdens and of oversight affects the effectiveness of the programme. Peru should consider establishing specific criteria for *ex post* evaluation, including an assessment of whether regulations achieve their objectives, to make sure the regulation is the most efficient solution to the issue at hand.

Spotlight: The Commission of Elimination Bureaucratic Barriers

The Commission of Elimination of Bureaucratic Barriers of the National Institute for the Defence of Free Competition and Protection of Intellectual Property (INDECOPI) has the legal capability to stop the application of a regulatory instrument to a citizen or business if it is considered a bureaucratic barrier, illegal or lacking rationality. In order to initiate a case, the citizen or business affected by the regulation must fill out a form providing information on the regulatory instrument which is alleged to be a barrier, including the name of the institution in charge and the legal arguments regarding the illegality and unreasonableness of the barrier. When a rule is considered both a "bureaucratic barrier" and not legal or irrational (rational or proportionate), the commission can stop its application to the business or citizen which filed the complaint.

Stakeholder engagement in developing subordinate regulation: Peru

Composite indicator



Note: The figure displays the total aggregate score across the four separate categories of the composite indicator. The maximum score for each category is one and the maximum score for the aggregate indicator is four. The more regulatory practices as advocated in the *2012 OECD Recommendation on Regulatory Policy and Governance* a country has implemented, the higher its indicator score.

The data on LAC countries include: Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico and Peru. They reflect the situation as of 31 December 2015. Data on OECD countries cover 34 OECD countries and reflect the situation as of 31 December 2014.

Source: Indicators of Regulatory Policy and Governance (iREG) for Latin America 2016. Indicators of Regulatory Policy and Governance (iREG) 2015. www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm.

Regulatory Impact Assessment (RIA)

	Peru	LAC	OECD
Requirement to conduct RIA	Never	All (2); Major (0); Some subordinate regulations (1); Never (4)	All (22); Major (6); Some subordinate regulations (4); Never (2)
RIA conducted in practice	Some subordinate regulations	All (1); Major (0); Some subordinate regulations (3); Never (3)	All (16); Major (8); Some subordinate regulations (7); Never (3)
RIA quality check by government body outside the ministry preparing the regulation	No	Yes (2); No (5)	Yes (25); No (9)
Written guidance on the preparation of RIA provided	No	Yes (6); No (1)	Yes (33); No (1)

Note: The data on LAC countries include: Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico and Peru. They reflect the situation as of 31 December 2015. Data on OECD countries cover 34 OECD countries and reflect the situation as of 31 December 2014.

Source: Indicators of Regulatory Policy and Governance (iREG) for Latin America 2016. Indicators of Regulatory Policy and Governance (iREG) 2015. www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm.

***Ex post* evaluation and administrative simplification**

		Peru	LAC
Administrative simplification processes in the last four years		Yes	Yes (7); No (0)
Ex post reviews conducted that include an assessment of whether the objectives of the regulation have been achieved	Primary laws	No	Yes (2); No (5)
	Subordinate regulations	No	Yes (3); No (4)

Note: The data on LAC countries include: Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico and Peru. They reflect the situation as of 31 December 2015.

Source: Indicators of Regulatory Policy and Governance (iREG) for Latin America 2016. Indicators of Regulatory Policy and Governance (iREG) 2015. www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm.

General trends and institutional setting

	Peru	LAC	OECD
Explicit, published regulatory policy exists	No	Yes (5); No (2)	Yes (32); No (2)
Minister / high-level official accountable for promoting regulatory reform	No	Yes (4); No (3)	Yes (28); No (6)
Body responsible for promoting regulatory policy and reporting on regulatory quality	No	Yes (5); No (2)	Yes (32); No (2)

Note: The data on LAC countries include: Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico and Peru. They reflect the situation as of 31 December 2015. Data on OECD countries cover 34 OECD countries and reflect the situation as of 31 December 2014.

Source: Indicators of Regulatory Policy and Governance (iREG) for Latin America 2016. Indicators of Regulatory Policy and Governance (iREG) 2015. www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm.