OECD Reviews of Regulatory Reform

Regulatory Policy in Mexico

TOWARDS A WHOLE-OF-GOVERNMENT PERSPECTIVE TO REGULATORY IMPROVEMENT



OECD

OECD Reviews of Regulatory Reform

Regulatory Policy in Mexico

TOWARDS A WHOLE-OF-GOVERNMENT PERSPECTIVE TO REGULATORY IMPROVEMENT



BETTER POLICIES FOR BETTER LIVES

This work is published on the responsibility of the Secretary-General of the OECD. The opinions expressed and arguments employed herein do not necessarily reflect the official views of the OECD or of the governments of its member countries.

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

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

ISBN 978-92-64-20337-2 (print)
ISBN 978-92-64-20338-9 (PDF)

Series: OECD Reviews of Regulatory Reform
ISSN 1563-4973 (print)
ISSN 1990-0481 (online)

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

Photo credits: Cover © Wesley Hitt/Getty Images.

Corrigenda to OECD publications may be found on line at: *www.oecd.org/about/publishing/corrigenda.htm*.

© OECD 2014

You can copy, download or print OECD content for your own use, and you can include excerpts from OECD publications, databases and multimedia products in your own documents, presentations, blogs, websites and teaching materials, provided that suitable acknowledgment of the source and copyright owner is given. All requests for public or commercial use and translation rights should be submitted to *rights@oecd.org*. Requests for permission to photocopy portions of this material for public or commercial use shall be addressed directly to the Copyright Clearance Center (CCC) at *info@copyright.com* or the Centre français d'exploitation du droit de copie (CFC) at *contact@cfcopies.com*.

Foreword

The OECD Review of Regulatory Policy in Mexico is a country report carried out under the programme of work of the Regulatory Policy Committee of the OECD.

The review methodology has developed over two decades of peer learning. It draws on and is grounded in a number of OECD instruments including: the 1995 *Recommendation of the Council of the OECD on Improving the Quality of Government Regulation;* the 2005 *Guiding Principles for Regulatory Quality and Performance;* and the 2012 *Recommendation of the OECD Council on Regulatory Policy and Governance*. The country reviews follow a multi-disciplinary approach and focus on the government's capacity to manage regulatory policy. Taken as a whole, the reviews demonstrate that a well-structured and implemented programme of regulatory policy can make a significant contribution to better economic performance and enhanced social welfare. Economic growth, job creation, innovation, investment and new industries are boosted by effective regulatory policy, which also helps to bring lower prices and more choices for consumers.

The OECD was asked by the Ministry of Economy of the federal government of Mexico to undertake a regulatory policy review in support of policies to promote economic growth and social inclusion in Mexico. Reflecting on the importance of getting regulation right, this report encourages the 2012-18 Mexican administration to "think big" about the relevance of regulatory policy and governance. It assesses the recent efforts of Mexico to develop and deepen regulatory policy and governance, both in the last few years and in the period covered by the current government. It evaluates the policy cycle by which Mexican regulations —both at national and sub-national level— are designed, enforced, evaluated, and revised. It describes progress in the use of a range of regulatory management tools including consultation, regulatory impact assessment, and risk-based regulation. It also illustrates the potential of efforts to promote regulatory governance including accountability and oversight of regulatory agencies and devising a whole-of-government approach for regulatory design and enforcement. The report provides recommendations on developing a more robust regulatory environment, which will be a key ingredient to generate economic growth and promote social welfare in Mexico.

This review is one of the first to be carried out having as framework of assessment the 2012 *Recommendation of the OECD Council on Regulatory Policy and Governance,* which places Mexico in a unique position as it has been assessed with the state-of-the-art knowledge on regulatory policy and governance. This report is based on answers provided by the Ministry of Economy and a range of Mexican agencies to an OECD questionnaire, and on various meetings and interviews during a fact-finding mission on 20-24 February, 2012 in Mexico City. A preliminary assessment of this report was discussed with a wide range of officials and stakeholders in a policy seminar in Mexico City on 24-25 May, 2012.

Acknowledgements

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

The Regulatory Reform Review of Mexico reflects significant contributions from a number of participants. Special thanks are attributed to Minister of Economy of Mexico, Ildefonso Guajardo; a Rocío Ruiz Chávez, vice-minister for Competitiveness and Business Regulation of the Federal Ministry of Economy of Mexico, and to Virgilio Andrade Martínez, head of the Federal Commission for Regulatory Improvement. Valuable contributions were also received from officials from the federal government, including the Ministry of Economy, the Federal Regulatory Improvement Commission, the Ministry of Public Administration, the Energy Regulatory Commission, the National Service of Agro-alimentary Health, Safety, and Quality; and the National Banking and Securities Commission. Contributions were also received from members of the federal Congress, and from officials from the state governments of Aguascalientes, Colima, Jalisco and Nuevo León, as well as from the Mexican Association of Economic Development Secretariats (AMSDE). Representatives from the business community of Mexico and from think tanks also contributed to this review. The review also benefited from the support and comments from José Antonio Torre Medina and Alfonso Carballo Pérez, former vice-minister for Competitiveness and Business Regulation, and former head of the COFEMER, respectively, during the 2006-12 administration.

As an input to this review, the Vice-ministry for Competitiveness and Business Regulation and the OECD organised a policy seminar in Mexico City in May 2012, in which the preliminary assessment and recommendations were reviewed by international experts. We thank George Redling, former assistant secretary for Regulatory Affairs of Canada; Michael Woods, deputy chairman, Australian Productivity Commission; and Nathan Frey, policy analyst from the Office of Information and Regulatory Affairs (OIRA) of the U.S. Office of Management and Budget, for their helpful comments and suggestions. We are also grateful to Jadir Diaz Provenca, technical director of the Programme for the Strengthening of Institutional Capacity for Management and Regulation, government of Brazil, for his remarks.

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

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

Table of Contents

Acronyms and abbreviations . . . 11

Executive summary . . . 15

Chapter 1. **Assessment and recommendations** . . . 19
Regulatory policy and governance in Mexico . . . 20
Independence, performance, and accountability of regulators . . . 22
Multi-level regulatory governance . . . 24

Chapter 2. **The importance of regulatory policy and governance** . . . 27
What is regulatory policy? . . . 28
What are the benefits of actively implementing regulatory policy? . . . 28
The evolving need for greater regulatory governance . . . 29
Bibliography . . . 33

Chapter 3. **Regulatory policy and institutions in Mexico** . . . 35
Introduction . . . 36
Structure of the government in Mexico . . . 36
Regulatory capacity of the government . . . 38
Regulatory policy . . . 40
Regulatory institutions . . . 44
Key findings and policy options . . . 48
Bibliography . . . 59

Chapter 4. **Regulatory impact assessment and consultation in Mexico** . . . 63
Introduction . . . 64
RIA in Mexico: History and recent developments . . . 65
Description and analysis of current RIA practice . . . 68
Process requirements for RIA . . . 72
Improving capacities . . . 78
Methodological issues in current RIA requirements . . . 81
Public consultation . . . 83
Key findings and policy options . . . 85
Bibliography . . . 90

Chapter 5. **Administrative simplification and management of the stock of regulation in Mexico** . . . 93
Introduction . . . 94
Reduction of administrative burdens . . . 94
Other administrative simplification strategies . . . 100
Regulation inside government . . . 110

Key findings and policy options . . . 111
Bibliography . . . 115

Chapter 6. **Independence, performance, and accountability of regulators in Mexico** . . . 117
Introduction . . . 118
The nature of regulators within the OECD context . . . 118
The three analysed regulators . . . 122
Assessment of current situation . . . 124
Key findings and policy options . . . 128
Special section: Progress towards addressing the recommendations on the governance of the regulatory system by the 2012-18 administration . . . 132
Bibliography . . . 137

Chapter 7. **Multi-level regulatory governance in Mexico** . . . 139
Introduction . . . 140
The organisation of the Mexican territory and the distribution of regulatory attributions . . . 141
Regulatory policies and institutions . . . 141
Regulatory tools . . . 151
Key findings and policy options . . . 177
Special section: Progress towards addressing the recommendations on multi-level regulatory governance by the 2012-18 administration . . . 189
Bibliography . . . 194

Annex A. **Implementation of the 2004 OECD regulatory reform recommendations for Mexico** . . . 197
Government capacity to assure high-quality regulation . . . 197

Annex B. **Multi-level regulatory governance in Mexico** . . . 199
1. The regulatory reform state laws and their contents . . . 199
2. Regulatory reform bodies at the state level in Mexico . . . 201
3. Main trends in the institutionalisation of RIA at state level in Mexico . . . 202
4. Regulatory reform in the state of Aguascalientes . . . 203
5. Regulatory reform in the state of Colima . . . 204
6. Regulatory reform in the state of Jalisco . . . 206
7. Regulatory reform in the state of Nuevo León . . . 208

Tables

4.1. Total RIA published in 2011 . . . 70
4.2. Bills approved by the 2009 to 2012 legislature . . . 71
5.1. Implemented actions and achievements of the Single Window for Foreign Trade . . . 107
6.1. Factors to consider in creating an independent and structurally separate regulatory body . . . 128
7.1. Total RIAs prepared at state level . . . 159
7.2. Compliance and enforcement instruments that interact among levels of government . . . 168
7.3. Touristic SARE by state and municipality . . . 188

Figures

3.1. Paying Taxes-hours needed to calculate, file and pay taxes per year . . . 43
4.1. The RIA process in Mexico . . . 72
4.2. Continuous improvement process . . . 77
7.1. Multi-level regulatory governance in Mexico . . . 160
7.2. RIA process in the state of Jalisco . . . 163
7.3. Process to review draft regulatory proposals in Baja California . . . 167
7.4. The top ten business environment constraints . . . 169

Acronyms and abbreviations

AALMAC	Association of Local Authorities of Mexico
ADAE	Agreement to Deregulate the Economic Activity
AMMAC	Mexican Municipalities Association
AMSDE	Mexican Association of Economic Development Secretariats
APF	Federal public administration
BC	British Columbia
BCA	Benefit/cost analysis
BIT	Business impact test
BoM	Bank of Mexico
BPM	Business process management
BRE	Better Regulation Executive
CAE	Business centres
CGPCEC	Consulting Committee to Promote Competitiveness and Economic Development
CDSR	Cabinet Directive on Streamlining Regulation
CEC	Commission for Evaluation and Control
CEDESPE (COMERJAL)	State Committee for Deregulation and Economic Promotion of Jalisco
CFC	Federal Competition Commission
CFCE	Federal Commission of Economic Competition
CFE	Federal Commission on Electricity
CNA	National Water Commission
CNAT	National Anticorruption Commission
CNBV	National Banking and Securities Commission
CNDH	National Human Rights Commission
COAG	Council of Australian Governments
COFECO	Federal Competition Commission of Mexico
COFEMER	Federal Commission for Regulatory Improvement
COFEPRIS	Federal Commission for the Protection against Sanitary Risk

COFETEL	Federal Telecommunications Commission
COG	Centre of Government
CONAGO	National Governors' Conference
CONCILIANET	Consumer Complaint Settlement System
CONDUSEF	Body to Protect and Advise Users of Financial Services
CONOCER	National Council of Standardization and Certification of Labour Competences
CONSAR	Retirement Fund Commission
CORE	Centre of Regulatory Expertise
CRC	COAG Reform Council
CRE	Energy Regulatory Commission
DCCA	Danish Commerce and Companies Agency
DOF	Official Journal of the Federation
DRO	Director of the work
EIRE	Electronic Regulatory Impact Studies
EIU	Economic Intelligence Unit
EU	European Union
FENAMM	National Municipal Federation of Mexico
FIEL	Advanced Electronic Signature
FR	Financial resources
GDP	Gross domestic product
GIC	Governor in Council
HR	Human resources
ICT	Information and communications technologies
IDC	Taxpayer Identification
IFAI	Federal Institute for Access to Information and Data Protection
IFT	Federal Institute of Telecommunications
IGA	Intergovernmental Agreement on Federal Financial Relations
IMSS	Mexican Institute of Social Security
INEE	National Institute for the Educational Evaluation
IPAB	Institute for the Protection Bank Savings
IRA	Independent regulatory agency
ITESM	Monterrey Institute of Technology and Higher Education
LATIN-REG	Latin American Network of Regulatory Reform and Competitiveness
LAU	Unique Environmental License
LFMN	Federal Law on Metrology and Standardisation
LFPA	Federal Law of Administrative Procedure
LOAPF	Organic Law of the Federal Public Administration

MOU	Memorandum of Understanding
MR	Material resources
NCP	National Competition Principles
NGO	Non-governmental organisation
NOMs	Mexican official technical standards
NRA	Australian National Reform Agenda
NRCC	National Regulatory Control Council
OECD	Organisation for Economic Co-operation and Development
OIRA	Office of Information and Regulatory Affairs
PC	Productivity Commission
PCA	Parliamentary Control of the Administration
PEMEX	Petróleos Mexicanos
PIA	Preliminary impact assessment
PMG	Programme for Management Improvement in the Federal Public Administration 2008-12
PND	Mexican National Development Plan 2007-12
POA	Annual Operating Programme
PYME (SMEs)	Small and medium-sized enterprises
RABC	Regulation applied to businesses and citizens
RAS	Regulatory Assessment Statement System
RAS	Regulatory Affairs Sector
RCC	Regulatory Criteria Checklist
RENAPO	National Registry and Personal Identification
REPTE	Public Registry for Formalities
RFTS	Federal Registry of Formalities and Services
RGU	Regulatory Gatekeeping Unit
RIA	Regulatory impact assessment
RIAS	Regulatory impact assessment statement
RIG	Regulation inside government
RIS	Regulatory impact statement
RPPC	Public Registry of Trade and Property
RRG	Regulatory Reform Group
SAGARPA	Ministry of Agriculture, Livestock, Rural Development, Fisheries and Food
SARE	System for Quick Business Start-up
SAT	Tax Administration Service
SCJN	Supreme Court of Justice of the Nation
SCM	Standard Cost Model
SE	Ministry of Economy

SEFOME	Ministry for Economic Promotion of the State of Colima
SEMADES	State Ministry for the Environment and Sustainable Development
SEMARNAT	Federal Ministry of the Environment and Natural Resources
SENASICA	National Service of Agro-alimentary Health, Safety, and Quality
SENER	Ministry of Energy
SEPROE	Ministry of Economic Promotion of the State of Jalisco
SFP	Ministry of Public Administration
SHCP	Ministry of Finance
SIA	Statutory Instruments Act
SIAPA	Sewage and Potable Water System of Jalisco
SIFAE	Interoperability Platform for Land Use and Official Number Formalities
SIGOV	System for information, Management and Processing of Formalities of Government Documents
SME	Small and medium-sized enterprises
TB	Treasury Board
TBS	Treasury Board of Canada Secretariat
TFJA	Federal Tribunal of Fiscal and Administrative Justice
UDE	Economic Deregulation Unit
UMR	Unit for Regulatory Reform
VCEC	Victorian Competition and Efficiency Commission
VSL	Value of Statistical Life
VUCEM	Mexican Single Window for Foreign Trade

Executive summary

Regulatory policy and governance in Mexico

Mexico has a formal policy on better regulation established in the Federal Law of Administrative Procedure (LFPA). The main elements of this policy include the establishment of the Federal Commission for Regulatory Improvement (COFEMER) as the oversight body, the responsibilities of line ministries and regulators, as well as the establishment of tools for the regulatory improvement policy, amongst them regulatory impact assessment (RIA), administrative simplification, consultation, and diagnoses of the stock of regulation.

The regulatory improvement policy also falls within the broader policy objective of economic growth and development of the Mexican government. The Ministry of Economy (SE) and the COFEMER lead the effort of pursuing regulatory policy for regulations applied to business and citizens. The Vice-ministry for Competitiveness and Business Regulation promotes competitiveness of businesses and economic sectors by contributing to the advance of an integral regulatory reform in its administrative and legislative aspects, enhancing consistency and regulatory neutrality.

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

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

Mexico has now been applying RIA for more than a decade and it recently reformed the impact assessment system to align it with OECD best practice. The COFEMER exercises quality controls of new and existing regulations by issuing opinions on the drafts and RIAs prepared by line ministries and regulators. COFEMER's opinions are not legally binding. Nevertheless, given that all of COFEMER's opinions, as well as the draft regulations and RIAs, are public, in the majority of cases, line ministries and regulators do follow its opinions. Mexico has striven to complement and deepen the assessments of regulation as part of RIA. It has included the modalities of RIA with competition assessment and with risk assessment. In both cases, international best practices have been considered for such analyses.

Mexico has robust practices in transparency and consultation in the rule making process. The COFEMER is obliged to make public all draft regulation and their RIAs from the moment it receives them, as well as all opinions from the general public on the subject. Similarly, it is obliged to make public all its resolutions and opinions derived from the process of evaluation of draft regulations and their RIAs. The COFEMER, line ministries, and regulators are obliged to consider all public opinions.

International best practice has been adopted in the programme to reduce administrative burdens. Recently, Mexico has adopted the internationally recognised Standard Cost Model, which has brought a renewed impetus across the federal government to reduce administrative burdens generated by formalities

Independence, performance, and accountability of regulators

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

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

A degree of independence in decision making and budgetary autonomy, below the OECD average, and lack of performance assessment mechanisms characterise Mexico's regulators. Budgets of regulators are determined by the "parent" ministries. The budget control also lays, with some exceptions, with the ministries, not regulatory authorities. Mechanisms for performance assessment are mostly insufficient

Multi-level regulatory governance

The federal states and municipalities of Mexico have been paying increasing attention to regulatory improvement policies in the last few years. Twenty-two out of the 31 federal states and the Federal District have a law on better regulation, mandating state authorities and, sometimes, municipalities, to pursue regulatory improvement policies. In addition, six states have laws on economic development containing a section on regulatory improvement.

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

Administrative simplification has been a good starting point to raise regulatory improvement issues on the political agenda of states and municipalities. The focus on simplification can be explained by several reasons. For instance, officials in states and municipalities do not always understand the difference between better regulation and administrative simplification, and the latter is easier to carry out than the former.

A handful of states and municipalities in Mexico are implementing RIA. Only a few states and municipalities have made use of more sophisticated tools that may get them closer to a regulatory governance cycle approach.

The co-operation between the OECD and the Ministry of Economy has supported states and municipalities to advance the better regulation agenda. The OECD-Mexico initiative *Strengthening of economic competition and regulatory improvement for competitiveness* has contributed to boost the better regulation efforts carried out by Mexican states and municipalities.

Chapter 1

Assessment and recommendations

Mexico should embrace a "whole-of-government" culture for regulatory improvement policy, which should be accompanied with a strengthening of the institutional design of COFEMER. The governance framework of the Mexican regulatory authorities needs to be strengthened to ensure independence from direct political intervention and particular interests. At state and municipal level, institutions and capacities that support regulatory reform should be developed while increasing the degree of political commitment to regulatory quality.

Regulatory policy and governance in Mexico

1. Mexico should embrace a "whole-of-government" culture for regulatory improvement policy. Further work should be fostered to step up to a new phase of regulatory quality which embeds an effective and profound regulatory improvement culture across the federal government. The following suggestions should be considered:

Creating a small committee or council of ministers to review and approve high-impact regulations, or incorporating these activities into existing cabinet groups, would offer the benefits of providing a "collective" ministerial review and approval function, therefore improving compliance and accountability of ministers and officials proposing regulations, and driving a "whole-of-government" culture for regulatory improvement policy. Proposing ministers would have to demonstrate compliance with clear and public criteria (i.e. regulatory policy principles, specific government objectives), and such compliance must be a condition for approval.

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

Enhancing the role of the Ministry of Public Administration (whose functions have been transferred to the Ministry of Finance). Two main activities concerning regulatory improvement must be clearly set for this ministry: its responsibility in promoting and effecting better regulation for regulation inside government; and, regarding regulations applied to businesses and citizens, its capacity to enforce the commitments and responsibilities of line ministries and regulators in co-ordination with the COFEMER and the Ministry of Economy, and issue pre-emptive orders and administrative sanctions in the case of non-compliance.

2. In order to achieve the "whole-of-government" culture for regulatory improvement policy, the institutional design of the COFEMER must be strengthened. The commission needs its institutional design improved through policies that strengthen is legal authority and financial operation, to discharge its mandate as a central oversight body for regulatory quality. The aim is to consolidate its technical independence and protect its professionalism. The measures to achieve this can include a more autonomous budget, internal structures with clearer responsibilities, and more solid tools to exercise its power. The actions to strengthen the COFEMER should be accompanied by the setting of transparency and accountability rules that ensure fairness and credibility.

3. The advocacy function is a key element to achieve a "whole-of-government" culture for regulatory improvement policy. Mexico should consider the creation of a citizen based agency external to the government that would unilaterally advocate for regulatory reform. Such advocacy function could be important in Mexico to identify reform opportunities and support the development of reform initiatives. It would also ensure that regulatory reforms are broadly understood and accepted by business and civil society. The creation of an external advocacy agency, completely independent from government decisions, has the merit of ensuring that a truly external view of business and citizen needs is captured and countering the bureaucratic view and "status quo bias" that prevails inside government. This external agency would have an important role in advising the government on the impacts of existing regulations by providing *ex post* analysis of the effectiveness of regulatory policies and programmes with suggestions for possible reforms.

4. The legislative power is an essential element of regulatory governance and, as such, it should take measures to adopt a culture of regulatory quality. The legislative process exercised by the Mexican Congress does not contain, to date, any type of better regulation analysis. This contrasts sharply with the regulatory improvement policy applied within the federal public administration. Congress should consider adopting specific tools of regulatory policy as part of its legislative activities. This could include adopting techniques for *ex ante* and *ex post* evaluation of the impact of legislation. Transparency in the process of lawmaking should be enhanced, and the inclusion of formal and institutionalised public consultation should be a permanent aspect of legislative activities.

5. Include the management of tax procedures and all regulation and formalities from decentralised entities as part of the regulatory improvement programme. Mexico should consider the inclusion of the improvement of tax and fiscal formalities in its regulatory improvement programmes, as well as the formalities required by the decentralised entities, encompassing the formalities of the Mexican Social Security Institute. Such a decision would eventually lead to have the necessary conditions to eliminate tax formalities from the exceptions of the LFPA, in order to include them in the RIA process, in the programmes for administrative simplification and burden reduction, and in the other tools of the country's regulatory improvement programme. It must be clearly stated that the objective is to make the management of tax formalities and procedures part of the better regulation programme. This does not include the capacity of the state to levy taxes by raising current tax rates or by creating new taxes. Moreover, Article 1 of the LFPA should be revised to include all the regulation and formalities from decentralised entities of the federal public administration into the discipline of regulatory improvement policy.

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

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

Mexico should also consider the benefits of adopting additional measures to support regulators to obtain access to adequate technical capacities to undertake high-quality regulatory development and RIA. Potential strategies could include reshaping the Economic Intelligence Unit (EIU) to interact and collaborate with the units of regulatory improvement suggested previously. Through these units, the EIU would develop a dedicated capacity to provide technical assistance on benefit/cost assessment of regulatory proposals to line ministries and regulators at early stages of policy development, up to the point where preliminary RIA documents are lodged.

8. Consolidate and advance the policy of reducing the cost of regulation. Mexico should establish the programme of reduction of administrative burdens using the adapted SCM methodology as a permanent feature. Mexico should consider strengthening these measurements via more interviews, or expert opinions through panels. Mexico might consider these approaches only to a core of the most burdensome formalities or key economic processes. Finally, Mexico should consider measuring other costs of the regulation, such as substantive compliance costs. Qualitative techniques could be employed to identify other sources of irritation for businesses and citizens, which might not be correlated with the amount of administrative burdens.

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

Independence, performance, and accountability of regulators

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

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

Box 1.1. Progress towards addressing the recommendations on the governance of the regulatory system by the 2012-18 administration

Mexico has given serious consideration to OECD's recommendations on strengthening the institutional capacity and independence of its regulatory bodies. There has been a substantive amount of analysis and debate amongst the executive and legislative powers, the political parties and civil society on the importance of strengthening regulators. As a result, there is currently a national consensus that these institutions should feature sufficient independence and clearly outlined regulatory powers. Specifically, reforms have been approved or are currently being promoted to strengthen governance arrangements of regulators in the areas of competition, telecommunication, transparency, anti-corruption, and evaluation of educational performance, under the framework of the "Pact for Mexico".

Amongst the constitutional reforms that have already been approved by Congress there is the upgrading to constitutional autonomous bodies of the Federal Commission of Economic Competition and the Federal Institute of Telecommunications, formerly COFECO and COFETEL, as well as the creation of the National Institute for the Educational Evaluation. The president has also presented to Congress the proposal of promoting the Federal Institute for Access to Information and Data Protection to a constitutional autonomous body, while also seeking for the establishment under the same status of the National Anticorruption Commission. Both proposals are currently under discussion at Congress.

One of the most important features is that these reforms aim to grant such regulatory bodies the highest level of independence existing in the Mexican legal system: constitutional autonomy. Mexico's reforms, which create specialised and more autonomous regulators with better defined functions and objectives, are likely to yield faster and higher quality regulatory decisions. With the recent debate, Mexico is demonstrating its conviction to address, at the highest political level, the state of independence of its regulators.

The future impact of these reforms will allow Mexico and OECD countries examining the specific effects of the constitutional autonomy model and define the future framework of sectoral and structural reforms. In any case, the evaluation of the optimal model of institutional arrangements for regulators should consider industry-specific factors, in order to define the design and adequate institutional capacity to be granted to regulators, with the aim of strengthening their organisational strength, in addition to increase their degree of independence, without losing efficiency or coherence with the objectives of the public policy in the sectors under evaluation.

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

Multi-level regulatory governance

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

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

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

Box 1.2. Progress towards addressing the recommendations on multi-level regulatory governance by the 2012-18 administration

The federal government administration 2012-18 has acknowledged the recommendations of this review and committed to address them. During its first few months, it pushed for an integral multi-level regulatory policy, which directly addresses the recommendation dealing with regulatory convergence and multi-level co-ordination. This effort led to a strategic agreement between the COFEMER and the AMSDE, signed on 12 March 2013, called Framework Agreement for Co-operation Concerning Regulatory Reform for Mexico's Productivity and Economic Development (*Convenio Marco de Colaboración en Materia de Mejora Regulatoria para Incentivar la Productividad y el Desarrollo Económico de México*).

The objective of this framework agreement is to establish co-operation, co-ordination, and communication mechanisms so that the COFEMER and the AMSDE join forces and technical capacities with the aim of producing information and diagnoses, as well as to develop and implement methodologies, strategies, and practices to address a regulatory reform agenda shared with the 32 federal states, including the Federal District, and the municipalities. This shared agenda is composed of 21 items, divided in three groups: institutional, formalities, and systems for quick business start-up (see Box 7.26). These 21 items are aligned with the recommendations contained in the OECD *Guide to improve the regulatory quality of state and municipal formalities and strengthen Mexico's competitiveness*.

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

Chapter 2

The importance of regulatory policy and governance

This chapter highlights the importance and benefits of regulatory policy. It also defines regulatory governance and discusses the main elements for an effective management of regulatory governance: regulatory policy, institutions and tools.

What is regulatory policy?

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

The emergence of regulatory policy has taken different pathways across the OECD, reflecting the diverse range of legal, political, and cultural settings on which countries have built their public governance. Perhaps the most important lesson is that the development of an effective regulatory policy is an evolutionary process that requires sustained political support and commitment to achieve changes across public administrations. OECD country experience shows that to achieve results in regulatory quality, governments should adopt a comprehensive approach, that considers regulatory policy, institutions, and tools in a regulatory governance perspective, at all levels of government and across sectors, including the role of the legislature in ensuring the quality of laws.

What are the benefits of actively implementing regulatory policy?

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

- Effective regulatory policy and market openness support each other, opening up pathways for innovation, enhanced consumer benefits, and entrepreneurship.
- A strong link exists with competition policy which highlights a close and positive relationship between the objective of promoting competition policy principles and that of fostering high-quality regulation and regulatory reform.
- Product market competition plays an important role in lowering structural unemployment rates, mainly through competitive pressures that eliminate rents and expand potential output.

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

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

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

The evolving need for greater regulatory governance

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

In early 2012, the *Recommendation of the OECD Council on Regulatory Policy and Governance* was approved. The recommendation presents regulatory policy and governance as a whole-of-government activity incorporated into the policy cycle of regulatory design, enforcement, review and evaluation, supported by appropriate institutions. It emphasises the importance of co-ordination, consultation, communication, and co-operation throughout the policy cycle.

It focuses, to a greater extent, on the need for risk assessment and regulatory co-ordination across levels of government, and on the organisation of regulatory agencies that have previous OECD instruments. Together, the principles stated in the recommendation provide countries with the basis for a comprehensive assessment of the performance of the policies, tools, and institutions that underpin the use of efficient and effective regulation to achieve social, environmental, and economic goals (see Box 2.1).

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

Box 2.1. The 2012 Recommendation of the OECD Council on Regulatory Policy and Governance

1. Commit at the highest political level to an explicit whole-of-government policy for regulatory quality. The policy should have clear objectives and frameworks for implementation to ensure that, if regulation is used, the economic, social and environmental benefits justify the costs, the distributional effects are considered, and the net benefits are maximised.
2. Adhere to principles of open government, including transparency and participation in the regulatory process to ensure that regulation serves the public interest and is informed by the legitimate needs of those interested in and affected by regulation. This includes providing meaningful opportunities (including online) for the public to contribute to the process of preparing draft regulatory proposals and to the quality of the supporting analysis. Governments should ensure that regulations are comprehensible and clear and that parties can easily understand their rights and obligations.
3. Establish mechanisms and institutions to actively provide oversight of regulatory policy procedures and goals, support and implement regulatory policy, and thereby foster regulatory quality.
4. Integrate regulatory impact assessment (RIA) into the early stages of the policy process for the formulation of new regulatory proposals. Clearly identify policy goals, and evaluate if regulation is necessary and how it can be most effective and efficient in achieving those goals. Consider means other than regulation and identify the trade-offs of the different approaches analysed to identify the best approach.
5. Conduct systematic programme reviews of the stock of significant regulation against clearly defined policy goals, including consideration of costs and benefits, to ensure that regulations remain up to date, cost-justified, cost-effective and consistent, and deliver the intended policy objectives.
6. Regularly publish reports on the performance of regulatory policy and reform programmes and the public authorities' applying the regulations. Such reports should also include information on how regulatory tools such as RIA, public consultation practices and reviews of existing regulations are functioning in practice.
7. Develop a consistent policy covering the role and functions of regulatory agencies in order to provide greater confidence that regulatory decisions are made on an objective, impartial and consistent basis, without conflict of interest, bias or improper influence.
8. Ensure the effectiveness of systems for the review of the legality and procedural fairness of regulations and of decisions made by bodies empowered to issue regulatory sanctions. Ensure that citizens and businesses have access to these systems of review at reasonable cost and receive decisions in a timely manner.
9. As appropriate, apply risk assessment, risk management, and risk communication strategies to the design and implementation of regulations to ensure that regulation is targeted and effective. Regulators should assess how regulations will be given effect and should design responsive implementation and enforcement strategies.
10. Where appropriate, promote regulatory coherence through co-ordination mechanisms between the supranational, national and sub-national levels of government. Identify crosscutting regulatory issues at all levels of government, to promote coherence between regulatory approaches and avoid duplication or conflict of regulations.
11. Foster the development of regulatory management capacity and performance at sub-national levels of government.
12. In developing regulatory measures, give consideration to all relevant international standards and frameworks for co-operation in the same field and, where appropriate, their likely effects on parties outside the jurisdiction.

Source: OECD (2012), *Recommendation of the Council on Regulatory Policy and Governance*, OECD, Paris.

Regulatory policy in a whole-of-government perspective

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

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

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

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

Regulatory institutions

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

OECD research identifies four core functions that should be assigned to one or more institutions charged with improving regulatory quality: (i) co-ordination and supervision, (ii) challenge and scrutiny, (iii) training, advice and technical support, and (iv) advocacy (Cordova-Novion and Jacobzone, 2011).

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

OECD country experience reveals that the existence of a specific body charged with regulatory oversight, and entrusted with several of the core functions mentioned above[1] indicates per se a strong commitment to improving regulatory quality and is closely correlated with the development of an effective and comprehensive regulatory policy.

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

Regulatory tools

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

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

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

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

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

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

The three next chapters present and explain the current state of affairs and the progress achieved in Mexico in regulatory governance. The framework of regulatory policies, institutions, and tools is employed to provide structure to the chapters.

Notes

1. Evidence from OECD countries shows that the functions of co-ordination and supervision, challenge and scrutiny, and training, advice and technical support are concentrated in one or various institutions. This contrasts with the advocacy function, which has traditionally been entrusted to a different body, separated from the other three functions.

Bibliography

Cordova-Novion, C. and S. Jacobzone (2011), "Strengthening the Institutional Setting for Regulatory Reform: the Experience from OECD Countries", OECD, Paris.

OECD (2009), Indicators of Regulatory Management Systems, Regulatory Policy Committee, OECD, Paris.

OECD (2010), *Cutting Red Tape: Why is Administrative Simplification so Complicated? Looking Beyond 2010*, OECD Publishing, Paris, doi: 9789264089754-en.

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

OECD (2012), Recommendation of the Council on Regulatory Policy and Governance, OECD, Paris.

Chapter 3

Regulatory policy and institutions in Mexico

This chapter describes Mexico's current policies for better regulation and the institutions that have been set up to support and implement such policies. Mexico has a formal policy on better regulation established in the Federal Law of Administrative Procedure. The Federal Commission for Regulatory Improvement oversees this policy, in which line ministries and agencies of the federal public administration have specific obligations as well. There are important synergies between COFEMER and the Ministry of Public Administration in the better regulation policy. There is also a renewed emphasis in Mexico on training and capacity building to improve the quality of regulations.

Introduction

Regulation is one of the three key levers of formal state power (together with taxing and spending). Of critical importance in shaping the welfare of economies and society, it may also be considered as the ultimate horizontal policy; when carried out effectively, regulatory policy complements the formulation and implementation of all other policies. The objective of regulatory policy is to ensure that the regulatory lever works effectively, so that regulations and regulatory frameworks are in the public interest.

Ensuring the quality of the regulatory structure is a dynamic and permanent role of governments and parliaments. Governments must be actively engaged in assuring the quality of regulation, not reactively responding to failures in regulatory quality. Political commitment to regulatory reform has been unanimously highlighted by country reviews as one of the main factors supporting an explicit policy on regulatory quality. An effective regulatory policy should be adopted at the highest political level, and the importance of regulatory quality should be adequately communicated to lower levels of the administration.

Political commitment can be demonstrated in different ways. The creation of a central oversight body in charge of promoting regulatory quality is a key element to show the political commitment of government to spread awareness among the different actors involved in the regulatory process. The appointment of responsibility for regulatory policy at the ministerial level helps to ensure the political commitment to the goals of the regulatory policy. However, the range of programme responsibilities within a system of regulatory management is complex and shared across government. These include portfolio and sector specific responsibilities for ensuring that regulatory quality measures are applied, such as, for example, the application of regulatory impact assessment (RIA) or simplification measures to the development of regulations in particular policy areas. Beyond the portfolio responsibilities, however, there is also a need to allocate the system wide responsibilities for monitoring and promoting the success of the government-wide policy on regulatory reform.

The chapter is structured as follows. The first section explains the structure of the government in Mexico, describing the organisation at federal level. The second section explains the capacity of the Mexican government to regulate, including the executive and the legislative branch. The following section focuses on the regulatory policy in place in Mexico. In this section, the formal legal instruments that make better regulation in Mexico are discussed. Section 4 discusses the institutions that have been created in Mexico to enforce and supervise the policy on better regulation. Issues on training and co-ordination in regulatory policy are also presented in this section. The fifth section concludes.

Structure of the government in Mexico

Mexico is a democratic and representative republic organised as a federation of thirty-one autonomous states and a Federal District. The supreme power of the Mexican Federation is divided into three branches: Legislative, Executive, and Judiciary. Each state has its own constitution, congress, judiciary and executive power, exercised by a governor. The states are organised into municipalities, administrative political entities governed by a municipal president.

The executive power relies on the president. Its attributions and obligations are established in the Constitution. The Organic Law of the Federal Public Administration (LOAPF) establishes that the federal public administration (APF) is divided into centralised and decentralised. The President's Office, line ministries and the Legal Counsel of the Federal Executive compose the centralised public administration. In turn, decentralised bodies, state-owned enterprises, national institutions of credit, national auxiliary organisations of credit, national institutions of insurance, bonds and trusts, constitute the decentralised or *para-state* public administration. The legal instrument chosen to create a public administration body determines its mandate and degree of autonomy (see Box 3.1).

Box 3.1. Types of bodies of the federal public administration in Mexico

Line ministries: They are the core entities of the Federal Executive. They are centralised administrative bodies that report directly to the president. Their mandate and attributions are defined in the LOAPF and their structure defined in their internal regulation. There are 19 ministries in the APF, which are hierarchically equal amongst them. Ministries are entitled to propose bills, enact regulation, decrees, and agreements, among other legal instruments.

Deconcentrated bodies: They have specific mandates attributed through delegated powers from line ministries, to which they are hierarchically subordinated. Deconcentrated bodies are created either through laws or decrees. They have no legal personality or financial independence since their budget depends on the line ministry. They have technical and operational autonomy to make decisions, implement their law-mandate and manage their own budget. There are more than 70 deconcentrated bodies in the Mexican federal administration. Regulatory bodies such as CRE, CNBV, SENASICA, COFEPRIS, among many others, fall within this category.

Decentralised bodies: Decentralised bodies are created by the Legislative or through a presidential decree, in which their mandate, structure and assets are defined. They are independent from the central government and have their own legal personality. They also have financial autonomy, allowing them to acquire, manage and dispose of assets. There are approximately 90 federal decentralised bodies, such as PEMEX, the Mexican Institute for Social Security (IMSS) and the Federal Electricity Commission (CFE).

Autonomous constitutional bodies: They are established directly in the Constitution, which gives them legal, organic and functional autonomy. They have authority to issue their own regulation (regulatory autonomy), as well as financial, budgetary and administrative independence. The National Human Rights Commission (CNDH) and the Central Bank are examples of autonomous bodies.

Source: Organic Law of the Federal Public Administration, and Martínez Morales (2004), *1er y 2do Curso de Derecho Administrativo*, Oxford University Press, Ciudad de México.

The federal legislative power in Mexico is vested in a General Congress composed by the Chamber of Deputies and the Senate. The Congress is formed by 500 deputies and 128 senators and has as its main purpose the analysis, discussion and issuance of laws.

The Federal Judiciary Power in Mexico is vested in the Supreme Court, the Electoral Tribunal, the collegiate and unitary circuit courts and the district courts. The administration, supervision, and discipline of the Judiciary of the Federation, except for the Supreme Court and the Electoral Tribunal, rely on the Federal Judiciary Council. The Supreme Court of Justice of the Nation (SCJN) has final appellate jurisdiction over all state and federal courts. Below the SCJN are the circuit courts, which are divided into single-judge circuit courts and collegiate circuit courts. The Federal Judiciary oversees a broader range of cases, and thus holds more judicial power than do the judiciaries at the state level. Courts undertake the judicial review of government action through the *amparo* trial. The *amparo* is a legal recourse for the judicial review of administrative actions.

There are also federal judicial bodies that are not part of the regular federal court system, such as the Federal Tribunal of Fiscal and Administrative Justice (TFJFA), which deals with fiscal and administrative disputes. This tribunal holds a jurisdictional proceeding that examines the legality and the opportunity of the APF's decisions. The TFJFA plays the role of a first-instance court competent to hear contested federal decisions. In December 2011, the TFJFA instituted a specialised chamber to resolve claims against the resolutions of regulatory bodies.

Regulatory capacity of the government

The Federal Law of Administrative Procedure (LFPA) defines regulation as a general administrative act, which according to this law encompasses a broad range of legal documents: laws, presidential rulings, decrees, agreements, technical standards, circulars and formats, guidelines, criteria, methodologies, instructions, directions, rules or whatever instrument that establishes specific obligations to citizens and businesses by ministries or decentralised bodies. In addition, the LFPA specifies that any general administrative act must be published in the Official Journal of the Federation (DOF) to come into force and have legal effects.

The main sources of law in Mexico are: i) the Constitution; ii) international treaties, iii) primary laws; and iv) secondary regulation. The Constitution prevails over all other provisions, and primary legislation and secondary regulation must be in accordance. The Congress issues primary laws and the Federal Executive enacts secondary regulations.

The Constitution states that the right to initiate laws and decrees belongs to: a) the president of Mexico, b) the deputies and senators to Congress, and c) the state legislatures. If the executive power presents a bill to Congress, it is done through the Ministry of the Interior (*Secretaría de Gobernación*), which sends it to the Chamber of Deputies or the Senate to follow the legislative process (see Box 3.2).

The Federal Executive is entitled to promulgate and implement the laws enacted by Congress, ensuring its accurate enforcement in the administrative area. The Federal Executive relies on the APF for the enforcement of legislation issued by Congress. Line ministries are legally attributed to enact regulation on the matters within their attributions. The legal documents of each ministry, such as their internal regulation, establish their attributions and matters on which they may enact regulation. Each of the governmental entities (ministries, deconcentrated bodies, and decentralised entities) issues different types of regulation.

Box 3.2. Legislative process in Mexico to approve laws

The legislative process is developed through several stages, which follow the same model regardless of whether the draft law was initially presented in either the Chamber of Deputies or Senators. The chamber of origin presents a draft law that is turned to internal committees for analysis and review. Once there is a resolution on the draft law, it is voted and presented to the other chamber for its review and comments. If the chamber of review approves the project under the same terms sent by the chamber of origin, the draft law is sent to the Federal Executive, which shall promulgate and publish it in the Official Journal of the Federation (DOF).

If the chamber of review dismisses or modifies the draft law, it is sent back to the chamber of origin for its review, modification, and voting. If the modified draft law is approved by the chamber of origin, it is sent again to the chamber of review, which in this second review may: a) approve the project under its terms and submit it to the Federal Executive, or b) dismiss it again and postpone the submission of the project until the next period of sessions of Congress.

Source: adapted from the Political Constitution of the United Mexican States and Organic Law of the General Congress of the United Mexican States.

The Mexican regulatory framework covers a wide range of legal instruments that result from the large number of bodies in the APF that have regulatory attributions (see Box 3.3). Nonetheless, to guarantee legal consistency within each line ministry or regulatory agency there is a Legal Affairs Unit that ensures that the project of regulation is in accordance with primary legislation and, with some exceptions, all types of secondary regulation follow the regulatory improvement process oversight by COFEMER.

Box 3.3. Types of secondary regulations in Mexico

Bylaws (*reglamentos*): The purpose of bylaws is to further detail the situations contemplated in a law. They are applicable to any person that falls under the category foreseen by the regulation, which may relate to different matters such as labour, environment, business or trade, among others. The Executive issues them in order to implement a law.

Decrees: Administrative orders issued by the public administration aimed at regulating a specific situation. They could be administrative, legislative or judicial. The decrees issued by the executive power are administrative.

Technical standards: Technical regulations issued by the public administration aiming at regulating the characteristics of a good or service that are produced within the country. They could have a mandatory or voluntary character.

Circulars: Internal documents of the public administration that intend to clarify, guide, inform or interpret regulation from a superior to its subordinates. Circulars aim at establishing the conduct that should be followed in regard to an act or service of the public administration.

Source: OECD (1999), *Regulatory Reform in Mexico*, OECD Publishing, Paris, doi: 9789164180315-en; OECD (2004), *OECD Reviews of Regulatory Reform: Mexico, Progress in Implementing Regulatory Reform*, OECD Publishing, Paris, doi: 9789264017528-en; Federal Commission for Regulatory Improvement of Mexico responses to OECD questionnaire, 2012.

Regulatory policy

Mexico's formal policy on better regulation

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

Consistent with this view, Mexico's policy on better regulation is formally established in the LFPA. Mexico's efforts on better regulation date from the mid 80's (see Box 3.4), and it is in the year 2000 in which reforms to the LFPA were introduced to give birth to the main current institutional arrangements of better regulation policy in Mexico. The LFPA defines the main elements of this policy which include the establishment of the Federal Commission for Regulatory Improvement (COFEMER) as the oversight body, the responsibilities of line ministries and regulators as part of the better regulation policy, as well as the establishment of tools for the regulatory improvement policy, such as the regulatory impact assessment (RIA), administrative simplification, consultation, and diagnoses of the stock of regulation.

Box 3.4. Milestones of the development of better regulation policies in Mexico

Mid-1980's: Mexico initiated the transformation of its institutional and regulatory framework through privatisation, trade liberalisation, and the development of economic sectors. A regulatory framework, which established the rules for new processes, was created.

1989: The Economic Deregulation Unit (UDE), within the Ministry of Trade and Industry, started the regulatory improvement programme through the review of the regulatory framework for the national economic activity.

1995: The Agreement to Deregulate the Economic Activity (ADAE) was implemented. It aimed at reducing and simplifying federal formalities. One of the main outcomes of the ADAE was the Federal Registry of Formalities and Services (RFTS).

1996: The Federal Law of Administrative Procedure (LFPA) was reformed to grant the UDE new attributions to implement regulatory impact analysis for the evaluation of draft regulation.

1997: The Federal Law on Metrology and Standardisation was reformed to extend the regulatory impact analysis to the evaluation of technical standards.

2000: The LFPA was amended by Congress to create an institutional framework for the regulatory reform programme in Mexico. The amendments comprised: i) the creation of the COFEMER as the responsible authority to foster the better regulation policy; ii) the obligation for agencies and government entities to undertake regulatory impact assessment (RIA); iii) the establishment of a legal basis for the RFTS which give it binding character (formalities not registered in the RFTS cannot be enforced); iv) the creation of the biannual programmes for regulatory improvement to be performed by line ministries and decentralised bodies, to simplify formalities and reduce the stock of regulation.

The System for Quick Business Start-up (SARE) was established to facilitate the process for creating and operating businesses—especially small and medium-sized enterprises (SMEs).

Box 3.4. Milestones of the development of better regulation policies in Mexico (cont.)

2001: Agencies and decentralised bodies were required to simplify at least 20% of the formalities listed in the RFTS and to further analyse regulatory improvement alternatives for high impact formalities.

2002: The Federal Law on Transparency and Access to Public Government Information was published. It granted public access to data and government documents and promoted further openness regarding regulations, their elaboration process, and public policy decisions.

2004: The Regulatory Moratorium Agreement was published. It aimed to reduce the flow of new regulatory proposals that imposed compliance costs for citizens and businesses.

2007: The Regulatory Quality Agreement was published. It established the criteria that must be observed by agencies and decentralised bodies of the federal public administration when they intend to issue regulations involving compliance costs for individuals and that should be submitted to the regulatory improvement process.

2009: The presidential programme on regulatory reform *Base Cero* is promulgated. It aims to abrogate those agreements, decrees and regulations that are not clearly and fully justified. The *Base Cero* programme is divided in two pillars: the guillotine of administrative regulations, aimed at reducing the number of regulations inside government, led by the Ministry of Public Administration (SFP), and the review of regulations applied to businesses and citizens, led by the Ministry of Economy.

2010: The Vice-ministry for Competitiveness and Business Regulation launches the on-line one-stop shop *tuempresa.gob.mx*, which simplifies federal formalities to create a legal business entity under a single step that reduces administrative burdens for citizens by 65%, according to OECD measurements.

Mexico redesigned and updated its RIA system following international best practice. It created a cost calculator, which differentiated regulation according to their impact (high or moderate), in order to target resources, make the evaluation process and times more efficient, and enhance the quality of RIA evaluation.

Seventy percent of regulations inside government were eliminated and nine administrative handbooks of general application were published, as a result of the guillotine of administrative regulations by the SFP. The handbooks standardise regulations, policies, strategies, actions, criteria, and internal procedures that must be observed in the federal public administration, under the administrative simplification criteria. Also, a presidential agreement was issued instructing agencies and entities of the APF to refrain from issuing internal regulations in the areas covered by the administrative handbooks.

2011: With the support of the Vice-ministry for Competitiveness and Business Regulation, and the COFEMER, an enhanced programme of better regulation in the Mexican States and Municipalities is established with the launching of the *OECD Guide to increase the regulatory quality of states and municipal formalities in Mexico*.

The Standard Cost Model to measure the economic cost of the formalities registered in the RFTS is adopted. Mexico sets the objective of reducing 25% of administrative burdens as part of the biennial regulatory improvement programmes for the years 2011-12.

The COFEMER issues a diagnosis on the institutional strength of economic and social regulators.

2012: Congress approves MXP 150 million to keep promoting better regulation policies in the Mexican states and municipalities. The Vice-ministry for Competitiveness and Business Regulation leads an advisory committee to allocate the resources.

Sources: OECD (1999), *Regulatory Reform in Mexico*, OECD Publishing, Paris, doi: 9789164180315-en; OECD (2004), *OECD Reviews of Regulatory Reform: Mexico, Progress in Implementing Regulatory Reform*, OECD Publishing, Paris, doi: 9789264017528-en; Federal Commission for Regulatory Improvement of Mexico responses to OECD questionnaire, 2012.

The regulatory improvement policy also falls within the broader policy objective of economic growth and development of the Mexican government. The Mexican National Development Plan 2007-12 (PND) states as an objective the need to improve regulation, public management, processes and outputs of the federal public administration (APF). For that purpose, the Ministry of Economy (SE) and the COFEMER lead the effort of pursuing regulatory policy for regulations applied to business and citizens, and the Ministry of Public Administration (SFP) for regulations inside government. Such efforts also involve the participation of regulatory agencies and the states and municipalities through the implementation of the multi-level regulatory governance agenda.

The SE established regulatory modernisation and administrative simplification for regulations applied to business and citizens as one of its six key objectives to promote productivity and competitiveness. The Vice-ministry for Competitiveness and Business Regulation promotes competitiveness of businesses and economic sectors by contributing to the advance of an integral regulatory reform in its administrative and legislative aspects, enhancing consistency and regulatory neutrality. The Vice-Ministry collaborates closely with the COFEMER to ensure that the positive impacts of regulatory quality reflect directly on the public and have a positive impact on economic growth and social welfare.

Areas excluded from the policy on better regulation

There are some areas of regulation that are formally excluded by the LFPA from the regulatory improvement programme. These areas include paying taxes, agrarian and labour law, regulation on administrative responsibilities of public servants, and regulation issued by the ministries of Defence and Navy. Regarding primary legislation, only drafts formulated and proposed by the executive power are subject to regulatory quality control, whereas all the legislation proposed by the Congress is not included in the policy of regulatory improvement.

Also, Article 9 of the Social Security Law establishes that all formalities and procedures directly related with the supply and delivery of medical services of preventive nature, for diagnostics, rehabilitation, and of management and treatment at hospitals, are excluded from the better regulation programme.

The Mexican federal government has performed several efforts to improve some of the regulation covered under the exceptions of regulatory improvement. The 2004 OECD Review of Regulatory Reform Policies of Mexico recommended the revision of the exemptions on tax regulation. In line with these recommendations, the Mexican government issued the Regulatory Quality Agreement on February 2007, in which it instructs the Ministry of Finance to reduce administrative burdens and apply measures of administrative simplification on tax payment formalities. As a result, on June 2010 and March 2012, administrative simplification measures on tax formalities were launched, which have brought about significant benefits to businesses, especially SMEs. Moreover, the World Bank's Doing Business publication has recognised several reforms to improve the formalities for paying taxes applied by the exican government (see Box 3.5), which has brought about a significant decrease in the number of hours needed to calculate, file and pay taxes per year (see Figure 3.1).

The Ministry of Defence also took regulatory improvement measures by issuing in 2007 an agreement that simplified import and export regulation on matters under the responsibility of the ministry. In spite of the very positive results, tax matters still remain a significant exception to the regulatory improvement process.

Box 3.5. Simplification measures on paying taxes by the Mexican government

2006: In Mexico City, notaries are allowed to issue a tax registration number on the spot. The tax code was simplified, eliminating some exceptions and reducing required paperwork.

2008: Mexico abolished asset tax.

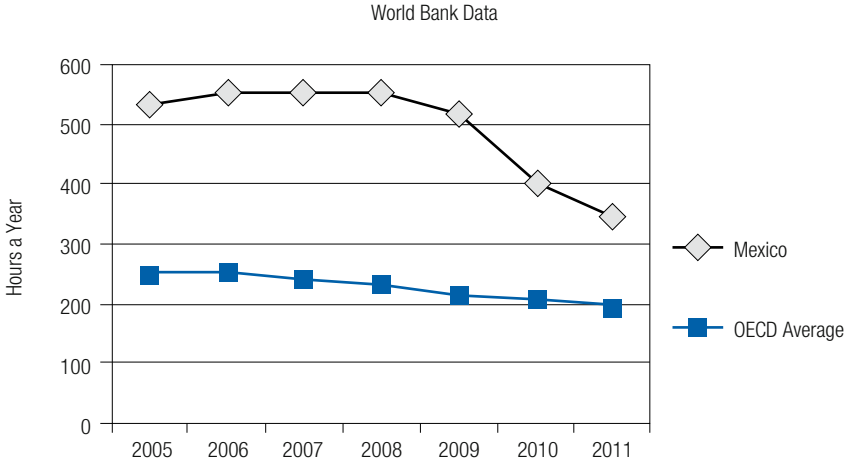
2009: Introduction of the electronic filing system for payroll taxes, property taxes, and social security.

2010: Launching of the online one-stop shop *tuempresa.gob.mx* for business start-up. Mexico decreased administrative burdens by using more online payment options and increasing the use of accounting software.

2011: Removal of the requirement to file a yearly value added tax return. Filing requirements for other taxes were reduced.

Source: adapted from the website of the World Bank, Doing Business, from www.doingbusiness.org, accessed 29 of April 2012.

Figure 3.1. Paying taxes-hours needed to calculate, file and pay taxes per year



Source: adapted from the website of the World Bank, Doing Business, from www.doingbusiness.org, accessed 29 April 2012.

Better regulation policy for regulation inside government

Regulation inside government refers to the regulations imposed by the state on its own administrators and public service providers (for example, government agencies or local government service providers). The Ministry of Public Administration plays a key role on better regulation as it leads two core federal programmes on regulation inside government: the "Special Programme for Management Improvement in the Federal Public Administration 2008-12" (PMG) and the "Guillotine of Administrative Regulations".

The Mexican federal government identifies the PMG as part of a strategy to boost the country's development, offer more efficient public services and improve the effectiveness of public spending. From these general objectives, specific objectives of the programme are:

1. Maximising the quality of goods and services provided by the federal public administration.
2. Increasing the effectiveness of institutions.
3. Minimising the operating and administration costs of agencies and entities.

The federal government has planned to complement the PMG with tools that measure the performance and the quality of government services and programmes, seeking to progressively improve government efficiency while reducing complexity and red tape. A complementary tool is the regulatory reform programme *Base Cero*, specifically its "Guillotine of Administrative Regulations"

The "Guillotine of Administrative Regulations" primarily aimed at eliminating internal administrative regulations, which would simplify and standardise the operation of federal government institutions, and implement mechanisms to eliminate all rules that hinder efficient service delivery. To date, this exercise has resulted in the elimination of 70% of the internal regulatory instruments.

Regulatory institutions

Oversight body

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

The COFEMER is the Mexican agency responsible for regulatory policy and has an oversight function for regulatory quality. It is part of the federal public administration and it is a deconcentrated body of the Ministry of Economy. The COFEMER is attributed with technical and operational autonomy, but remains hierarchically subordinated to its central ministry.

The LFPA defines COFEMER's attributions and mandate, which is to promote transparency in the development and enforcement of regulations, ensuring that they generate benefits that outweigh their costs. COFEMER's core functions in order to pursue a high quality regulatory framework are assessing draft regulations through regulatory impact assessment (RIA), reviewing the existing stock of regulations with the objective of reduction and simplification, and diagnosing regulations (see Box 3.6). COFEMER performs the functions of an oversight body: (i) co-ordination and supervision, (ii) challenge and scrutiny, (iii) training, advice and technical support for better regulation.

Ministries and decentralised agencies elaborate draft laws, decrees, and regulation accompanied by their RIA, which they send to the COFEMER for review. As an oversight body, COFEMER is entitled to enforce regulatory policy by exercising quality controls of new and existing regulations, issuing opinions on the drafts and RIAs prepared by line ministries and regulators. COFEMER's opinions are not legally binding and neither line ministries nor regulators are obliged to modify the draft regulation or the RIA. Nevertheless, given that all of COFEMER's opinions, draft regulations, and RIAs are public, line ministries and regulators do follow COFEMER's opinions most of the time. Besides, COFEMER's final opinion is a requisite to publish regulation in the DOF, which is necessary to provide the regulation with binding power and legality.

Box 3.6. COFEMER's functions as an oversight body on better regulation established by the LFPA

I. Reviewing the national regulatory framework, diagnosing its application and developing draft laws and administrative programmes to improve regulation in specific economic sectors or activities and propose them to the president;

II. Dictating and issuing resolutions on the drafts regulation, as well as on their regulatory impact assessments, issued by line ministries, administrative departments, and decentralised entities of the APF when they elaborate draft laws, legislative decrees, and administrative acts;

III. Managing the Federal Registry of Formalities and Services;

IV. Elaborating opinions on the regulatory improvement programmes of line ministries, administrative departments, and decentralised entities of the federal government;

V. Providing technical advice on better regulation to administrative departments and decentralised entities of the federal government and states and municipalities that request so; and sign agreements to that effect;

VI. Concluding Interagency agreements on regulatory improvement, according to the terms of the Law on Conclusion of Treaties;

VII. Issuing, publishing and submitting to Congress an annual report on the performance of the functions of the commission and on the progress of line ministries, administrative departments, and decentralised entities on their regulatory improvement programme.

Source: Federal Law of Administrative Procedure of Mexico.

Training and capacity building

The OECD has documented that another essential function of an oversight body is to assist regulators in improving the quality of their regulations (Cordova-Novion and Jacobzone, 2011). Conducting training on regulatory quality issues has been an important way to support regulators in complying with new disciplines, and to raise awareness and promote a cultural change among regulators and regulated entities or individuals.

The COFEMER has increased the expertise and technical level of its officials through training and specialisation on RIA and economic and social regulation. The COFEMER has also achieved successful results by increasing training of public servants both at the federal and municipal level and it now has an annual programme on training for public officials.

Training regulators is also essential to ensure the effectiveness of the tools that improve the overall quality of regulation. Adequate understanding of regulatory tools such as RIA provides regulators with the skills and knowledge to identify and assess appropriate alternatives to regulation to meet a policy objective. Training also ensures that new regulation does not impose unnecessary costs and burdens upon citizens.

The LFPA establishes COFEMER's legal attributions to provide technical advice on regulatory improvement to line ministries, decentralised and deconcentrated bodies of the federal government, states and municipalities that request so. On that basis, the COFEMER provides training and capacity building at all levels of government. The COFEMER has deployed several efforts to increase the regulators' understanding of the regulatory improvement process and tools. COFEMER has conducted specialised training sessions for regulators performing RIA. During 2010 the COFEMER trained 476 public servants from 53 departments and decentralised agencies of the APF throughout 17 training sessions.

Despite the high-technical level of the staff working at COFEMER, the public officials involved in the regulatory process within the ministries and regulatory agencies not necessarily share this profile. There are also important differences amongst regulators on their knowledge and understanding of the regulatory process and tools. The COFEMER remarked the importance of enhancing a strong, common basis on the regulatory process and tools. For that purpose, the COFEMER and the Latin American Network of Regulatory Reform and Competitiveness (LATIN-REG) designed a course on regulation, directed to public officials responsible for issuing regulation at all levels of government.

The course on regulation aims at generating expertise on the basic concepts and tools of regulation. It provides participants with an overview and introductory analysis of the economic and social regulation, the different theoretical approaches, as well as the tools used in the regulatory design process and in regulatory impact assessment. The course is carried out online and lasts 60 hours divided into four modules. The first course was launched in February 2012 and had more than a thousand participants; the second instalment enrols more than 5 000 public officials and individuals.

Moreover, the COFEMER has broadened the scope covered by its online training. Two new courses have been designed, starting in July 2012. One of them is a Diploma on Evaluation of Regulatory Impact. It highlights the methodologies and strategies of regulatory policy applied to practical situations. The other studies Economic Regulation and is aimed at an audience specialised in regulated markets. It deepens the knowledge of the concepts and tools in the study and understanding of economic regulation. The Diploma on Regulation will also continue, having more instalments, taught in Spanish and English.

The COFEMER has also worked on increasing the training of public servants at the state and municipal level. The number of trained state and municipal officials has increased significantly over the recent years, from 147 public servants trained in 2008 to a total of 484 in 2010. The training and advice provided by the COFEMER comprises:

- Reviews of the local regulatory framework, diagnosis of its application and development of project proposals (for legislative as well as administrative measures) to improve regulation in specific economic sectors or activities;
- Design, implementation and evaluation of regulatory improvement programmes;
- Creation of state and municipal records of formal procedures and services;
- Development and implementation of methodologies to prepare RIA and for the review and public consultation of draft normative acts;
- Implementation of the System for Quick Business Start-Up (SARE);
- Creation of state and municipal councils in the area of regulatory improvement.

Advocacy for better regulation

Another core function for an oversight body is unilaterally encouraging improvements of the regulatory framework. This advocacy function can be internal to the administration, as well as external. Advocating reform is important in helping to identify opportunities for reform and in supporting and arguing for the development and progress of reform initiatives. Technical expertise and an overall understanding of the regulatory process and of best practices to adopt are necessary requirements for an effective advocacy function. The COFEMER is endowed with these capabilities. Additionally, to freely and publicly advocate for regulatory improvement policy, political leverage and a degree of autonomy and independence are key features that an advocacy body must have (Cordova-Novion and Jacobzone, 2011).

Better regulation in the federal public administration

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

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

The Mexican federal government also has co-operation mechanisms between ministries to promote regulatory quality and coherence. Some are formally established through a law or regulation, as is the case of the Federal Law on Metrology and Standardisation (LFMN), which establishes that inter-sector agreements should be reached when there is an overlap or concurring functions in the elaboration of technical standards. Besides, the Federal Competition Commission (CFC) has an administrative collaboration agreement with the COFEMER aiming at the review and improvement of competition on draft regulation reviewed by the COFEMER and at the advocacy of competition.

Informal co-operation between ministries also takes place to enhance a horizontal perspective of regulation and public policies. The Competitiveness Committee aims at reviewing the public policies introduced by different units of government in matters of competitiveness. Nine line ministries and the Office of the President compose the committee; where the ministers propose subjects on which they need horizontal assistance. Although the resolutions taken by the Competitiveness Committee are not legally binding, the committee has been useful in communicating programmes and objectives across ministries, in order to rally for support and avoid overlapping efforts.

Co-ordination between the COFEMER and the Ministry of Public Administration

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

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

The Regulatory Improvement Council

To perform its co-ordination and supervision function, the COFEMER is complemented with the Regulatory Improvement Council. The Council is intended to serve as a coordinating mechanism for the government, and as a liaison between the public, social and private sectors to obtain their opinions in terms of regulatory improvement. It is composed by the heads of the ministries of Economy, Public Administration, Finance, Labour, and the legal counsellor of the president. The head of the COFEMER is the technical secretariat of the Council. The council also has representatives from the business and academic sectors, amongst others. By having some of the most influential ministries, the council is expected to achieve the necessary political consensus to carry out the different actions in the framework of the regulatory improvement policy and overcome internal resistance, which is commonly known as "soft power" for reform (Cordova-Novion and Jacobzone, 2011). In the last five years, the council has carried out only a few sessions, which indicates that it is not being employed to its full potential.

Key findings and policy options

Mexico should embrace a "whole-of-government" culture for regulatory improvement policy…

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

- Creating a small committee or council of ministers, or incorporating these activities into existing cabinet groups, to review and approve high-impact regulations;
- Strengthen the network of units placed inside ministries that provide expert support in regulatory policy and governance matters; and

- Enhancing the role of the Ministry of Public Administration, whose attributions have been transferred to the Ministry of Finance, to have better regulation inside government, and to properly monitor the implementation of legislation in better regulation, in co-ordination with the Ministry of Economy and the COFEMER.

…by creating a small committee or council of ministers to review and approve high-impact regulations…

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

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

This committee would only focus on draft regulation considered to be high-impact. The COFEMER would be the body in charge of making recommendations to the council regarding the approval, modification or rejection of the regulation, based on the corresponding RIA process and the results of public consultation. The final decision would rest on the council, in which transparency and accountability mechanisms would have to be established regarding the council's decisions. This option presumes the need for an adequate legal instrument, such as a new law on regulatory policy and governance, to create the committee, or update the status of current bodies, such as the Federal Council on Regulatory Improvement. A relevant international example is offered by Canada (see Box 3.7).

…by strengthening the network of units placed inside ministries that provide expert support in regulatory policy and governance matters…

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

Box 3.7. The regulatory process in Canada

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

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

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

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

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

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

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

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

Source: adapted from the website of the Treasury Board of Canada Secretariat, www.tbs-sct.gc.ca, accessed 29 April 2013.

Box 3.8. The culture of better regulation in the United Kingdom

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

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

Source: OECD (2010c), *Better Regulation in Europe: United Kingdom*, OECD, Paris, doi: 9789264084490-en.

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

The units would be part of the line ministries' structures and could be created with existing staff, just as in the case of the current transparency units. COFEMER's functions would include the capacity to issue guidelines, methodologies and criteria for the operation of the units. In turn, the units would be one of the main official contact points for the COFEMER, and they would receive training, capacity building and direct support from the commission. By working alongside line ministries and regulators, the units of regulatory improvement would be able to maximise the effects of the regulatory policy tools, and generate ownership of the regulatory improvement policy agenda within the entities of the public administration. Box 3.8 contains an example of this networked approach to better regulation from the UK.

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

…and by enhancing the role of the Ministry of Public Administration (whose functions have been transferred to the Ministry of Finance)

Finally, the role of the Ministry of Public Administration in the better regulation agenda of Mexico, whose functions have been transferred to the Ministry of Finance, must be enhanced. In addition to ensuring its participation in the ministerial committee suggested above, two main activities of the Ministry of Public Administration in regulatory improvement in Mexico must be clearly set: its responsibility in promoting and effecting better regulation inside government; and regarding regulations applied to businesses and citizens, its capacity to enforce the commitments and responsibilities of line ministries and regulators in co-ordination with the COFEMER and the Ministry of Economy, and to issue pre-emptive orders and administrative sanctions in the case of noncompliance.

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

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

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

The COFEMER requires a strengthened institutional setting in order for Mexico to achieve an integral regulatory policy culture. The COFEMER is vested with technical and operational autonomy, but does not have financial independence.

The commission needs an institutional design that strengthens its legal authority and grants larger financial autonomy to discharge its mandate as a central oversight body for regulatory quality. Such autonomy would reinforce its technical independence and protect its professionalism. In a setting in which line ministries and regulators take more responsibility for their better regulation obligations, a stronger internal and external institutional setting for the COFEMER is needed so as to allow the system to function and deliver results effectively.

The COFEMER currently performs the function of challenge and scrutiny of new and existing regulation, mainly through the regulatory tools of RIA, administrative simplification, and reviews of the regulatory stock. Similarly, the COFEMER carries out the function of providing training and giving advice and technical support on regulatory tools and improvement policies. To successfully perform these functions, the COFEMER requires to be shielded from political interference and private interests in order to establish its technical independence and assure a high level of technical capacity of its staff. The measures to achieve this can include an autonomous budget, more independence on its capacity to exercise its power, the updating of its internal structures in accordance with the real nature of its functions, and strengthened policies for hiring and retaining staff. Adequate resources are not only needed to make an oversight body competent and effective, but lack of these can also compromise the proper fulfilment of tasks (Cordova-Novion and Jacobzone, 2011).

Box 3.9. Accountability mechanisms of oversight bodies on better regulation in selected OECD countries

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

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

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

Source: Cordova-Novion, C. and S. Jacobzone (2011), "Strengthening the Institutional Setting for Regulatory Reform: the Experience from OECD Countries", OECD, Paris.

An oversight body also needs access to the highest political level to preserve influence within the government. Political support is required to back the oversight body and give effective life to it. When regulatory oversight bodies receive a say on regulatory instruments, they are necessarily close to the centre of the political process. In the proposed setting, in which there is an approval committee of high-impact regulation, COFEMER's opinions are taken into account by such committee, and the need to provide the COFEMER with a stronger political stance vis-à-vis line ministries and sectoral regulators is more acute.

The actions to strengthen the COFEMER should be accompanied by the setting of transparency and accountability rules that ensure fairness and credibility. Experiences across OECD countries reveal that as oversight bodies are vested with significant powers, they have also been checked by clear transparency and accountability rules, to make sure their approach and processes can resist external scrutiny (see Box 3.9).

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

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

A core function of a regulatory improvement policy consists in unilaterally encouraging improvements of the regulatory framework. Advocating reform is important in helping to identify opportunities for reform and in supporting and arguing for the development and progress of reform initiatives. This advocacy function can be divided in two: internal to the administration, and external. In the case of internal advocacy, oversight bodies are empowered to recommend quality regulation through specific deregulation/re-regulation initiatives to ministries, regulators or agencies. In other cases, oversight bodies have the opportunity to advocate publicly and engage in external communication, calling upon stakeholders and the policy debate to push through a programme for regulatory improvement (Cordova-Novion and Jacobzone, 2011).

A key consideration for Mexico may be to modify its current institutional arrangements for regulatory policy to establish and foster the external advocacy function. Mexico should consider the creation of a citizen based agency external to the government that would unilaterally advocate for regulatory reform. Such advocacy function could be important in Mexico to identify reform opportunities and support the development of reform initiatives. It would also ensure that regulatory reforms are broadly understood and accepted by business, and civil society. In this regard, such an advocacy function would require interaction with stakeholders and affected parties —seeking external assessment, perceptions and support—, which will help to drive future regulatory improvements. Box 3.10 summarises the experience of Australia in this respect.

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

1. The agency would need statutory independence and a standing function that is accepted by all major political parties.
2. The analysis carried out by the agency would need to give clear consideration to the stated objectives of government policy and not substitute its own policy objectives.
3. The examination would need to be undertaken transparently using broad welfare analysis that would take into account a diversity of policy considerations and the impacts on the overall economy.
4. The analysis would provide a single voice in policy debate, yet be informed by inputs from multiple actors and stakeholders. Therefore, coordinating and consultation mechanisms would have to be established with these stakeholders, including the Ministry of Economy, the COFEMER and regulators.
5. The analysis would need to take a national focus, thereby overcoming the potential for policy fragmentation associated with multiple layers of regulatory authority in Mexico.

Box 3.10. The Australian Productivity Commission

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

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

Source: OECD (2010), *OECD Reviews of Regulatory Reform: Australia, towards a Seamless National Economy*, OECD Publishing, Paris, doi: 9789264067189-en.

6. Finally, while the analysis of the agency would not have to be formally considered or approved by the government —thus tying the government's hands—, it would remain in the public domain as a reference to assist policy debate and in guiding future policy development. To counter the potential for status quo bias, the government should be required to formally respond to the agencies analysis and recommendations.

The legislative power is an essential element of regulatory governance and, as such, it should take measures to adopt a culture of regulatory quality

Regulatory governance comprises the system whereby regulations are designed, implemented, enforced, and evaluated once they are in force. OECD recommends that policies for better regulation must be applied throughout the cycle. This approach will permit to establish a whole-of-government policy on regulatory improvement. The legislative power is therefore one of the pillars of this cycle, since it is the primary source of laws, from which secondary regulation emanates.

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

The regulatory improvement process envisaged by the LFPA only comprises secondary legislation issued by the APF and initiatives of primary legislation presented by the federal Executive. This means that all legislation proposed by Congress itself is not included in the policy of regulatory improvement. For instance, primary laws prepared by Congress are not subject to any formal or informal obligation to perform an impact analysis, either *ex ante* or *ex post*, or to carry out public consultation on the impact and effects that the intended legislation has on society.

In fact, about 96% of the bills passed by the previous legislature had their origin in Congress and were not subject to impact analysis (see Table 4.2). This gap implies the risk that ministries and agencies may try to avoid the regulatory quality process by convincing legislators to present a bill with the regulatory requirements they would otherwise issue via secondary regulations, which have to be accompanied by a RIA.

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

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

The adoption of specific tools on regulatory policy in the process of law making should not create additional burdens. Similarly, these tools should be embedded in the process so as to avoid additional delays or bottlenecks. To this purpose, there should be prioritisation of the laws to be evaluated, based on specific and objective criteria. Another option in the short term to avoid extra steps in the law-making process, while adopting at the same time better regulation practices, is to set up tools for *ex post* evaluation of laws, as a first measure. *Ex post* evaluation of regulatory impact can help Congress draw lessons which can guide the law-making process (see Box 3.11 for a relevant example from Chile).

Box 3.11. Law evaluation in Chile

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

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

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

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

- Contributing to define policy alternatives and, if adequate, regulatory interventions, and improving the quality of the information available for congressmen, so that they can anticipate unintended consequences of legislation.
- Enhancing transparency by opening new possibilities for stakeholders' participation.
- Facilitating the buy-in of target populations of legislation.
- Increasing accountability of the legislative process.
- Reducing risks of regulatory failure by promoting evidence-based decision-making.
- Setting out *ex ante* evidence and expectations as the basis for *ex post* assessment to monitor performance and consistency with expected results.

Box 3.12. International experience with regulatory impact assessment in legislative bodies

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

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

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

Box 3.12. International experience with regulatory impact assessment in legislative bodies *(cont.)*

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

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

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

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

In consequence, Congress should consider the development of institutions and methodologies for impact analysis. There have already been some initiatives to propose impact analysis within Congress and to implement public hearings, but they have not gone too far. The international experience suggests different models to do it, such as relying on legislative commissions or developing a technical unit with the mandate and expertise to do it, among others (see Box 3.12). In any case, the body responsible for impact assessment would need to work in close consultation with the ministry or independent regulator responsible for the relevant policy area, building on the co-ordination mechanisms already in place.

Include the management of tax procedures and all regulation and formalities from decentralised entities of the federal public administration as part of the regulatory improvement programme

Mexico should consider the inclusion of the improvement of tax and fiscal formalities in its regulatory improvement programmes, as well as the formalities required by the decentralised entities, encompassing the formalities of the Mexican Social Security Institute. Such a decision would eventually lead to have the necessary conditions to eliminate tax formalities from the exceptions of the LFPA, in order to include them in the RIA evaluation process, in the programmes for administrative simplification and burden reduction, and in the other tools of the regulatory improvement programme of Mexico. It must be clearly stated that the objective is to make the management of tax formalities and procedures part of the better regulation programme. This does not include the capacity of the state to levy taxes by raising current tax rates or by creating new taxes.

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

Moreover, Article 1 of the LFPA should be revised to include all the regulation and formalities from decentralised entities of the federal public administration into the discipline of regulatory improvement policy. As it currently stands, only those that are "exclusively provided by the state" are included, which exempts a large share of formalities and front line services to citizens from the efforts of better regulation. Recent OECD research shows that administrative simplification programmes can be very effective in reducing both administrative burdens and sources of irritation amongst citizens when dealing with the government in the provision of services (OECD, 2010d). The inclusion of IMSS formalities and of all the decentralised entities in the programme for regulatory improvement of Mexico will contribute to raise the standard of services for the benefit of citizens.

Bibliography

COFEMER (2010), Informe de Actividades 2009, Gobierno Federal de México, Ciudad de México.

COFEMER (2011a), Impacto del Sistema de Apertura Rápida de Empresas (SARE) en México, Gobierno Federal de México, Ciudad de México.

COFEMER (2011b), Informe de Actividades 2010, Gobierno Federal de México, Ciudad de México.

COFEMER (2011c), Fortaleza Institucional de los Reguladores Financieros en México, COFEMER, Mexico City.

COFEMER (2011d), Institutional Strength of Economic Regulators in Mexico, COFEMER, Mexico City.

COFEMER (2011e), Institutional Strength of Social Regulators in Mexico, COFEMER, Mexico City.

Cordova-Novion, C. and S. Jacobzone (2011), "Strengthening the Institutional Setting for Regulatory Reform: the Experience from OECD Countries", OECD, Paris.

Martínez Morales (2004), *1er y 2do Curso de Derecho Administrativo*, Oxford University Press, Ciudad de México.

Martínez, Rafael (2004), *Derecho Administrativo*, México.

OECD (1999a), *Regulatory Reform in Mexico*, OECD Publishing, Paris, doi: 9789164180315-en.

OECD (1999b), *Regulatory Reform in the Netherlands*, OECD Publishing, Paris, doi: 9789264173774-en.

OECD (2002), *Regulatory Policies in OECD Countries: From Interventionism to Regulatory Governance*, OECD Publishing, Paris, doi: 9789264177437-en.

OECD (2003), *OECD Reviews of Regulatory Reform: Norway*, OECD Publishing, Paris, doi: 9789264103122-en.

OECD (2004), *OECD Reviews of Regulatory Reform: Mexico, Progress in Implementing Regulatory Reform*, OECD Publishing, Paris, doi: 9789264017528-en.

OECD (2006), *Cutting Red Tape: National Strategies for Administrative Simplification*, OECD Publishing, Paris, doi: 9789264029798-en.

OECD (2007), *OECD Reviews of Regulatory Reform: Italy, Ensuring Regulatory Quality Across Levels of Government*, OECD Publishing, Paris, doi: 9789264037984-en.

OECD (2009a), Indicators of Regulatory Management Systems, Regulatory Policy Committee, OECD, Paris.

OECD (2009b), *Regulatory Impact Analysis: A Tool for Policy Coherence*, OECD Publishing, Paris, doi: 9789264067110-en.

OECD (2010a), *Better Regulation in Europe: Denmark*, OECD, Paris, doi: 9789264084551-en.

OECD (2010b), *Better Regulation in Europe: Netherlands*, OECD, Paris, doi: 9789264084568-en.

OECD (2010c), *Better Regulation in Europe: United Kingdom*, OECD, Paris, doi: 9789264084490-en.

OECD (2010d), *Cutting Red Tape: Why is Administrative Simplification so Complicated? Looking Beyond 2010*, OECD Publishing, Paris, doi: 9789264089754-en.

OECD (2010e), *Multi-level Regulatory Capacity in Australia*, OECD Publishing, Paris, doi: 9789264067189-en.

OECD (2010f), *OECD Reviews of Regulatory Reform: Australia, towards a Seamless National Economy*, OECD Publishing, Paris, doi: 9789264067189-en.

OECD (2011a), *Competition Assessment Toolkit*, OECD, Paris.

OECD (2011b), *Regulatory Policy and Governance: Supporting Economic Growth and Serving the Public Interest*, OECD Publishing, Paris, doi: 9789264116573-en.

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

OECD (2012b), *OECD Review of Telecommunication Policy and Regulation in Mexico*, OECD Publishing, Paris, doi: 9789264060111-en.

OECD (2012c), Principles for the Governance of Regulators - Discussion Paper, Paris.

OECD (2012d), Recommendation of the Council on Regulatory Policy and Governance, OECD, Paris.

Office of Best Practice Regulation (2008), Best Practice Regulation Guidance Note: Value of Statistical Life, Australian Government, Canberra, www.finance.gov.au/obpr/docs/ValuingStatisticalLife.pdf.

Office of Best Practice Regulation (2011), Best Practice Regulation Report 2010-11, Australian Government, Canberra.

Office of Management and Budget (2003), Circular A-4: Regulatory Analysis, United States Government, Washington, www.whitehouse.gov/omb/circulars_a004_a-4/.

Parliament of Victoria, Australia (1994), Subordinate Legislation Act 1994 (No. 104/1994). www.legislation.vic.gov.au.

Secretaría de Economía y OCDE (2009), Programa de Medición del Costo Administrativo Empresarial en México: Informe de resultados del costeo de tuempresa.gob.mx, Gobierno Federal de México y OCDE, Ciudad de México.

Secretaría de la Función Pública (2010), Menos reglas, Mejores resultados, Gobierno Federal de México.

United Kingdom Government (2011), Impact Assessment Toolkit. UK Government, London, August 2011. www.bis.gov.uk/assets/biscore/better-regulation/docs/i/11-1112-impact-assessment-toolkit.pdf.

World Bank (2011), *Mexico Country Profile 2010, Enterprise Surveys*. The World Bank Group, Washington.

Chapter 4

Regulatory impact assessment and consultation in Mexico

This chapter describes the process by which regulations are made in Mexico and the ex ante tools to ensure their quality, including regulatory impact assessment (RIA) and public consultation. Likewise, it analyses the main issues identified in the methodologies and processes applied to these tools and proposes reforms to strengthen their implementation with the aim of improving the quality of the flow of regulations. Finally, it assesses the Mexican situation in light of the OECD's principles and best practices and the experiences of other member countries.

Introduction

This chapter discusses the processes by which new regulation is made in Mexico. It focuses on the use of *ex ante* regulatory quality assurance tools and, in particular, on the use of regulatory impact assessment (RIA) and consultation in the Mexican context.

The OECD's recent major publication on RIA (OECD, 2009a, pp. 12-13) points out that better decision-making processes should lead to better policy decisions. Public policy decisions are inherently challenging, given the need to take into account a complex range of social, economic and environmental factors to determine how to maximise the public interest. High-quality institutions, tools, and processes are needed to ensure that good policy decisions are made systematically.

RIA should function both as a tool and a policy process to inform political decision makers as to whether and how to regulate. The history of the use of RIA now extends for more than three decades and the OECD has long been an advocate of RIA as a key means by which governments can ensure that regulation achieves its objectives effectively and efficiently in a dynamic policy context. Successive publications have provided data and analyses on best practices and elucidated guiding principles for the adoption of RIA.

The key role of RIA is to ensure that regulatory decision-making is placed on a systematic and comparative footing. At its most fundamental, RIA involves clearly identifying underlying regulatory objectives, systematically seeking out policy options potentially capable of addressing them, subjecting each to rigorous and comparative analysis, ideally based on benefit/cost analysis, in order to determine how the options compare in terms of effectiveness and efficiency. RIA is closely linked to a number of other regulatory quality tools, most importantly public consultation, which provides essential inputs to the RIA analysis.

The use of RIA has spread very rapidly among OECD countries and beyond. As recently as the mid-1980's, few member countries used this tool, but, by the late 1990's, around two thirds of OECD countries had adopted RIA requirements. Currently, virtually all OECD member countries use some form of RIA. This trend represents a very rapid spread of a new policy tool—a conclusion that is further underlined by the fact that no country is known to have abandoned RIA once having adopted it.

The current chapter considers Mexico's historical and current experience with RIA within this broader context and particularly assesses the Mexican situation in light of the OECD's principles and best practices and the experiences of other member countries.

RIA in Mexico: History and recent developments

Early steps

Mexico has a relatively long history in using RIA as part of a programme to improve regulatory quality. The first step in this direction was a requirement, introduced in 1992 via amendments to the Federal Law on Metrology and Standards, for benefit/cost analysis (BCA) to be applied during the development of technical standards (*normas oficiales mexicanas* or NOMs). However, there were substantial implementation problems, with consultative committees in charge of preparing the BCAs having great difficulty producing scientific or objective data and the BCA often, in practice, amounting to little more than a list of qualitative benefits and political considerations and a description of minor transition costs (OECD, 1999a, p. 158).

A broad RIA requirement was formally adopted in 1996 via amendments to the Federal Law on Administrative Procedure (LFPA), although the OECD's 1999 review reported that the "effective establishment" of the RIA requirements came in 1998. The use of the LFPA made Mexico one of the relatively few countries at that time to have established its RIA requirements in legislation (OECD, 1999a, p. 158). Indeed, the establishment of RIA in legislation remains relatively uncommon today.

The scope of the initial RIA requirements was relatively broad, covering a wide range of draft regulations with a potential impact on business activity. A centralised quality control mechanism was also established at this time, with all RIA required to be submitted to the *Economic Deregulation Unit* (UDE) of the Ministry of Trade and Industry for assessment.

The 2000 reforms

Significant changes to the RIA system were adopted only four years later. The move to adopt a major reform to the RIA process so soon after its introduction reflected the intention to respond positively to the recommendations of the *1999 OECD Review of Regulatory Reform: Mexico* (OECD, 1999a) and a concern to better embed the process, including the new reforms, in the LFPA, in order to minimise the possibility that an incoming government administration would fail to enforce, or even seek to repeal, the requirements (Cordova-Novion, 2007, p. 233).

The 2000 reforms were adopted via thoroughgoing changes to the LFPA that were passed unanimously by Congress. These changes included the addition of an entire new section on regulatory improvement, institutionalising new rule-making procedures based on RIA and public consultation. A fundamental aspect of the 2000 reforms to RIA was a further broadening of the scope of RIA requirements, so that it was henceforth to be required in respect of a wide range of proposed regulations and formalities issued by any government ministry or agency. Of particular note is that regulations proposed by sectoral regulatory agencies were also brought within the new mandate.

Some exceptions exist to the RIA process: these relate to regulation governing taxation, the public service, "agricultural or labour justice", directives dealing with the operations of the Public Prosecutor and some regulation related to the Mexican Institute of Social Security. These exemptions are spelled out specifically in the LFPA.

The COFEMER, which was established at this time, took over the RIA quality control function previously undertaken by the UDE. A new article 69H of the LFPA required all regulatory instruments to be forwarded to the COFEMER, together with a RIA. The COFEMER was given a substantial budget to carry out its responsibilities, with a staff of 60 professionals available to it in the year 2000. In accordance with the LFPA requirements, it developed a detailed RIA format and also published a detailed manual for regulatory agencies setting out and explaining the procedures defined by the LFPA (Cordova-Novion, 2007, p. 234).

The 2010 reforms

Further, substantial reforms to the Mexican RIA process were adopted in 2010. These reforms were, in part, intended to ensure that the Mexican RIA system would be fully consistent with the OECD best practice principles. In addition, they sought to address a number of specific problems identified through accumulated experience and took account of the recommendations of the follow-up to the 1999 OECD *Reviews of Regulatory Reform: Mexico*, published in 2004 (OECD, 2004).

A key change adopted in 2010 was to distinguish formally between regulations that are expected to have moderate impacts and those expected to have high impact. An online tool—the Regulatory Impact Calculator—was developed to enable regulators to assess their proposed regulation in these terms at an early stage of the process. The importance of this distinction lies in the differential RIA requirements that are applied under the new system. According to COFEMER, RIA in relation to high impact regulation is expected to incorporate more and better quality data and a greater depth of analysis than that relating to "moderate impact" regulatory proposals. The effort to ensure proper targeting of RIA is clearly consistent with OECD best practice principles. The purpose of this distinction is to make better use of RIA resources, particularly within agencies developing regulatory proposals, by directing a greater proportion of RIA effort to those regulations likely to have the greatest impact if adopted.

The concerns of the ministries that RIA was acting as a bottleneck that impeded important regulation and even regulatory improvement were another driving force for the adoption of the 2010 reforms aiming to reduce compliance costs for ministries preparing RIA without losing essential information to appraise proposals properly.

RIA requirements for both moderate and high impact regulations were also improved in a number of other key areas. Greater attention has been paid to problem definition, thus improving the basic rationale for regulation set out in the RIA. In addition, analytical requirements in relation to alternatives to the proposed regulations have been increased, with the RIA required to include BCA of each alternative for the first time, thus expanding the number of RIAs that contain quantitative comparisons of the different identified policy options.

Additions to RIA in 2012

On November 16, 2012, the RIA Manual was modified to introduce two additional types of RIAs: high-impact RIA with competition impact analysis and moderate-impact RIA with competition impact analysis. In the same spirit of aligning RIA evaluation in Mexico, the Mexican government decided to include a specific section in the RIA requirements to assess the effects on competition of the new draft regulation.

The competition impact analysis follows closely the Competition Assessment Toolkit issued by the OECD (OECD, 2011a). The toolkit states that:

"Increased competition improves a country's economic performance, opens business opportunities to its citizens and reduces the cost of goods and services throughout the economy. Numerous laws and regulations, however, restrict competition in the marketplace further than necessary to achieve their policy objectives. Governments can reduce unnecessary restrictions by applying the OECD's Competition Assessment Toolkit. The toolkit provides a general methodology for identifying unnecessary restraints and developing alternative, less restrictive policies that still achieve government objectives." (OECD, 2011a, p. 3)

As in the case of the OECD's toolkit, the new RIA process includes a checklist that asks a series of questions which intend to determine whether the draft regulation limits the number or range of suppliers, limits the ability of suppliers to compete, limits the choices and information available to customers, or reduces the incentive of suppliers to compete. This checklist is integrated to the Regulatory Impact Calculator, and depending on the answers to the competition assessment questions, the regulator is requested to prepare either the moderate-impact RIA with competition impact analysis, or the high-impact RIA with competition impact analysis. In both cases, regulators are requested to fill a special section on the RIA template which is aimed at identifying the negative impact on competition due to the new regulation, to justify the need for such harm on competition from a public policy perspective, and to describe whether and which alternatives were considered.

The new process establishes that for these cases the COFEMER will send the RIAs to Mexico's Federal Competition Commission to receive their comments and feedback. Hence, a co-ordination mechanism between the two oversight bodies is established, which is expected to increase the quality of new regulation, and minimise its impact on competition.

Additionally, on November 28, 2012, the RIA Manual was further modified, this time to include two additional modalities of RIA: high-impact RIA with risk analysis and high-impact RIA with competition impact analysis and with risk analysis. The common thread in both new RIAs is the addition of a risk analysis, which is intended for the regulator to assess whether the proposed piece of regulation is aimed at reducing risks for human, animal of vegetal health, for public security, workplace safety, the environment, or consumer protection; and once these risks are identified, to identify and assess the actions or mechanisms that the regulation intends to apply to reach such reductions in risks.

The risk analysis introduced by Mexico has two OECD documents as source of inspiration: the 2012 *Recommendation of the OECD Council on Regulatory Policy and Governance,* which amongst its recommendations states that, "As appropriate, apply risk assessment, risk management, and risk communication strategies to the design and implementation of regulations to ensure that regulation is targeted and effective"; and the 2010 OECD report *Risk and Regulatory Policy, Improving the Governance of Risk,* whose main purpose is to identify areas for the improvement of risk governance through an analysis of the legal, procedural and practical challenges for risk regulation, and hence, improve the efficiency and effectiveness of regulatory management arrangements for reducing risks.

The new RIAs with competition assessment and risk assessment are expected to become operational by the second half of 2013.

In a similar way, following OECD's recommendations on maintaining a regulatory management system that comprises *ex ante* and *ex post* RIA as fundamental elements of an evidence-based decision-making process, on 28 November 2012 Mexico issued an agreement that allows the COFEMER to request an *ex post* RIA to ministries and decentralised bodies who issued technical standards accompanied by high-risk RIAs. The *ex post* RIA assesses the accomplishment of the regulatory objectives, its efficiency, effectiveness, impact and permanence. The agreement, in force as of 30 March 2013, also enables the COFEMER to recommend the modification or cancellation of the technical standard, the re-statement of its objectives or the adoption of additional measures that improve its application, as a result of the review of the *ex post* RIA.

The agreement establishing the *ex post* RIA also comprises the opportunity for ministries and decentralised entities to submit their regulation (after two years of its entry in force or when they consider necessary) for an *ex post* evaluation by the COFEMER or an external evaluator on a voluntary basis.

Finally, the COFEMER created the Quality Management System of the RIA through an agreement published in the DOF on 16 November 2012. The agreement establishes the criteria under which the COFEMER will assess the quality of high-impact and moderate-impact RIAs sent by ministries and decentralised bodies. To assess the quality of the RIA, the agreement states that the COFEMER may classify RIAs as satisfactory, unsatisfactory, deficient or inapplicable (not graded). It also specifies the conditions under which a RIA may be considered as partially answered or containing unconvincing information. The system also involves a global quantity indicator for each ministry and decentralised body. This indicator is calculated through the differential between the number of satisfactory RIAs and the number of unsatisfactory and deficient RIAs, all of them in reference to the total number of RIAs analysed.

Based on these assessments, the COFEMER will issue and publish on its website, in February of each year, a report on the quality of the RIAs received during the preceding year. The report will contain: i) the period of analysis, ii) the score obtained by the ministries and decentralised bodies that issued RIAs in the previous year, iii) specific recommendations with the purpose of enabling each of them to adopt the necessary measures to improve the quality of information and analysis provided in the RIA.

Description and analysis of current RIA practice

Scope of RIA requirements

The scope of RIA requirements is a key determinant of their practical effectiveness and efficiency. In principle, RIA should be applied to all regulatory instruments that impose significant regulatory costs: applying RIA only to some types of regulatory instrument can mean that important regulatory impacts go without assessment and can lead to distortions in the regulatory process, by creating incentives to use particular instruments that may not be well-adapted to their purpose, simply in order to avoid the RIA requirement. At the same time, it is important to understand that RIA is a resource-intensive process that is demanding of often scarce expertise. This means that RIA should generally not be required in respect of relatively minor regulation, both because it has limited ability to enhance regulatory quality in such circumstances and because resources used to conduct RIA in such cases could be better employed in undertaking deeper and more sophisticated RIA analysis of farther-reaching regulatory proposals (OECD, 2009a, p. 26).

Countries that have adopted RIA have tended to broaden its application over time (OECD, 2002, p. 45). However, previous OECD research found that:

> "…despite a considerable broadening of the scope of RIA in recent years, there remains considerable divergence between OECD countries in this respect. Most countries now apply RIA to both primary and subordinate legislation. However, a very large minority applies RIA only at one or the other of these levels of legislation, with similar numbers of countries applying RIA to primary legislation only and to subordinate legislation only" (OECD, 2009a, p. 26).

Moreover, the same research found that there were often inconsistencies in relation to the coverage of subordinate legislation, with similar but legally distinct instruments being treated differently for RIA purposes.

Types of instruments subjected to RIA and threshold of application

Against this background, the Mexican system appears to have established a relatively broad scope for the application of RIA. The range of legislative instruments covered by the RIA requirement includes Acts, regulations, decrees and presidential agreements, technical standards (NOMs), handbooks, circulars, guidelines, directives, rules, and any other general regulation issued by agencies and federal decentralised bodies. This list of instruments appears to be designed to be a comprehensive recitation of all possible regulatory instruments that would have the effect of creating compliance obligations.

In addition, Mexico has established a low threshold for application of the RIA requirement, which requires RIA to be conducted whenever compliance costs are to be imposed on the private sector. RIA must also be completed where a regulatory instrument would affect the rights of individuals or modify formalities other than in ways that may reduce compliance burdens. These provisions suggest that a high proportion of regulatory instruments made in Mexico are subject to the RIA requirement. Whenever line ministries or regulators consider that their draft regulation does not create compliance costs or does not fall into any of the other criteria for RIA, they must request an exception to COFEMER. Nevertheless, COFEMER retains the power to deny the request and demand RIA analysis.

However, as discussed in the following section, the Mexican RIA requirement applies in practice to only a small proportion of primary legislation. While laws initiated by the president are subject to RIA, the much larger number that is initiated by Congress is not. This constitutes a major gap in RIA coverage. In addition, the specific exemptions from the RIA process for regulations and formalities dealing with tax matters, public servants responsibilities, agricultural and labour justice, and the attributions of the federal prosecutors that are established in the LFPA are significant in narrowing the scope of application of RIA to lower-level rules. In particular, the OECD previously highlighted the exemptions relating to tax matters and recommended that these should be removed (OECD, 2004).

Despite these factors, available comparisons suggest that Mexico has a high level of RIA activity by OECD standards, although data are available from only a limited range of countries. Table 4.1 shows that, of the four countries with which Mexico is compared, only the United Kingdom produced significantly more RIA in 2011. That said, the reported number of RIA for the United States refers only to those prepared in respect of "economically significant" regulations, which require a full BCA to be completed. Adding the number of RIA completed on regulations that fall below this threshold would yield a substantially larger number.

Table 4.1. Total RIA published in 2011

Country	Total RIA published	Note
Australia	63	July 2010-June 2011
New Zealand	106	Calendar 2011
United States[1]	118	Calendar 2011
Mexico	206	Year to May 2011
United Kingdom	320	Calendar 2011
Five country average	163	

Note 1. Total refers only to RIA on economically significant regulations, which are defined as those imposing costs exceeding 100 USD million per year. Full BCA is not required in respect of regulations that are not economically significant.

Sources: For Australia, Office of Best Practice Regulation (2011), *Best Practice Regulation Report 2010-11*, Australian Government, Canberra; for New Zealand, adapted from the website of the Treasury of New Zealand www.treasury.govt.nz/publications/informationreleases/ris, accessed 21 March 2012; for the United States, adapted from the website of the Office of Information and Regulatory Affairs, Executive Office of the President, www.reginfo.gov/public/do/eoHistReviewSearch, accessed 21 March 2012; for Mexico, Federal Commission for Regulatory Improvement of Mexico responses to OECD questionnaire, 2012; for the United Kingdom, adapted from the website of The Impact Assessment Library of the UK Government, www.ialibrary.bis.gov.uk, accessed 21 March 2012.

While Mexico has applied the RIA requirement very broadly, the above discussion of the 2010 amendments also noted that it has recently differentiated the RIA requirements applied to moderate- and high-impact regulations, in a bid to ensure that a relatively high proportion of RIA resources would be directed to the highest impact regulations.

As part of the process to introduce the new RIA system, COFEMER carried out an internal review of the regulations received in 2009. It found that 386 regulations, or approximately one third of the 1 185 reviewed, were judged as generating compliance costs on individuals. Of these 386 regulations, 92 were *reglas de operación* (operating rules for federal programmes which include granting of subsidies or other forms of public money transfers) which do not undergo the normal RIA process. Of the 294 remaining regulations, 100 were classified as high-impact and 194 as moderate- or low-impact. Thus, it was found that RIA was required for about 25% of regulations and that around one third of these would be "high-impact" RIA.

While around 75% of regulations do not require RIA to be conducted, COFEMER nonetheless conducts a basic assessment of them. It regards this scrutiny of low-impact regulations as being an important part of the overall RIA process, both because it ensures a basic consistency of approach and, importantly, because it provides a check on agencies' own assessments that proposed regulations will impose no new compliance costs: unsurprisingly, the COFEMER has on occasion reached a different conclusion in this regard and the initial assessments have led to RIA being prepared.

More recent statistics show that, while a substantial number of RIA are being completed under the new arrangements, as predicted, a smaller than anticipated proportion relate to "high-impact" regulations. According to the COFEMER, up to May 2011, a total of 206 RIA had been prepared under the new system. However, only 37, or 18%, was being judged as high-impact, with the remaining 169, or 82%, being moderate-impact. This statistic suggests that the intent of the creation of differentiated requirements—that of allowing a greater proportion of overall RIA resources to be devoted to those regulations with the highest impact—is being achieved in practice. The objective itself is clearly consistent with OECD best practice principles in this regard.

Legislation originating in Congress

As noted above, the Mexican RIA requirement formally embraces both primary and subordinate legislation. However, according to Article 71 of the Constitution, the president, the two chambers of the federal Congress, and the state legislatures have the right of initiative in relation to primary legislation, while only legislation originated by the president is, in practice, subjected to RIA. There is no formal or informal obligation to perform an impact analysis of the legislation either *ex ante* or *ex post*, or to carry out public consultation on the impact and effects that the intended legislation has on society. This contrasts sharply with the regulatory improvement policy applied within the federal public administration.

This inconsistency in the treatment of primary legislation is an important one in practice, not least because a substantial majority of legislation originates in the federal Congress and, therefore, is outside the scope of RIA scrutiny. Table 4.2 below shows details of legislation considered by Congress during the current legislature (*i.e.*, since late 2009). During this period, 669 bills were approved by Congress, but only 27 of this number were initially proposed by the president; 642, or 96%, of the laws passed by the current legislature originated with the federal Congress and were, presumably, not subjected to RIA scrutiny.[1]

Table 4.2. Bills approved by the 2009 to 2012 legislature

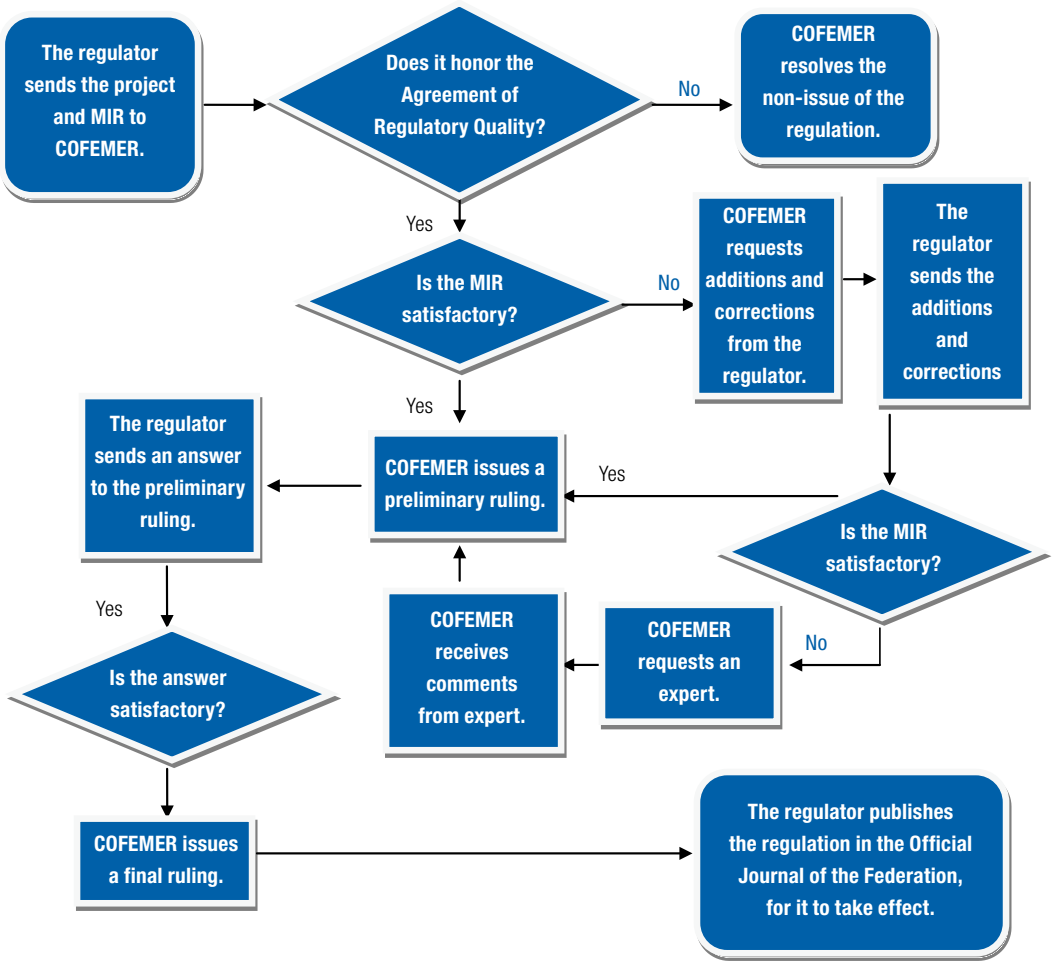
Origin	Processed	Approved	Rejected	Pending
Executive power	34	27	0	7
Senate	286	14	9	263
State legislatures	74	3	4	67
Legislative Assembly of the Federal District	4	0	1	3
Chamber of Deputies	4669	625	417	3627
Total	5067	669	431	3967

Source: adapted from website of the Federal Congress of Mexico, www.congreso.gob.mx, accessed 15 April 2012.

While RIA is not formally applied to such legislation, some scrutiny does occur from a regulatory quality assurance perspective. Specifically, where legislative proposals from Congress are likely to have substantial economic impacts, it is probable that COFEMER, when requested, will provide a formal opinion on the proposal, as will relevant ministries and regulators. The opinions received are integrated by the Ministry of the Interior, which represents the formal link between the Executive and the federal Congress, and conveyed to Congress.

However, while such scrutiny is doubtless of value, it is not part of a formal systematic process and clearly represents a lower, and less consistently applied, level of assessment than the more formal process adopted in respect of draft laws originating with the president. This suggests that a significant gap in the regulatory quality assurance process exists in relation to draft laws originating in Congress. Moreover, there is a risk of strategic moves to take advantage of this gap in the coverage of formal RIA scrutiny requirements, as some ministries, backed by private and public interest groups, may consider using the Congress to initiate laws to bypass the "checks-and-balances" process (Cordova-Novion, 2007, p. 233).

Figure 4.1. The RIA process in Mexico



Source: Federal Commission for Regulatory Improvement of Mexico responses to OECD questionnaire, 2012.

The fact that formal RIA scrutiny is apparently being applied to a very limited share of Mexico's new legislation highlights an important area to focus on for future reforms of the RIA system.

Process requirements for RIA

Figure 4.1 provides a diagram of the Mexican RIA process, which is established via the Agreement of Regulatory Quality. This agreement is intended to create guidelines that must be followed by ministries and decentralised agencies of the federal public administration when issuing regulations with compliance costs and which are, as a result, subject to the regulatory improvement process set out in Title 3A of the LFPA. Specifically, the RIA guidelines are included in a manual, which is attached to the agreement.[2] The RIA Manual indicates the deadlines set for COFEMER to issue a resolution on regulatory projects.

Initial "triage"

The Mexican RIA process commences with a determination of the type of RIA to be prepared. As noted above, a key reform adopted in 2010 was to differentiate RIA requirements between moderate- and high-impact regulatory proposals, in order to enable for a larger proportion of RIA resources to be devoted to the latter, thus increasing the expected productivity of the RIA process. However, the current RIA process actually distinguishes between eight different types of RIA, as follows:

- High-impact RIA: It is prepared when, as a result of the use of the Regulatory Impact Calculator (see below), it is concluded that the potential impact of the draft submitted to the COFEMER for consideration is high. In addition, the COFEMER may request the preparation of a high-impact RIA, even where the calculator has rated the regulatory impact as being moderate.
- Moderate-impact RIA: It is prepared when the calculator rates the potential impact of the draft regulation submitted to the COFEMER as moderate.
- High-impact RIA with competition impact analysis: It is prepared when, as a result of the use of the Regulatory Impact Calculator, it is concluded that the potential impact of the draft submitted to the COFEMER for consideration is high; and additionally, as a result of the competition impact checklist (see below), it is concluded that the draft regulation contains actions that could impact the intensity of competition, economic efficiency and consumer welfare, either by restricting or promoting specific changes in market conditions.
- Moderate-impact RIA with competition impact analysis: It is prepared when the calculator rates the potential impact of the draft regulation submitted to the COFEMER as moderate; and additionally when, as a result of the competition impact checklist, it is concluded that the draft regulation contains actions that may affect competition in markets.
- High-impact RIA with risk analysis: It is prepared when, as a result of the use of the Regulatory Impact Calculator, it is concluded that the potential impact of the draft submitted to COFEMER for consideration is high; and additionally when, as a result of the risk impact checklist (see below), actions intended to address, mitigate or lessen a risk have been identified.
- High-impact RIA with competition impact analysis and with risk analysis: It is prepared when the criteria for high-impact RIA with competition impact analysis are met, and additionally when, as a result of the risk impact checklist, actions intended to address, mitigate or lessen a risk have been identified.
- Periodic updating RIA: It is prepared in cases where regulations must be periodically updated, but the updated rule is not expected to impose any additional obligations. This would include cases where instruments with limited life spans are being renewed without substantive change. A periodic updating RIA will update the analysis contained in the initial "substantive" RIA to reflect the current situation, rather than developing an entirely new analysis. The periodic updating RIA can therefore be applied in cases where the initial analysis followed either the high-impact or moderate-impact requirements. Evidently, however, if no RIA has previously been prepared, this path cannot be taken.

- Emergency RIA: It is to be used where specific eligibility criteria are satisfied. These require that the instrument have a lifespan of not more than six months and that it is designed to address an immediate harm and that no previous emergency RIA has been prepared in relation to the same issue. Emergency RIA can be submitted up to 20 days after the regulatory instrument has been adopted.

Permission to prepare either a periodic updating RIA or an emergency RIA must be given to the regulatory agency by the COFEMER. By contrast, agencies prepare a moderate-impact or a high-impact RIA, based on the results derived from the use of the Regulatory Impact Calculator. Additionally, the modalities of competition impact analysis and risk analysis are prepared depending on the results produced by the answers provided to the competition impact checklist, and the risk impact checklist, respectively.

Regulatory Impact Calculator

The initial assessment to determine whether a high-impact or a moderate-impact RIA will be prepared is conducted via the application of the Regulatory Impact Calculator. This tool has been developed with reference to Australian and British regulatory cost calculator models[3] and, in broad terms, follows the precepts of the Standard Cost Model approach[4] to assessing administrative burdens. That is, it involves identification of all expected impacts of the proposed regulations at the most disaggregated level, determination of the number of affected parties, and the average cost per impact, as well as the number of years over which impacts are expected to occur.

The calculator comprises ten questions, three of which relate to the expected impact on demand of the regulatory proposal, three relate to the expected impact on supply, and three relate to the number of firms and/or individuals expected to be affected.[5] The development of the calculator included a process of "road trials" against existing regulation, in order to test its accuracy and reliability. The ten questions that comprise the calculator are accorded different ratings, on a scale of 0.5 to 2.5 points. Given the extent of this weighting, it will clearly have a significant impact on the outcomes.

The calculator is configured as an online tool and the regulator is only able to apply it once to a given regulatory proposal. Thus, there are safeguards against attempts to "game" the results. The calculator process can therefore be regarded as "automated" in that it does not rely on individual judgements regarding the regulatory proposal, other than those that are involved in answering the specific questions that comprise it. Even here, the scope for the exercise of subjective judgement seems to be limited, given the nature of many of the questions. The main exception in relation to this observation is that, as noted above, the COFEMER has the right to request that a high-impact RIA be undertaken even if the result given by the calculator is that the proposal appears to be a moderate-impact one. This appears to be a safeguard to be applied in situations where significant impacts are not detected by the calculator's simplified approach.

Competition impact checklist

Drawing heavily from the OECD's Competition Assessment Toolkit (OECD, 2011a), the competition impact checklist contains fourteen questions intended to determine whether the draft regulation limits the number or range of suppliers, limits the ability of suppliers to compete, limits the choices and information available to customers, or reduces the incentive of suppliers to compete. The checklist is planned to be part of the online tool which

encompasses the impact calculator, and contingent on the answers provided, the tool will indicate the regulator whether a competition impact analysis must be done. As in the case of the dichotomy high- vs. moderate-impact RIA, the COFEMER retains the power to demand that a high-impact RIA with competition impact analysis is prepared by the regulators, regardless of the results dispensed by the online tool.

The section for competition impact analysis which is added to the RIA template contains four main sections: the identification of the regulatory actions or mechanisms that could restrict competition, a description of such actions or mechanisms, a justification to include such actions or mechanisms in the regulation in light of the fact that they will harm competition, and a description of whether alternatives to the regulation were considered. It is to note that the RIA manual does not specify whether the justification must include quantitative elements, which implies that the regulator is free to add them or not.

As part of the modifications to the RIA Manual to insert the competition impact analysis, a clear-cut procedure to review this analysis by the Federal Competition Commission of Mexico (COFECO) was also added. The procedure includes response times by the COFECO to the request of comments by the COFEMER, as well as the procedures and periods for the hypotheses in which additional information must be sought from the regulator to complete the analysis.

Risk impact checklist

Similar to the competition impact checklist, the risk impact checklist is planned to be embodied in the same online tool as in the impact calculator. The risk impact checklist contains six questions to help the regulator determine whether the proposed piece of regulation is aimed at reducing risks for human, animal of vegetal health, for public security, labour hazards, the environment, or consumer protection. Depending on the answers provided, the tool will specify to the regulator whether a risk impact analysis must be done.

The template for risk impact analysis which is added to the RIA template contains four main sections: identification of the risks to be prevented or mitigated, description of the regulatory actions which are pretended to manage such risks, recognition of whether different groups are affected in different levels of magnitudes by the risks and the measures proposed to manage such variations, and finally, whether there are risk trade-offs between different groups or situations and an explanation for such trade-offs.

The role of the COFEMER in RIA

The COFEMER notes that they typically engage in a number of preliminary and informal discussions with regulators as they prepare for the RIA process and conduct initial research and analysis. However, once the regulator formally submits a draft RIA, the process is quite formal and extremely transparent.

The RIA submitted formally to the COFEMER is based on an electronic form, containing a detailed set of standard questions, with drop down menus being used in many cases to provide response prompts. These questions cover the core elements of RIA, including problem definition and identification of regulatory objectives, detection of feasible means of achieving these objectives (whether regulatory or non-regulatory), benefit and cost assessments of each option, and comparison of the resulting net present values (NPVs). However, a number of specific features of the online form are notable, such as the following:

- Any differential impacts on large vis-à-vis small and medium enterprises must be noted;
- BCA calculation occurs via an integrated calculator using a Standard Cost Model (SCM) type methodology that requires estimates of the costs of individual compliance obligations to be built up via inputs of unit cost, frequency, and number of affected parties;
- Where a full BCA is not possible, provision is made for a qualitative analysis to be included;
- Since 2010, compliance and enforcement strategies to be adopted have also been required to be addressed explicitly;
- The consultation undertaken prior to the RIA being completed is required to be summarised; and
- A specific section for competition impact analysis as described above, if the online tool requests so;
- A specific section for risk impact analysis as described above, if the online tool requests so;
- Space is provided for comments to be made to the COFEMER.

The draft RIA, when completed by the regulator, is automatically published on the COFEMER website. This enables all stakeholders to view the analysis and provide comments and responses. Any such comments received are published, as are COFEMER's comments on the draft RIA.

The regulatory agency is then required to respond substantively to the comments published by the COFEMER. Once a satisfactory response has been received, the COFEMER will certify the RIA as final and the regulatory process proceeds. Again, publication of the relevant documents occurs at the time. Notably, however, an exception to RIA publication does exist: a regulator may request that the RIA be excluded from the publication requirement where it believes that the achievement of the policy objective would be undermined as a result, or other significant harms would occur.

In practice, regulators' responses to COFEMER's comments on the draft RIA will frequently fail to address adequately all of the concerns raised in relation to the analysis. In such circumstances, the revised draft may be deemed by the COFEMER to constitute another draft RIA, rather than a final document.

Responsibility for RIA

The OECD's 1997 RIA best practices highlight the need to allocate responsibilities for RIA programme elements carefully. This fundamentally refers to the locus of responsibility for preparation of the RIA and for the quality control function. However, the question of who takes responsibility for the RIA document constitutes an important additional element.

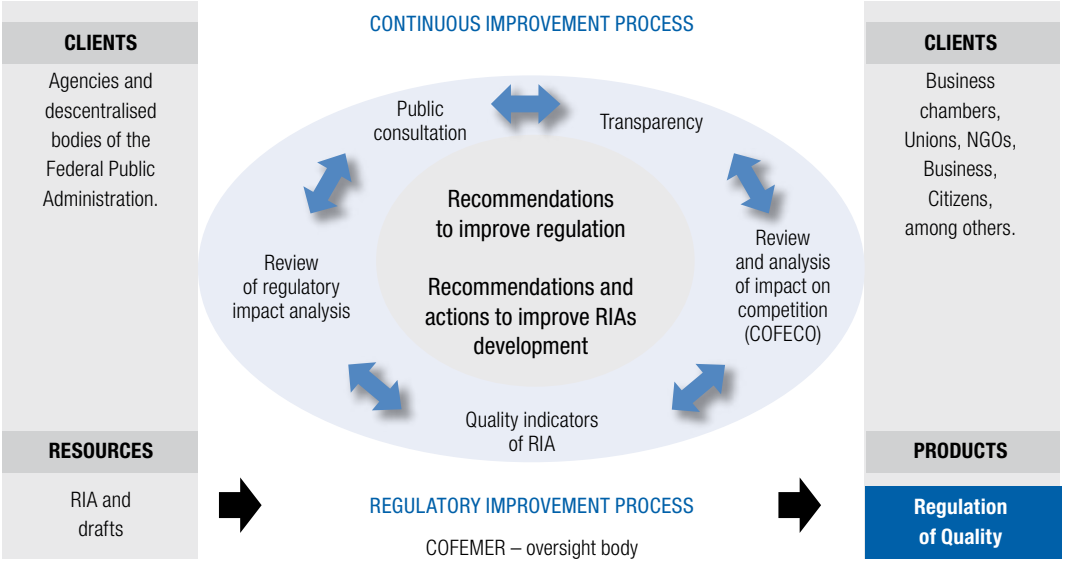
Under the current Mexican RIA arrangements, there is an electronic signature process for authorising the draft RIA to be sent to the COFEMER for assessment. Responsibility for this authorisation lies with the official within the agency who is responsible for the better regulation agenda. This person will usually be a senior official (*i.e.,* deputy minister or chief administrative officer).

By contrast, many OECD countries require the RIA to be authorised either by the head of the relevant regulatory agency or by the minister responsible for the regulatory proposal. The concept of requiring ministers to take personal responsibility for the content of the RIA document has been a feature of RIA systems at least since the mid-1990's (OECD, 1997, p. 17). Particularly where the RIA document is publicly available, such a requirement has the potential to be a powerful factor in encouraging a high-level analysis to be completed.

Quality Management System for RIA

The COFEMER has given considerable importance to embedding a culture of regulatory quality within the ministries and decentralised bodies involved in the regulatory improvement process. Thus, with the purpose of ensuring better quality in the development of regulation and RIAs, the COFEMER created and implemented, in November of 2012, a Quality Management System of the RIA to identify the best practices on RIA along with areas of improvement for each regulatory body. The importance of creating a Quality Management System reaches beyond quality indicators as it takes into consideration all the parties to the system (internal and external clients, Federal Competition Commission and the COFEMER as an oversight body), while aiming at having feedback and solutions to continuously improve the regulatory process and, hence, the quality of regulation (see Figure 4.2).

Figure 4.2. Continuous improvement process



Source: COFEMER and LATIN REG (2012), *Quality Management System of the RIA*, Mexico City.

The Agreement on Quality Management System of the RIA establishes the criteria to assess the quality of high-impact and moderate-impact RIAs sent by ministries and decentralised bodies to the COFEMER during a year. It allows for specific, quantifiable assessments for each ministry and decentralised body through the global quantity indicator, as it enables to appropriately rate the quality of RIAs sent throughout a year.

The COFEMER has already performed assessments for RIAs submitted in 2011, based on the criteria of the system and the employment of the global quality indicator. A total of 269 high-impact and moderate-impact RIAs were received in 2011, out of which 98% were subject to the quality analysis and only 2% considered inapplicable. Out of the 263 RIAs that were assessed, 87.8% were classified as satisfactory, 10.6% as not satisfactory and 1.5% as deficient, with an overall grade of 76; whereas 77% of the ministries and decentralised bodies were rated as adequate or outstanding.

Despite the positive results, based on the Quality Management System of the RIA, the COFEMER was able to identify improvement opportunities in the elaboration of RIA for the year 2011, as it was the cost-benefit analysis and incomplete RIAs due to the lack of information for regulators to identify and justify its regulatory actions. The results highlight the importance of the Quality Management System, where a continuous improvement of the regulatory process is attained through evaluation, transparency and internal and public consultation. The system, therefore, stands as an important tool for feedback and recommendations for better regulation, as it also enables increasing the capacity of public officials to prepare better RIAs.

Improving capacities

The 2010 changes to RIA requirements were intended in part to focus RIA resources on the most significant regulatory proposals, but also signalled a move to increase the stringency of RIA requirements, particularly in relation to high impact regulation. This intent is reflected in the more detailed set of headings contained in the online RIA form and in COFEMER's statements that they expect more "disaggregated" analyses to be completed, which address explicitly a wider range of RIA topics.

The Economic Intelligence Unit

A key recent initiative taken by the COFEMER to support the RIA process and enable higher quality analysis is the creation of the EIU. The EIU is a subsidiary part of the COFEMER, which is charged, in part, with providing relevant technical information, including economic, scientific and academic findings, to improve the quality of regulatory analysis. A significant part of the EIU's work involves the provision of input into COFEMER's assessments of draft RIA. Thus, the creation of the EIU is intended, in part, to increase the rigour of the scrutiny, which the COFEMER applies to draft RIA. To this extent, it functions as a mechanism which creates pressure on regulators to increase their own RIA capacities, to deal with the more rigorous scrutiny process that will be applied by the COFEMER.

However, in many cases, the unit also provides assistance to regulators at an earlier stage of RIA development. This reflects COFEMER's view of its role as including assisting regulators who are developing high quality regulation to document its benefits and thus meet the RIA scrutiny requirements. Thus, the EIU also operates to some degree as a direct source of improved analytical capacity for regulators. In both aspects of its role, an underlying objective of the EIU is to encourage regulators to recognise the need to take full account of the results of international research in developing their analyses and to research international practice when identifying options to address policy problems, and to ensure that appropriate methodological approaches are taken. The EIU is also closely involved in the process of identifying means of improving *ex ante* RIA through better methodological approaches.[6]

The work of the EIU in supporting regulators to undertake better RIA can be compared with the "Helpdesk" approach adopted in the Netherlands in the late 1990's and identified in an OECD review as a promising practice worthy of consideration by other OECD countries (OECD, 1999b). That review highlighted the benefits of providing access to specialist expertise and addressing the reluctance of regulators to divert resources to RIA by providing "free" resources as key benefits.

These benefits seem to be significant in the context of Mexico's use of the EIU. The gains from such an approach will be particularly significant in contexts in which many regulators lack capacities. The COFEMER reports that the EIU's input frequently leads to substantial improvements in the initial quality of the analysis by identifying important data and research findings to be incorporated in the RIA.

The COFEMER sees the EIU as an essential tool in achieving medium-term improvements not only in the quality of RIA, but also of the quality of the underlying regulatory proposals. This appears to imply moving to emphasise further the unit's role in providing positive assistance directly to regulators, vis-à-vis its role in RIA assessment, a direction which the COFEMER has indicated it intends to pursue in the near future. A potentially significant issue in this regard relates to the need to manage potential conflict between the two roles. As pointed out in a review of the Australian experience:

"Regulatory reform bodies have also sought to enhance RIA quality by offering internal consultancy services to regulatory agencies, to provide relevant expertise and guide them in carrying out RIA tasks. However, they have generally had limited success in carrying out this function, arguably because of perceived conflict between this role and their RIS assessment function. For many regulators, interactions with regulatory reform bodies in the course of reviewing RIS inevitably become adversarial in nature. In consequence, developing the cooperative relationships needed to underpin a successful consultancy role becomes difficult if not impossible" (Deighton-Smith, 2007, p. 161).

The strong role being taken by the EIU in training regulators on RIA disciplines (see below) may be positive in this regard.

Training programmes

The OECD has consistently emphasised the importance of developing regulators' capacities as a core element of the regulatory quality agenda.[7] Regulators must develop sufficient technical capacities to enable the preparation of high-quality RIA, while the systematic use of RIA at such a level is expected to lead toward cultural change over time within regulatory agencies, embedding the regulatory quality agenda in policy making practice. Training and capacity development is therefore a core role of regulatory reform agencies.

The COFEMER has moved to very substantially increase its focus on training in recent years. From a starting point in which training was largely conducted only "on request", it has in recent times both massively increased the number of officials being trained in RIA disciplines and moved to tailor training to the needs of individual regulatory agencies. For example, during 2010 the COFEMER conducted 17 training sessions which were attended by 476 officials from 53 agencies and decentralised bodies. This compares with 370 officials trained in 2009 and 147 in 2008 (COFEMER, 2011b, p. 13; COFEMER, 2010). The COFEMER provides training to officials from all levels of government.

It should be noted that these training and consultation activities are complementary with other training activities carried out by the COFEMER that extent beyond RIA, embracing a wide range of regulatory quality issues. These include the Diploma on Regulation (see Chapter 3. Regulatory policy and institutions, subsection "Training and capacity building") and training for state and municipal officials (see Chapter 7. Multi-level regulatory governance, subsection "Capacity building for regulatory reform in states and municipalities").

While the recent adoption of this programme of training means that its success cannot yet be measured confidently, the COFEMER reports that initial evaluations have been undertaken and yielded positive results. Notably, the curriculum appears designed to place RIA requirements in a much broader conceptual context, incorporating discussion of issues such as competition assessment, network economics, theories of oligopoly and deregulation

Use of external consultants

While the EIU's role in providing technical assistance to regulators can be expected to enhance their RIA capacities to a significant degree, it cannot on its own meet the needs created by the increase in the rigour of RIA requirements that have resulted from the 2010 changes.

Previous OECD research points to a tendency for rapid increases in the RIA quality standards required by regulatory reform bodies to lead regulators to move toward the employment of expert consultants as a means of gaining access to increasingly important technical skills. It also suggests that regulatory reformers have at times encouraged this approach as a means of improving RIA quality in the short term (OECD, 2009a, p. 47). The use of external consultants can have a positive impact on both policy development and RIA quality, particularly if they are engaged early in the process and regulators seek to use the process as a mechanism for knowledge transfer.

Conversely, it has been argued that an underlying purpose of RIA is to lead to cultural change within regulatory agencies, with a progressive adoption of RIA-based disciplines as core elements of basic policy development. In this view, contracting specific RIA development expertise could be seen as a limiting factor in terms of the achievement of such long-term policy change. However, the specific use made of this expertise by regulators is important in determining its usefulness: "The RIA consultancy in some cases acts as the springboard for transfers of knowledge on a broader range of regulatory quality issues, including maters such as different regulatory approaches, risk analysis, design of alternative policy tools and the like. In such cases, it is not tenable to argue that continuing and even increasing use of external RIA consultancy is indicative of the failure of RIA to embed itself in the policy process" (Deighton-Smith, 2007, p. 158).

The Mexican context appears to be one in which external experts have historically been little used in either the RIA context or the policy process more generally. However, the recent increase in the rigour required by the COFEMER in RIA documents, together with pressures for better quality analysis created by the very transparent nature of the Mexican RIA process, will potentially lead to pressure for regulators to move in this direction.

Independent experts

The context for the above consideration of the potential role of external consultants is one in which the COFEMER already has the ability to require regulators to use the services of an external expert in certain defined circumstances. Specifically, where a regulator's response substantially fails to address the concerns with the draft RIA raised by the COFEMER, and the RIA relates to a high-impact regulatory proposal, the COFEMER may request the appointment of an independent expert. This appears to be a unique aspect of the Mexican RIA process.

According to the RIA Manual,[8] if an expert is appointed at COFEMER's request following an agency's failure to address its concerns with RIA, the cost of the appointment is charged to the regulatory agency's budget. The scope of the expert's role will be, at a minimum, to review the aspects of the RIA that the COFEMER has highlighted as inadequate. The regulatory agency is able to choose the expert to be appointed from a list prepared by the COFEMER of experts approved for review of RIA in particular areas of expertise. In this case, the appointment of the expert is automatically approved by the COFEMER. Alternatively, the regulatory agency may propose an expert for appointment, in which case the COFEMER will assess his training and expertise, as well as the potential for conflicts of interest, before determining whether to approve his appointment.

The COFEMER then provides the terms of reference for the expert review. The expert's report is due within forty working days of his appointment and his conclusions must be taken into account in the further development of the RIA.

The expert review process was implemented as part of the 2000 RIA reforms. It is used relatively rarely in practice; however, the COFEMER believes that it has significant value as an incentive for regulators to respond appropriately to their comments on draft RIA. This reflects, in particular, the fact that a COFEMER request for the appointment of an expert will inevitably lead to delay in the regulatory process and additional cost, as well as the possibility that the expert's findings may lead to a broader reconsideration of the issues underlying the proposed regulation.

The range of experts potentially able to be used is extremely broad. For example, in one case relating to a NOM regarding vehicle weight and dimension standards, the opinion of an expert from the University of Texas was sought.

As noted above, the "expert opinion" provisions of the Mexican RIA system are innovative in nature and possibly unique among OECD countries. They appear to give rise to a number of important benefits. Most obviously, the expert opinion can act as a "circuit-breaker" where there is disagreement between the COFEMER and a regulator on RIA issues. The use of an independent party would in itself appear to give rise to greater opportunities for conflict resolution.

In addition, this mechanism is also clearly a means by which substantial additional subject-matter expertise can be brought to bear within the RIA process. The issue of adequate technical capacity to prepare high-quality RIA is a significant one for regulators in all OECD countries and is likely to be particularly acute where there are broader capacity issues across the public sector. Moreover, the COFEMER suggests that this aspect of the RIA process has a significant impact in encouraging higher levels of compliance by regulators, implying both better RIA and, presumably, better policy outcomes.

Methodological issues in current RIA requirements

The OECD recently published a substantial discussion of methodological issues in the context of RIA and, in particular, of BCA (OECD, 2009a, Chapter 3). This included a survey of methodological guidance materials published in a subset of member countries with well-advanced RIA programmes, assessment of this guidance against the conclusions of the research literature on the relevant issues, and identification of key areas for further reform. The following discussion considers the approaches to these methodological issues currently adopted in Mexico in light of this material.

Discount rates

Most OECD countries recommend the use of specific discount rates in the context of providing methodological guidance on the preparation of RIA, albeit discretion to adopt rates other than the proposed "benchmark" rates is usually provided and the conduct of sensitivity analysis using different rates is also often counselled. The OECD has found (OECD, 2009a, p. 84) that, among 11 countries for which data could be identified, recommended real discount rates varied from 3.5% to 10%, while sensitivity analysis using rates varying from 3% to 15% is also proposed.

Many of the guidance documents identified as the source of discount rate recommendations provide little or nothing in the way of a conceptual rationale for the rates recommended. Hence, there is little transparency as to the reasons for the observed wide divergence in recommended rates.

Mexico's Ministry of Finance recommends the use of a 12% real discount rate in BCA conducted by government agencies and, accordingly, the COFEMER recommends the use of this rate in the RIA context. As the above discussion indicates, this is a very high rate, compared to that used in other OECD member countries for which data has been compiled—indeed, it is higher than that found in any of the 11 jurisdictions considered.[9] However, in practice, only high-impact regulations are required to be subjected to the benefit/cost calculator and, hence, to a formal BCA. COFEMER advises that, within this context, most regulators apply alternative discount rates in practice and that the rates actually used will, in some cases at least, vary widely from the benchmark 12% rate. For example, in one case cited by the COFEMER, an inflation rate of 3.8% was cited and was used as a discount rate. At the same time, if the COFEMER believes that the discount rate adopted by the regulator is inappropriate, and the rate used is significant in determining the outcome of the BCA, it can require an alternative rate to be adopted.

The current arrangements suggest that a wide range of discount rates are used in practice in Mexico for RIA purposes. By contrast, previous OECD analysis has concluded that:

"There is a strong argument that RIA guidance documents should recommend a specific discount rate or rates to ensure policy coherence, rather than leaving this issue to be determined in a decentralised manner by regulators. […] consistency in the choice of discount rate favours optimisation of the expenditure of regulatory resources. This does not necessarily imply that a single rate should be used for all regulatory purposes, but does imply the need for consistent approaches, so that like regulatory expenditures are assessed using like discount rates" (OECD, 2009a, p. 92).

The wide range of rates recommended in different OECD countries is likely to reflect, at least in part, different views on the appropriate conceptual basis for the setting of the rate, with the opportunity cost of capital and the social rate of time preference being the two approaches that are used in most cases. There are sound arguments for the use of both of these conceptual approaches, while the differences in recommended discount rates across OECD countries are likely largely to reflect different views on which perspective should be taken as a "base case". However, the United States RIA guidance material counsels that the RIA should be completed using two different discount rates (3% and 7%) that reflect both conceptual perspectives (Office of Management and Budget 2003, p. 34).[10] Other OECD countries deal with this issue, at least implicitly, by arguing that sensitivity analysis should be conducted with respect to discount rates, albeit that a single "base case" rate is nominated.

Value of Statistical Life (VSL)

A second fundamental variable in relation to quantitative BCA is that of the "Value of Statistical Life". The COFEMER does not currently include recommendations on appropriate VSL for use in RIA in its guidance materials; however, it has indicated that it is currently reviewing this issue and intends to provide such guidance in the near future.

A wide range of VSL figures have been proposed in research literature and adoption of different values will clearly have a substantial impact on estimated benefit outcomes where health and safety related regulation is under consideration. Despite this, OECD 2009 found that only one of the RIA guidance documents reviewed recommended a specific VSL figure for use in the RIA context: the European Union recommended a relatively low figure of €1 million. Other guidance on the subject included citation of a range of results arising from the literature, with both the US and Canadian guidance documents citing a range of USD 1-10 million. As with the discount rate, different conceptual approaches to VSL can be adopted, with human-capital and willingness-to-pay based approaches being the key alternatives. The former systematically leads to the adoption of lower VSL estimates than does the latter. However, both RIA guidance documents and the research literature demonstrate a tendency to favour the latter approach (OECD, 2009b, pp. 94-96).

The OECD has previously argued (*ibid.*) in favour of the inclusion of specific recommendations on VSL as a priority area for improvement of RIA guidance, while there is some recent evidence of a tendency by member countries to move in this direction: for example, in Australia, both the federal and Victorian (state) governments now recommend a value of AUD 3.5 million should be adopted (Office of Best Practice Regulation, 2008),[11] based on the outcome of a literature review commissioned specifically for this purpose.

Public consultation

For many OECD countries, systematic public consultation processes have traditionally been a key part of the regulatory process and considered as an essential requirement in ensuring its legitimacy. However, a clear trend that has followed the widespread adoption of RIA and the increasing use of quantitative BCA is the use of public consultation as a means of gathering empirical information to support this analytical activity (OECD, 2002, pp. 68-69). This reflects the fact that consultation is often the most cost-effective means of obtaining the required data, while an open, public consultation process also implies that data will be obtained from numerous sources, enhancing its reliability and legitimacy.

Consultation in Mexico is strongly influenced by the requirements formally established in two separate pieces of legislation. First, as discussed above, the LFPA 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.

As discussed above, 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, the COFEMER publishes 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. The 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.

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 the 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. The COFEMER also supports effective engagement in consultation by actively providing the draft RIA to key stakeholders and soliciting their inputs in many cases.

However, while consultation on the basis of the draft RIA is extensive in nature and is one of the strengths of the impact assessment process, there is no formal requirement for consultation to be conducted prior to its publication. While the adoption of the transparency law appears to have significantly expanded the amount of consultation effort undertaken by regulators overall, there are wide divergences in practice between regulators. The COFEMER states that some regulators undertake substantial pre-RIA consultation, while others do none, preferring to use the RIA process as their main consultation vehicle. This transfer of consultation responsibilities to the COFEMER does not help advancing a whole-of-government approach, in which each ministry must commit to regulatory quality.

Consultation can play different roles at the various stages of the regulatory process, so that extended post-RIA consultation, while of substantial value in its own right, is not a complete substitute for pre-RIA consultation. The OECD has previously noted an evolving tendency to adopt different forms of consultation in combination, to improve its overall performance. This reflects growing understanding of the strengths and weaknesses of different consultation strategies and of the fact that they are therefore suited to different specific circumstances and to different stages in the consultative process. As consultation is often beginning much earlier in the policy making process, it is increasingly common for it to be conducted in several stages, with different mechanisms employed at different times (OECD, 2002, p. 69).

In the Mexican context, it has been noted that the post-RIA consultation is often very much oriented toward technical issues. The COFEMER suggests that this is a result of the fact that much of the analysis presented in RIA documents is itself highly technical in nature. However, this, in turn, can be seen as a result of the fact that a proposed regulation is well-advanced in its development by the time the draft RIA has been published. In fact, the OECD recorded the concern from regulated agents, such as business chambers and associations, to have the opportunity to comment and issue opinions on draft regulations at earlier stages of the rule making process. They expressed their concern that once the regulatory proposal reaches the COFEMER, there is no much room to modify it.

Key findings and policy options

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

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

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

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

Despite the public consultation mechanisms currently available, the OECD recorded the concern from regulated agents, such as business chambers and associations, as to having the opportunity of commenting and issuing opinions on draft regulations at earlier stages of the rule-making process. They expressed their concern that once the regulatory proposal reaches the COFEMER, there is not much room left to modify it.

The Mexican government should consider enhancing the current consultation requirements by mandating that regulators and ministries conduct consultation with stakeholders at early stages in regulatory development. This consultation should be completed before a draft RIA document is prepared and submitted to the COFEMER, and should provide input to that document. The scope, depth, and nature of pre-RIA consultation could be commensurate with the impact of the proposed regulation, so that high-impact regulations would merit extensive early consultation. Such prioritisation would help target resources and avoid "consultation fatigue". See Box 4.1 for an example from the UK.

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

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

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

- Problems in terms of the acceptability of a regulatory proposal to key stakeholders may be identified at an earlier stage and this factor taken into account more effectively in the process.
- Engagement with the public at an earlier stage of the policy process, before there is strong commitment to a particular regulatory path, may help to identify additional tools (regulatory or non-regulatory) to address the policy objectives, potentially yielding more effective responses.
- Consultation at an early stage can be conducted on a less technical and more inclusive basis. Wider participation decreases the possibility of regulatory capture and increases the perceived legitimacy of the resulting regulation.

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

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

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

During the RIA evaluation process, the COFEMER should also consider requiring regulators to publish a non-technical summary of the RIA document, together with specific questions to stakeholders that would highlight the key issues in question. This can help to enhance the ability of the general public and other smaller stakeholder groupings to participate in public consultation on regulatory proposals.

Finally, Mexico should consider setting up mechanisms to have consultation after the enactment and implementation of regulation, as a way to assess regulatory performance. This approach presupposes that performance indicators and the plan for *ex post* assessment of regulation should be part of the RIA. In this way, Mexico's policy on better regulation would adopt performance evaluation in a "life cycle" approach.

The quality and accountability of RIA analysis could be improved further

As a means to enhance RIA quality and accountability, the Mexican government should consider the merits of having the minister responsible signing off the RIA in order to certify its quality. The concept of requiring ministers to take personal responsibility has been a feature of RIA systems at least since the mid-1990's (see Box 4.2). This would constitute an

Box 4.1. Public consultation in the United Kingdom

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

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

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

Source: OECD (2010), *Better Regulation in Europe: United Kingdom*, OECD, Paris, doi: 9789264084490-en.

important quality assurance factor, since it creates direct incentives within the regulatory agency or ministry for high quality RIA to be developed. Particularly where the RIA document is publicly available, such a requirement has the potential to be a powerful factor in encouraging a high-level analysis to be completed. Furthermore, ministerial endorsement would foster accountability within ministries, thereby driving deeper a regulatory reform culture among those responsible for developing and administering regulations.

At the same time, Mexico should consider to exempt sectoral regulators from this mechanism. In the framework proposed by the OECD in this report, in which there is strengthened independence and accountability of regulators (see Chapter 6), regulators should be directly responsible for the quality of RIA.

Box 4.2. Ministerial endorsement of the RIA: International experience

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

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

Source: OECD (1997), *Regulatory Impact Analysis: Best Practices in OECD Countries*, OECD Publishing, Paris, doi: 9789264162150-en; United Kingdom Government (2011), Impact Assessment Toolkit. UK Government, London, August 2011. www.bis.gov.uk/assets/biscore/better-regulation/docs/i/11-1112-impact-assessment-toolkit.pdf.; and Parliament of Victoria, Australia (1994), Subordinate Legislation Act 1994 (No. 104/1994). www.legislation.vic.gov.au.

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

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

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

The COFEMER should continue its current efforts to provide methodological guidance to ministries and regulators to assist them in preparing high-quality RIAs that adopt consistent approaches and assumptions. See Box 4.3 for relevant international experiences. Special focus should be given to review current advice on discount rates and ensure that the advice provided is consistent with Mexico's circumstances and underpinned by a sound policy rationale; and to develop guidance on appropriate estimates for the Value of Statistical Life in the Mexican RIA context.

Box 4.3. International experience on guidance to carry out RIA

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

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

Source: adapted from the website of Victorian Competition and Efficiency Commission of Australia, www.vcec.vic.gov.au, accessed 6 February 2013 and website of Treasury Board of Canada Secretariat, www.tbs-sct.gc.ca, accessed 6 February 2013.

Notes

1. Furthermore, three of the approved initiatives originated in state legislatures. These are not subjected to RIA.
2. Published on 26 July 2010 in the Official Journal of the Federation (DOF) and available at www.cofemer.gob.mx/documentos/marcojuridico/acuerdos/AcuerdoPlazos26072010.pdf
3. Material on the Australian Business Cost Calculator can be found at *www.finance.gov.au/obpr/bcc/index.html*.
4. *www.administrative-burdens.com*.
5. Another notable aspect of the calculator is that the questions include one which asks if this proposal relates to one of several sectors of the economy that, historically, have been characterised by high levels of regulatory cost. These include gas, electricity, transport, telecommunications, patents, and pharmaceuticals.
6. The EIU also provides assistance in reviews of existing regulations, including the conduct of *ex post* RIA, and takes a leading role in relation to the COFEMER's training activities, as discussed below.
7. For example, the 1997 RIA Best Practices include "Train the Regulators", while OECD (2009b, p. 43) highlights the need to provide regulators with assistance in preparing RIA through a three-part strategy, including publication of guidance documents, provision of training, and *ad hoc* technical assistance, as required.
8. *Manual de la Manifestación de Impacto Regulatorio*, Official Journal of the Federation, 26 July 2010.
9. The data analysed in OECD (2009), chapter 3, derive from nine OECD member countries, one sub-national government and the European Union.
10. OMB (2003) includes useful discussion of the underlying rationale for adopting the opportunity cost of capital and the social rate of time preference approaches and suggests the contexts in which each is likely to be more appropriate. It also provides specific justification of the particular rates recommended in the US context.
11. This document was published after the drafting of the material subsequently published as OECD 2009.

Bibliography

COFEMER (2010), Informe de Actividades 2009, Gobierno Federal de México, Ciudad de México.

COFEMER (2011), Informe de Actividades 2010, Gobierno Federal de México, Ciudad de México.

COFEMER and LATIN REG (2012), Quality Management System of the RIA, Mexico City.

Cordova-Novion, C. and S. Jacobzone (2007), "Regulatory Impact Assessment in Mexico". In Kirkpatrick, C. & Parker, D. (eds.), *Regulatory Impact Assessment: Towards Better Regulation?*, Edward Elgar, London.

Cordova-Novion, C. and S. Jacobzone (2011), "Strengthening the Institutional Setting for Regulatory Reform: the Experience from OECD Countries", OECD, Paris

Deighton-Smith, R. (2007), "Regulatory Impact Assessment in Australia: A Survey of Twenty Years of RIA Implementation". In Kirkpatrick, C. & Parker, D. (eds.), *Regulatory Impact Assessment: Towards Better Regulation?,* Edward Elgar, London.

OECD (1997), *Regulatory Impact Analysis: Best Practices in OECD Countries*, OECD Publishing, Paris, doi: 9789264162150-en.

OECD (1999a), *Regulatory Reform in Mexico*, OECD Publishing, Paris, doi: 9789164180315-en.

OECD (1999b), *Regulatory Reform in the Netherlands*, OECD Publishing, Paris, doi: 9789264173774-en.

OECD (2002), *Regulatory Policies in OECD Countries: From Interventionism to Regulatory Governance*, OECD Publishing, Paris, doi: 9789264177437-en.

OECD (2003), *OECD Reviews of Regulatory Reform: Norway*, OECD Publishing, Paris, doi: 9789264103122-en.

OECD (2004), *OECD Reviews of Regulatory Reform: Mexico, Progress in Implementing Regulatory Reform*, OECD Publishing, Paris, doi: 9789264017528-en.

OECD (2007), *OECD Reviews of Regulatory Reform: Italy, Ensuring Regulatory Quality Across Levels of Government*, OECD Publishing, Paris, doi: 9789264037984-en.

OECD (2009a), Indicators of Regulatory Management Systems, Regulatory Policy Committee, OECD, Paris.

OECD (2009b), *Regulatory Impact Analysis: A Tool for Policy Coherence*, OECD Publishing, Paris, doi: 9789264067110-en.

OECD (2010a), *Better Regulation in Europe: Denmark*, OECD, Paris, doi: 9789264084551-en.

OECD (2010b), *Better Regulation in Europe: Netherlands*, OECD, Paris, doi: 9789264084568-en.

OECD (2010c), *Better Regulation in Europe: United Kingdom*, OECD, Paris, doi: 9789264084490-en.

OECD (2010d), *Cutting Red Tape: Why is Administrative Simplification so Complicated? Looking Beyond 2010*, OECD Publishing, Paris, doi: 9789264089754-en.

OECD (2010e), *Multi-level Regulatory Capacity in Australia*, OECD Publishing, Paris, doi: 9789264067189-en.

OECD (2010f), *OECD Reviews of Regulatory Reform: Australia, towards a Seamless National Economy*, OECD Publishing, Paris, doi: 9789264067189-en.

OECD (2011a), *Competition Assessment Toolkit*, OECD, Paris.

OECD (2011b), *Regulatory Policy and Governance: Supporting Economic Growth and Serving the Public Interest*, OECD Publishing, Paris, doi: 9789264116573-en.

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

OECD (2012b), *OECD Review of Telecommunication Policy and Regulation in Mexico*, OECD Publishing, Paris, doi: 9789264060111-en.

OECD (2012c), Principles for the Governance of Regulators - Discussion Paper, Paris.

OECD (2012d), Recommendation of the Council on Regulatory Policy and Governance, OECD, Paris.

Office of Best Practice Regulation (2008), Best Practice Regulation Guidance Note: Value of Statistical Life, Australian Government, Canberra, www.finance.gov.au/obpr/docs/ValuingStatisticalLife.pdf.

Office of Best Practice Regulation (2011), Best Practice Regulation Report 2010-11, Australian Government, Canberra.

Office of Management and Budget (2003), Circular A-4: Regulatory Analysis, United States Government, Washington, www.whitehouse.gov/omb/circulars_a004_a-4/.

Parliament of Victoria, Australia (1994), Subordinate Legislation Act 1994 (No. 104/1994). www.legislation.vic.gov.au.

United Kingdom Government (2011), Impact Assessment Toolkit. UK Government, London, August 2011. www.bis.gov.uk/assets/biscore/better-regulation/docs/i/11-1112-impact-assessment-toolkit.pdf.

Chapter 5

Administrative simplification and management of the stock of regulation in Mexico

This chapter presents the actions on administrative simplification and management of the stock of regulation applied by Mexico in the recent years. International best practice has been adopted in the programme to reduce administrative burdens, through the adaptation of the Standard Cost Model. These actions have been complemented with other administrative simplification strategies which have been priorities of the Mexican government, including the Base Cero programme and the one-stop shop tuempresa.gob.mx. The programme of simplification for regulation inside government has delivered significant results.

Introduction

Regulations and formalities are important tools used by governments to provide services and to carry out public policies in many areas. Administrative burdens have tended to grow in number and complexity, as governments need more information to implement their policies and target their regulations and instruments on more specific issues and populations. The growing use of formalities has become a major problem, known as administrative burdens. Formalities increase costs and multiply barriers for businesses through the time and money needed for compliance. This can, in addition, reduce regulatory certainty, a key parameter for businesses.

Administrative simplification is a regulatory quality tool to review and simplify administrative regulations: paperwork and formalities through which governments collect information and intervene in individual economic decisions. Administrative simplification has remained high on the agenda of most OECD countries over the last decade. With the complexity and dynamism of societies and economies creating a demand for new and revised regulations, the intricacy of the regulatory framework and the burden it presents for citizens, businesses and the public sector has become excessive.

While some OECD countries have a policy on how to manage the stock of legislation, it appears as a derivative of administrative simplification in most countries. By management of the stock of legislation we mean making the legislation more easily accessible. This includes electronic publication, consolidation and codification of legislative texts as well as the review of existing regulation to eliminate inconsistencies and duplications. These projects remain usually in the shadow of more attractive projects aiming at measuring administrative burdens.

Reduction of administrative burdens

OECD countries have tried to promote economic growth through regulatory improvement. Better regulation is crucial in order to achieve growth and improve the competitive position of businesses. A central aspect of better regulation is minimising the administrative burdens that businesses and individuals have to endure in order to create and perform an economic activity. The reduction of administrative burdens releases economic resources previously invested in regulatory compliance, while making them available for more efficient uses. Administrative simplification has remained high on the agenda of most OECD countries over the last decade. With the complexity and dynamism of societies and economies creating a demand for new and revised regulations, the intricacy of the regulatory framework and the burden it presents for citizens, businesses and the public sector have become excessive (OECD, 2010d), increasing the importance of mechanisms that allow for the reduction of administrative burdens.

The Standard Cost Model as a tool for the measurement and reduction of the administrative burdens

The Dutch Ministry of Finance developed the Standard Cost Model (SCM) as a quantitative methodology for determining the administrative burdens that regulation imposes on businesses. The SCM is usually popular across the political spectrum as it aims at removing obligations that are not necessary, but it does not entail changing the policy objectives of regulations. This allows the model to be perceived as politically neutral. A key strength of the SCM is that it is uses a high degree of detail in the measurement of the administrative costs, in particular going down to the level of individual activities.

The Standard Cost Model measures the consequences of administrative burdens for businesses. It provides a simplified, consistent method for estimating the administrative costs imposed on business by central government and provides estimates that are consistent across policy areas. The SCM can be applied to measure a single law, selected areas of legislation or to perform a baseline measurement of all regulation in a country at different levels. The SCM is also suitable for measuring the administrative consequences of a new legislative proposal as well as administrative simplification proposals (see Box 5.1).

Box 5.1. The Standard Cost Model and administrative simplification

The SCM methodology is an activity-based measurement of the businesses' administrative burdens, making it possible to follow the development of administrative burdens. At the same time, the results from the SCM measurements are directly applicable to governments' simplification work, as its outcome shows the specific regulation that is especially burdensome for businesses.

The SCM breaks down regulation into a range of manageable components that can be measured, while focusing on the administrative activities that must be undertaken in order to comply with regulation. SCM measurements highlight the existence of areas of regulation suitable for administrative burden reductions. Given the action-orientated nature of SCM results, it provides a crucial baseline and source of ideas for simplification opportunities.

The adoption of the SCM in the simplification process has several advantages:

- It draws attention to the specific parts of the legislation that are most burdensome for businesses' compliance as well as identifying the total costs of administrative burdens;
- A baseline measurement reveals where administrative costs occur in business processes, highlighting where the greatest effect of simplification can be achieved;
- The classification of the causes for the administrative burdens and the identification of which department/ministry is responsible for burdensome regulation allows to target the simplification efforts;
- The collected information enables to simulate how changes or amendments in the regulation may impact on the costs faced by stakeholders, and;
- The SCM may also stimulate the share of data between government agencies.

Source: SCM Network (2005), International Standard Cost Model manual. Available on http://www.administrative-burdens.com/filesystem/2005/11/international_scm_manual_final_178.doc, accessed on 6 February 2013.

The main factors for the success of SCM have been a sound methodology for mapping and measuring administrative burdens and the possibility to set up a quantitative target for reduction. This target enables the creation of a benchmark against which progress can be measured. Such benchmark provides countries with fresh ideas for reducing burdens.

The SCM is nowadays the most widely applied methodology for measuring administrative costs amongst OECD countries. The rapid spread in the use of the SCM was encouraged by the 2007 Action Programme of the European Commission. The Programme aimed at measuring the administrative costs arising from legislation in the EU and to reduce administrative burdens by 25% by 2012. The programme used a modified version of the SCM and consisted in a large-scale measurement of administrative burdens in 2007-08, followed by major simplification proposals aiming to reduce administrative burdens on businesses. The European Council endorsed the Action Programme in 2007 and all the member states of the EU have also adopted quantitative targets of administrative burden reduction.

The approach to administrative simplification changed after meeting the 25% reduction target and an updated Action Plan has been adopted by the EU, based on the recommendations of the joint review conducted by the OECD and the World Bank, with new targets (OECD, 2010d):

- Reduce administrative burdens by a further 25% by 2011, based on a largely new baseline measurement;
- Reduce compliance and supervisory costs;
- Lower the costs for companies in relation to subsidies;
- Improve the provision of information and services to businesses;
- Accelerate the procedure for granting permits;
- Broaden the programme to comprise burdens generated at local level.

In addition, new developments to measure and reduce administrative burdens have been performed by OECD countries, using the SCM as a base (see Box 5.2).

The biennial programmes of Mexico as tools to reduce administrative burdens

The aim of reducing the administrative burdens in Mexico dates back to 2001 with the creation of the biennial programmes, which set specific objectives to reduce and improve the regulatory framework. The biennial programs establish the obligation to carry out an improvement programme on the regulatory standards and formalities of ministries and decentralised agencies in Mexico.

The LFPA establishes that ministries and decentralised agencies of the federal public administration should submit to the COFEMER, at least every two years, an improvement programme on the regulatory standards and formalities they apply and submit the corresponding progress reports. This legal obligation takes the form of biennial programs.

The LFPA grants the COFEMER the power to establish and publish in the Official Journal of the Federation the guidelines to be followed for all the biennial programs, enhancing the mandatory character of their presentation by ministries and decentralised bodies. The biennial programs provide concrete actions for improvement in federal regulations, seeking to increase competitiveness and growth. The two-year period comprises a timeframe where the programs are officially initiated, developed, implemented, monitored and evaluated.

Box 5.2. International experiences in the use of the 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; while 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.

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), *Cutting Red Tape: Why is Administrative Simplification so Complicated? Looking Beyond 2010*, OECD Publishing, Paris, doi: 9789264089754-en.

Despite the fact that the first biennial programme started in 2001, efforts to review and simplify the regulatory framework date from 1989. The first effort to review and propose reforms to the national regulatory framework was carried out in 1989. It intended to modernise the economy, raise levels of economic efficiency, increase the participation of private and social sectors and remove obstacles to free competition. President Carlos Salinas de Gortari issued an agreement under which it instructed the Ministry of Economy to review the regulatory framework of the national economic activity. Afterwards, in 1995, president Ernesto Zedillo issued an agreement that instructed the Economic Deregulation Unit (UDE) within the Ministry of Economy to coordinate a deregulation programme of those formalities related to the establishment and operation of business. This was the first reduction of the administrative burden in Mexico, as it resulted in a decrease of 45% of business formalities. In 2000, with the amendments to the LFPA, the systematic review of the national regulatory framework was institutionalised and mandatory. To date, five biennial programmes have been performed (see Box 5.3).

Box. 5.3. Milestones of the biennial programmes in Mexico

2001-03

- The first biennial programme was put in place.
- 18 entities of the Mexican government presented programmes establishing the regulatory instruments to eliminate, modify or create. A total of 22 regulations were proposed for deletion, 182 for modification and 327 for creation.
- 447 technical standards were subject to the 5-year sunset review.
- Public entities completed the registration of procedures and services in the RFTS and updated the ones already registered, while eliminating the obsolete or unnecessary formalities.
- Ministries and decentralised bodies had to submit to the COFEMER their plans to simplify with at least 5 high-impact formalities.

2003-05

- 45 entities of the Mexican government presented programmes, which contained two main objectives:
  - –Registration, elimination and simplification of formalities in the RFTS.
  - –Creation, modification or abrogation of regulatory instruments.
- Regarding formalities, a validation of the information recorded in the RFTS took place, as well as an upgrade of the online RFTS tool, which included the identification of high-impact formalities.
- A total of 1 738 formalities and services representing 67% of the RFTS were validated.
- Plans were set to create 492 formalities and services, modify 741 and eliminate 116 formalities. In addition, 121 high-impact formalities were identified for simplification.
- Regarding technical standards, 408 were proposed for creation, 284 for modification and 70 for elimination, while 155 were subject to the 5-year sunset review.
- The section of the programme regarding creation of regulation was suspended as a result of the enactment of the agreement establishing a regulatory moratorium aiming at suspending the issuance of regulations with compliance costs.

2005-06

- Since the agreement establishing a regulatory moratorium was still in place, there were no proposals under the programme for the creation of regulation.
- The programme incorporated 36 specific actions on regulatory reform that could be carried out without the need to implement legislative changes.
- These 36 actions encompassed 11 priority areas: foreign trade, standardisation, health, finance, transport, telecommunications, energy, labour and social regulation, migration, social security, and regulatory Improvement in states and municipalities.

2007-08

- No programmes were made.

2009-10

- 113 ministries and decentralised bodies presented biennial programs. They focused in 4 main areas:
  1. Plans to register, modify or eliminate formalities and services of the RFTS;
  2. Schedules to issue, reform or abrogate regulations which are submitted to the COFEMER for consideration;

Box. 5.3. Milestones of the biennial programmes in Mexico *(cont.)*

3. Specific actions of regulatory improvement proposed by the COFEMER and, where appropriate, the schedule of the activities associated with these actions;

4. Specific actions for regulatory improvement proposed by the ministries and decentralised bodies, and the schedule of activities associated with these actions.

2011-12

- 49 biennial programs were presented for this period, comprising 1 898 improvement proposals.
- The main objective was to reduce by 25% the administrative burden and response times for permits and licences currently imposed on citizens and entrepreneurs.
- The programme focused in the regulatory governance cycle and followed the principles of focalisation, high-impact and straightforward implementation of the measures.
- Public consultation was broadly employed to identify the regulations, which imposed the highest burden, where the public sent 1 028 proposals.
- ICT tools were also largely employed as a computer system was used to quantify in detail the administrative burden of 4 649 formalities.

Source: Federal Commission for Regulatory Improvement of Mexico responses to OECD questionnaire, 2012.

As can be seem, an important improvement of the biennial programmes is that they are currently implementing the Standard Cost Model to measure administrative burden reductions, allowing regulators to emphasise the regulations and formalities that generate bigger reductions of the administrative burden and promote market efficiency.

Adaptation and application of the SCM by the Mexican government

The 2011-12 biennial programme sets as an objective a reduction of the administrative burden by 25%, in accordance with international best practices and experiences. The federal government expects a burden reduction of 1.4% in national GDP, which, according to COFEMER's estimations, can account for an additional 2.5% of Mexico's growth by 2025. The objective of this simplification target is to promote economic growth through short-term measures that would enable individuals and enterprises to spend less time and resources on formalities and paperwork arisen from the regulations in place, and instead, focus such efforts in increasing individual and businesses' productivity.

To establish a baseline, Mexico employed the SCM to map and measure the administrative burden, while setting a goal to achieve quantitative reduction in the future and setting a benchmark to compare and measure progress in the reduction of the administrative burden. The adoption and adaptation of the SCM by the Mexican federal government took place through the programme Strategy to Increase Productivity and Employment. It is a variation of the SCM as some modifications took place due to the availability of information and the objectives pursued. Nonetheless, it follows international standards of simplification and obtained similar results to those achieved by its international counterparts.

During the planning stage (from 2010 to May 2011), the federal government, through the COFEMER, conducted the quantification of the administrative burden of federal regulation. It chose to mainly focus on formalities, since they are explicit obligations for the delivery of information between citizens and the federal government and have an impact on companies, citizens and union, farming, religion or societal organisations. Given that Mexico already has the Federal Registry of Formalities and Services (RFTS), the complete registry, comprising 4 649 formalities, was analysed.

To complete the exercise in an orderly manner, the registries were classified by user, allowing to determine the cost of the impact of business-oriented procedures and those with no business impact, comprising the formalities carried out by citizens, trade unions, farmers, as well as religious and civil society. The next stage was to develop the measurement of the administrative burden and to create an accounting model for that purpose. In this case, the COFEMER based its analysis on the SCM to calculate the administrative burden. Once each of the formalities were analysed and evaluated by the methodology of the SCM, a virtual simulator was designed to internalise the variables and parameters that allowed determining the aggregate measure of the total economic cost of regulation. As a first step, the administrative burden was estimated, as was the opportunity cost for each formality, obtaining the economic cost for each of them. Subsequently, the frequency with which each formality is performed during the year was identified, multiplied by its economic cost and the total aggregate economic cost was determined (see Box 5.4).

The Mexican Model is similar to the SCM except that the time variable does not depend solely on the time of compliance, but also on the number of requirements per procedure and the distribution of the time each of the staff types has to devote to comply with the regulation. As a result of the process, it was found that the administrative burden amounts to 4.8% of the GDP, similar to the cost faced by some countries, such as Spain, Italy and Portugal, which have applied the SCM. It was also concluded that 66% of that cost is concentrated in 11% of the formalities registered in the RFTS and, if the goal to reduce the administrative burden by 25% were achieved, it would represent the release of 1.2% of the GDP worth in resources for companies, which is a level of benefit similar to the average estimated internationally.

Other administrative simplification strategies

The Federal Registry of Formalities and Services

The Federal Registry of Formalities and Services (RFTS) is a public online catalogue established by the LFPA, which the COFEMER manages. It is comprised of a catalogue which includes all the formalities and services provided by the federal government. The RFTS streamlines, updates and maintains publicly available all formalities and services that are carried out by the federal government. The registration of formalities in the RFTS is mandatory for all the federal governmental entities, which is a prerequisite for the formalities to be legally enforceable.

The RFTS is constantly updated, as government entities are obliged to notify the COFEMER of any changes in the formalities that they are bound to apply, including elimination, addition, or modification of formalities.

Box 5.4. Methodology of the Mexican Cost Model to calculate the administrative burden

An adapted version of the SCM was used to calculate the administrative burden of formalities in Mexico. Firstly, the formalities were classified by life cycle (start-up, operation, closing), agency and administrative unit involved in the procedure and subsector of economic impact.

In addition, 450 surveys were applied to businessmen, citizens, as well as agricultural, consumer and civil society organisations to gather information while mapping every procedure and classifying them as new or pre-existing. Based on the mapping and on the surveys, the time spent in complying with each regulation is estimated before the regulation is changed, as well as after it has been done. The proportion of time spent by each type of staff (secretaries, technicians, directors, professionals) was also determined.

To calculate the cost, a series of variables were analysed. First, the complexity of complying with the regulation was estimated, according to the number of requirements, the number of work hours invested for complying, and the distribution of time used to comply with the regulation, divided between the different types of staff.

Then, the Estimated Unit Cost (a function of the complexity of compliance), the Total Time Spent per Activity (before and after the simplification) and the Total Cost Per Activity are calculated. The later is determined by multiplying the Total Time Spent Per Activity (before the simplification) by the weighted salary (the weights depend on the distribution of time used to comply with the regulation divided among the different types of staff).

Afterwards, the Administrative Cost Per Company was calculated by adding all the Total Cost per Activity for all the activities and all the procedures. This variable was then multiplied by the number of times each procedure is used or fulfilled in a year to determine the Aggregated Administrative Cost, amounting to the Total Economic Cost except for the start up stage of the life cycle of a company.

To determine the Total Economic Cost except for the start up stage of a company, another methodology was applied. To calculate the Opportunity Cost, the benefits by subsector where the regulation has influence were multiplied by the days the authority takes to make a decision (in all the procedures involved in the start-up). The Aggregated Opportunity Cost was estimated by adding all the Opportunity Costs of the subsectors and thus the calculation of the Total Economic Cost was made by adding the Aggregated Administrative Cost and the Aggregated Opportunity Cost, while the Total Economic Benefit was determined by subtracting the Total Economic Cost after the Simplification of the Total Economic Cost before the Simplification.

Source: Federal Commission for Regulatory Improvement of Mexico responses to OECD questionnaire, 2012.

Regulatory reform programme Base Cero

In 2009, the Mexican government promulgated the Decalogue for the "deep transformation" of Mexico, promising "to undertake in the government a deep regulatory reform that allows establishing a zero-basis regulation that facilitates citizens' life". Following up on this, on January 12-13, 2010, the Mexican Ministry of Economy and the OECD organised a forum on Regulatory Reform, under the name Strengthening Competitiveness in Mexico, which

gathered experts on regulation and competitiveness in order to discuss the regulatory barriers across the life cycle of a business, as well as ways on which the government could help Mexican states to improve their competitiveness, and sought to reform regulations and laws that could lift productivity gains and improve competition. During this forum, the Mexican president Felipe Calderón announced a general regulatory review to be conducted by the federal government to eliminate unnecessary burdens and simplify the interactions between the government, citizens and businesses with the purpose of promoting a sustained economic growth. The strategy was called the regulatory reform programme *Base Cero*.

In the *Base Cero* programme the Ministry of Public Administration led efforts to evaluate all regulation impacting on the operation and development of activities within the federal public administration —regulation inside government (RIG, see below)—, and the Ministry of Economy worked with the regulations of greatest impact on businesses operation—regulation applied to businesses and citizens (RABC).

In short, the strategy was intended to cover three main objectives:

- to foster regulation that would increase competitiveness and promote growth and economic development;
- to eliminate unnecessary transaction costs and market distortions generated by over-regulation; and
- to facilitate citizens' and businesses' interaction with the government.

With these objectives, the government of Mexico expected the strategy to have an economic, substantive and administrative impact: the "economic" through the reduction and improvement of economic regulation that would in turn promote competitiveness; the "substantive" by reducing and simplifying the normative framework to facilitate the interaction and presentation of formalities and services to citizens; and, finally, the "administrative" by reducing and simplifying the regulation inside the government in order to efficiently apply and make the most of resources and technical procedures of the federal public administration. On this last point, the government pointed out that savings (resources) would be specifically applied to priority tasks for the country's growth and social development.

In March 2010 the Ministry of Economy finished the first stage of the Base Cero programme, in which it had identified the most burdensome regulation for economic activity. With the help of the COFEMER, it set out to review this regulation in order to find simplification opportunities. As a result, in August 2010 the president of Mexico announced 12 regulatory reform measures (see Box 5.5). Using a modified version of the Standard Cost Model, the Mexican government announced that these measures amounted to around MXP 20 billion in savings for businesses and citizens.

The one-stop shop for business start-up tuempresa.gob.mx

The establishment of a one-stop shop, whether physical or electronic, is a popular administrative simplification strategy across OECD countries. One-stop shops usually supply a high variety of services ranging from the provision of information about the business environment and its requirements, to licensing and issuing permits to enter specific business activities. One-stop shops can also provide other services on behalf of entrepreneurs from other public authorities. In a perfect situation, there is only a "single window" to contact in order to access all services entrepreneurs might apply for business licenses and permits (OECD, 2010d).

Box 5.5. Twelve regulatory reform measures announced on August 17, 2010 by the federal government of Mexico, as part of the Base Cero programme

1. Facilitate Mexican exports to Europe and Latin America.
2. Simplifying and streamlining the filing and resolution of complaints for users of electricity. Incorporation of the Federal Electricity Commission to the Consumer Complaint Settlement System CONCILIANET.
3. Simplification of procedures to receive and record foreign investment through automation in the presentation of information to the National Registry of Foreign Investments.
4. Expand services offered through the electronic portal *tuempresa.gob.mx*
5. Promote equipping SMEs and access to electronic products.
6. Automate the process for obtaining Health Registry.
7. Promoting the marketing of last-generation medical devices in Mexico.
8. Promote access of families to health by providing them with a greater supply of medications.
9. Establish a direct interconnection between the tax administration system and COFEPRIS for real-time transmission of sanitary import permits.
10. Boosting productivity in agriculture, facilitating the transfer of its products nationwide and automating the issuance of Phytosanitary Certificate and National Mobilization Animal Health.
11. Generate savings to farmers by automating the registry for Consumer Products and Animal Use.
12. Support the productivity of Mexican firms and household income, by also deregulating the process of importing meat, grains, oilseeds and other agricultural products.

Source: Federal Ministry of Mexico responses to OECD questionnaire, 2012.

Tuempresa is an online one-stop shop under the responsibility of the Vice-ministry for Competitiveness and Business Regulation of the Ministry of Economy, that allows entrepreneurs to comply with the federal formalities needed to legally constitute a business entity in a simplified and streamlined manner. Once all the required information has been collected, entrepreneurs fill an online questionnaire, make online payments, and have to visit a notary or an authorised commercial broker. The whole process can take just a few hours. The OECD calculated that Tuempresa reduces administrative burdens in the process to create a legal business entity by 65%. The portal *tuempresa.gob.mx* was launched by president of Mexico Felipe Calderón on 4 August 2009.

With the creation of Tuempresa, the aim of the Mexican federal government was to simplify the process for starting a business as a whole. The rationale behind such an approach was that the government must place the citizen at the centre of the regulatory process. This approach implies that the needs of citizens and businesses should dictate the regulation, not the other way around. Under this view, an entrepreneur is not interested in getting an authorization for the name of the company, or enrolling in the tax payroll. The objective of the entrepreneur is to start a business, offer goods or services to the market and make profits. It is the government who establishes the obligation for the entrepreneur to meet all the specified formalities and requirements.

The objective of Tuempresa is to simplify federal procedures so that entrepreneurs who wish to start a business do not have to go to many different government agencies and line up in various offices. Tuempresa offers an electronic portal in which entrepreneurs need to submit information only once and visit a notary or commercial broker in order to create and register a business entity. Prior to the instrumentation of the portal, entrepreneurs needed to visit different government offices, fill several forms and questionnaires providing the same information several times, wait in line to submit information, and wait several hours or days to receive an official response. Box 5.6 includes information on these formalities and the number of visits needed.

Box 5.6. Formalities needed to create a legal business entity in Mexico before Tuempresa*

Approval of the name of the company with the Ministry of Foreign Affairs. At least three visits to the public office are needed: one to collect the form to be filled, one to submit it with three proposals of names, and one to collect the official response. Response times range between 1 and 2 working days. If none of the three proposed names are available, a new submission needs to be done. For each submission of information, a payment needs to be made in the bank.

Creation and signing of the business deed before a notary or an authorised commercial broker (corredor público). The notary and commercial broker provide legal advice to entrepreneurs on the type of legal form that the business can take; for instance, a limited company or an incorporated company. Their main function is to prepare the business deed that legally creates the company in accordance with the regulatory framework, and to verify the identity of the business partners. Generally, entrepreneurs visit the office of the notary or commercial broker twice.

Registration of the company deed in the Registry of Public Commerce. This procedure is carried out by the notary or commercial broker, by using an electronic system called Fedanet. They need to fill online forms and make an online payment. The system is managed by the federal Ministry of Economy in co-ordination with the 32 Mexican states.

Notification of the use of the name of the company with the Ministry of Foreign Affairs. Once steps number one and two have been finalised, entrepreneurs need to submit a notification informing the Ministry of Foreign Affairs that the name of the company that was initially authorised will actually be employed. At least one visit is needed to the Ministry of Foreign Affairs, and a payment needs to be made in the bank.

Registration as taxpayer with the tax collecting authority. This is also a procedure carried out by the notary or commercial broker. They submit information via an electronic system provided by the tax authority.

* Prior to tuempresa.gob.mx, these were the only option available.
Source: Federal Ministry of Mexico responses to OECD questionnaire, 2012.

There are two main steps involved in establishing a company through Tuempresa:

1. Use of the online website, which includes:
   - Registration,

- Choice of name or denomination;
- Provision of information to create the company;
- Payment of the corresponding federal fees;
- Choice of a notary public or authorised commercial broker;
- Visit to the notary or authorised commercial broker to get the business deed and register with the tax authority.

2. After finalizing the process at *tuempresa.gob.mx* and meeting with the notary or authorised commercial broker, the entrepreneur obtains the following documents:
   - Business deed;
   - Authorization to use the name or denomination;
   - Document confirming that the notification of the authorization to use the name or denomination has been sent;
   - Registration of the deed in the corresponding Public Register of Commerce;
   - Registration with the Federal Register of Taxpayers;

The main features of the portal are the interconnection of: (i) 10 federal agencies with 12 federal procedures and one local agency with one procedure; (ii) more than one thousand public and commerce notaries; and (iii) public offices in 30 out of the 32 states, which allow the constitution of an enterprise through the portal. The only two remaining states (Baja California Sur and Tamaulipas) are currently under negotiations with the Ministry of Economy to take part in the programme.

In its current form Tuempresa allows creating the business deed of only two types of legal companies: incorporated companies (*sociedades anónimas*) and limited companies (*sociedades de responsabilidad limitada*). Together with sole proprietors (*personas físicas*), incorporated companies and limited companies are the most common forms of legal business entities (Secretaría de Economía y OCDE, 2009). However, the most common legal business entity in Mexico is sole proprietorship,[1] but in order to create this type of company, only registration with the tax authority is needed: a relatively simple procedure. Nevertheless, following OECD recommendations, the Ministry of Economy is considering including in Tuempresa the option of creating a company as a sole proprietor.

At the end of 2011, the portal had accomplished:

- 42 316 registered users;
- 1 477 Notaries Public and Public Brokers were enabled;
- 39 144 business name licenses were requested;
- 7 910 business name licenses were paid;
- 4 355 companies were registered with the Public Registry of Commerce;
- More than 77 045 interactions with legal effects between citizens and public officers took place, with estimated savings over $90 861 227.60 USD.

Mexico has set very ambitious outcomes for the programmes *tuempresa.gob.mx*, and the single window for foreign trade (see below), as they are expected to contribute to an increase in economic activity through a boost in the number of business start-ups and by an increase in the import and export activity, and in this way help to achieve an increase in competition, efficiency, and productivity.

Box 5.7. Services available at the portal tuempresa.gob.mx

In addition to the documents the entrepreneur obtains from Tuempresa, described above, the current version allows for:

- Quick search of company names previously authorised by the Ministry of Economy or the Ministry of Foreign Affairs*
- Validation of certifications and authorisations
- Modification of the chosen legal regime, or of the notary public selected to formalise the creation or modification of the company

Once the company has been created, the legal representative of the enterprise or the notary public may request the following services:

- Appointment to request the enrolment in the insurance for high-risk work in the Mexican Social Security Institute
- Presentation of training programs to the Ministry of Labour and Social Welfare
- Declaration of opening of commercial establishments before the government of the Federal District
- Application for trademark registration with the Mexican Institute of Industrial Property
- Application for supply of electricity to the Federal Electricity Commission
- Register as "hazardous waste generator" with the Ministry of the Environment and Natural Resources
- Notice of functioning and sanitary responsibility before the Federal Commission for Sanitary Risks Protection
- Permit for wastewater discharge before the National Water Commission (CNA)
- Obtaining the distinctive "Made in Mexico" along with the benefits and use of the mark

* A legal reform by Mexico's Congress on December 15, 2011, stipulates that the Ministry of Economy is now in charge of authorising the name of the company.
Source: adapted from the website of the Federal Ministry of Economy of Mexico, Tu Empresa, tuempresa.gob.mx, accessed 13 February 2013.

For this reason, since its creation Tuempresa has been subject to continuous improvements. In accordance with these objectives, as of September 2012 the Ministry of Economy has made available the version 2.0 of the portal, which includes new features such as the incorporation of new procedures and services for the authorization to use designations for commercial and civil companies and for associations of civil nature, requests for permission to use or modify designations, among others (see Box 5.7). These new features operate online via Internet in real time and through the employment of the advanced electronic signature issued by the Tax Administration Service (SAT).

The new version of the portal also comprises an interactive section of basic legal information and guidance that allows the entrepreneurs' understanding of the available options to open a business. It offers information on legal matters regarding commerce, taxation, labour and industrial property, as well as relevant issues related to planning and financing of business.

After the recent reform to the Federal Law on Duties (Ley Federal de Derechos), from January 2012 the payment of federal duties for the constitution of a company were eliminated and no payment is requested during the online procedure at the portal. Nonetheless, the payment of the fees of the notary public is still requested and may be variable as it is not a standardised fee. Subsequently, the notary public will register the company with the Public Registry of Commerce and make the corresponding payment of fees to the office of the Public Registry of Commerce.

For 2013, the goal of the Mexican federal government is consolidation of the portal through an increase in usage by notaries, and the incorporation of formalities at state and municipal level. The latter is envisaged as a daunting task given that Mexico has 31 states, one federal district and more than 2 000 municipalities, all of them with independence to set and apply their own regulation for business creation.

Single Window for Foreign Trade

The Single Window for Foreign Trade allows businesses performing import or export activities to request the necessary licenses and permits and submit the corresponding information obligations in a single place while dealing with just one authority.

The Tax Administration Service (SAT), through the Customs General Administration, designed and implemented, in conjunction with other units of the federal public administration involved in foreign trade, the "Mexican Single Window for Foreign Trade" (*Ventanilla Única de Comercio Exterior Mexicana,* VUCEM), launched in January 2012. The VUCEM is a tool that enables the delivery of standardised information to a single entity for compliance with all the requirements related to import, export and transit. For this purpose, the Tax Administration Service implemented the use of electronic documents and signatures, rending customs clearance 100% paperless, resulting in better controls, procedures optimization, and easier documentation location, space-saving and eco-friendly procedures.

The main features of the VUCEM are:

- Deregulation and re-engineering of formalities
- Paperwork and payments under a single website
- A single system for government agencies and customs formalities
- Connectivity with private agents and commercial partners
- Use of the Advanced Electronic Signature (FIEL)

Table 5.1. Implemented actions and achievements of the Single Window for Foreign Trade

Actions taken	Reductions	
Number of formalities	from 54 to 22	60%
Registered data	from 770 to 435	44%
Deadline for response	from 15-20 to 1-5 days	
Requirements	from 104 to 61	41%

Source: Ministry of Economy of Mexico responses to OECD questionnaire, 2012.

The VUCEM allows sending electronic information only once, to a single entity, to meet all requirements of foreign trade. This is possible through the simplification, standardisation and automation of management processes. The VUCEM aims to accelerate and simplify information flows between trade and the government while providing significant benefits to all parties involved in cross-border trade. A governing body centrally manages the VUCEM, allowing government agencies to receive or have access to information relevant to meet their purpose (see Box 5.8). In turn, authorities and agencies involved must perform their own controls and coordinate amongst themselves. Thanks to these co-ordination mechanisms, traders can file electronic data to the various authorities to be processed and approved in a single application and, in some cases, the VUCEM must also provide means for the payment of royalties, taxes and fees.

The federal government overcame some technical factors affecting the implementation of the VUCEM, yet some political challenges remain. After the VUCEM was launched, some technical factors affected its implementation. As a response, the Mexican government carried out the following actions: (i) the provision of 450 mobile devices to verifiers of the 49 Customs Offices with its corresponding training, (ii) the implementation of wireless connectivity services using radio frequency technology in the 49 Customs Offices, (iii) the employment of technological tools and existing databases, such as the Electronic Signature, Taxpayer Identification (IDC) and RENAPO (National Registry and Personal Identification), and (iv) the implementation of procedures necessary for foreign trade transaction using BPM tools allowing for proper management and transparency.

Amongst the political challenges faced by the VUCEM, the issue remains of the co-ordination among the 10 government departments that participate in the approval, simplification, and streamlining of procedures, data and requirements, in order to reduce costs and time on the preparation of documents required for foreign trade operations (licenses, permits and certificates that have to do with the import, export and transit of goods).

Box 5.8. Authorities of the federal public administration involved in foreign trade

- General Administration of Customs (AGA) within the Tax Administration Service;
- Ministry of Agriculture, Livestock, Rural Development, Fisheries and Food (SAGARPA);
- Ministry of Health (SALUD);
- Tax Administration Service (SAT);
- Ministry of Economy (SE);
- Ministry of National Defence (SEDENA);
- Ministry of the Environment and Natural Resources (SEMARNAT);
- Ministry of Energy (SENER);
- Ministry of Education (SEP);
- Ministry of Finance and Public Credit (SHCP), and
- Ministry of Public Administration (SFP)

Source: adapted from the website of the Federal Government of Mexico, Ventanilla Única, www.ventanillaunica.gob.mx/vucem/index.htm, accessed 15 February 2013.

The first shipment of goods under the Single Window for Foreign Trade was held in January 2012 at the office of Lázaro Cardenas, Michoacán, and since then a strong impetus has been given to promote the use of this tool with the goal of increasing Mexico's competitiveness.

Aiming at further enhancing the utilisation of VUCEM, as of June 2012, the use of the single window is mandatory for all users of foreign trade in all custom houses in the country. From the launch of VUCEM in October 2011 until May 2012, the Mexican government had documented the following accomplishments:

- Performance of over 130 000 transactions, representing more than 100 000 containers;
- Registry of more than 49 000 users, from a universe of about 60 000 (over 80% of the total);
- Almost 260 000 electronic value vouchers have been registered, whereas up to 22 000 invoices are daily processed saving around 400 trees a year;
- Digitalisation of more than 108 000 documents.

The VUCEM benefits approximately 30 involved sectors, comprising government offices, exporters, importers, carriers and auxiliary customs agents. With the VUCEM, the time to carry out formalities is reduced by more than 90% and the time of customs clearance decreases by more than 10%, thus allowing carriers to increase their efficiency through the streamlining of freight clearance processes.

The SARE-System for Quick Business Start-up

In recent years, there has been a growing interest in promoting policies that would benefit the micro, small and medium-sized enterprises (SMEs), as they account for 99% of the formal enterprises in Mexico, they create 72% of formal employment and generate 52% of Mexico's GDP. Consequently, streamlining the process of creation of businesses has a decisive importance for the Mexican economy.

Since 2002, the COFEMER has promoted the adoption of the System for Quick Business Start-Up (SARE) in the Mexican states and municipalities. SARE is a federal government programme for regulatory simplification, process re-engineering, and administrative modernisation of the state and municipal formalities involved in the establishment and start-up of businesses. The purpose of the SARE is to reduce permanently the time and cost of doing business in Mexico, particularly in regard to the start-up of low-risk businesses. The SARE is mainly targeted to micro, small and medium-sized enterprises (SMEs) which do not involve any risk to health or the environment, aiming for their establishment and opening in a period not exceeding 72 hours.

The SARE programme has the following main features: (i) it is a single "one-stop shop" encompassing the formalities demanded by the three levels of government to open a business, allowing entrepreneurs "to make the first sale";[2] (ii) it identifies the degree of risk by economic activity, deregulating to the utmost enterprises with low or zero risk; (iii) it develops a single application form and submission of a cost-benefit analysis to the formalities required in the process; (iv) it establishes that the whole process for obtaining the licences and permits from the three levels of government must take a maximum of 72 hours for zero- or low-risk businesses; (v) it carries out reforms to the regulations and municipal operations in order to achieve the formal establishment of SARE; and (vi) it performs verifications after the resolution of the formalities involved in the start-up of business.

The SARE has facilitated the entrance of new competitors in the markets, lowering entry costs and regulatory requirements. The current coverage of the SARE in Mexico comprises municipalities representing 46% of the national population and 56% of the GDP. Up to October 2011, 189 SARE had been implemented, leading to the establishment of 264 489 businesses and creating 701 157 jobs, while generating an investment of $42 441 million pesos.

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

In addition, the SARE programme has managed to significantly reduce response times regarding the issue of licenses for municipal operation. In the 20 SARE implemented in 2010, the average number of visits to local agencies needed to complete the procedures for starting a business went from 3.2 to 1, while the average number of days for starting up a business went from 32 to just 2. Similarly, during 2011, 19 SARE modules were installed, where the average number of visits also decreased from 3.2 to 1 and the average number of days to start a business fell from 21 to just 2.

Regulation inside government

In 2009 and 2010, in the framework of the programme Base Cero, the Ministry of Public Administration led an exercise to review the stock of regulations inside government. Two important action lines in this strategy were:

- to eliminate unnecessary and excessive procedures and services, thus promoting the reduction of requirements, as well as the use of information and communication technologies.
- to eliminate the rules which are not fully justified.

To comply with the second action line, the Mexican government developed nine administrative handbooks of general application in the federal public administration, dealing with acquisitions, public works, human resources (HR), financial resources (FR), material resources (MR), information and communication technologies, transparency, auditing, and control. The goal is to eliminate internal administrative regulations, which will simplify and standardise the operation of federal government institutions and implement mechanisms to eliminate all rules that hinder efficient service delivery. By the end of 2012, these actions resulted in the elimination of about 70% of the internal regulatory instruments.

The handbooks aim to provide a standardised and unique framework to guide the actions of public officials in each subject area. By eliminating duplicative and overlapping rules, and establishing a clear and unique internal regulatory framework, these programmes seek to minimise the use of resources for internal government activities while increasing the quality of public goods and services, as well as the effectiveness of federal public administration agencies (see Box 5.9).

The revision of the internal regulation, and the elaboration of the handbooks, comprised a wide-ranging effort involving many entities of the federal government. Approximately 404 officials from 64 institutions, particularly the main administrative offices of the federal public administration and the units for review and control of the Ministry of Public Administration, were directly engaged in the process. Additionally, consultation with 147 leader agencies of the federal public administration was carried out in order to receive

comments and contributions on the first drafts of the handbooks from public officials responsible for operating the administrative processes in the matters regulated by each handbook. In the nine handbooks, a total of 17 759 comments were addressed; 51.24% were on technical-administrative issues, 22.47% on legal-normative, and 29.29% on edition.

The programme *Base Cero,* on its strand of regulation inside government, which comprised the publication of the nine handbooks, reported the following key results:

- Significant reduction of government's internal rules (70%): removal of rules that were obsolete, overlapped, and added no value to government services;
- Simplification of procedures through their standardization: redesigning of administrative procedures based on best practices;
- Increased efficiency in administrative procedures: it allowed the generation of performance standards and integrated internal procedures within the entire federal public administration;
- Better internal management of institutions; that is to say, a better use of institutional resources and a reduction in costs associated with operational deficiencies. According to the Mexican federal government, around 60 billion Mexican pesos are calculated to be saved through efficiency measures derived from the application of the handbooks.

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

Key findings and policy options

Consolidate and advance the policy of reducing the cost of regulation

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

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

Box 5.9. Objectives of the administrative handbooks of general application

Acquisitions handbook

- More agile and timely payment to providers.
- Homogeneous formats in all governmental agencies.
- Electronic transactions.
- Simplification of purchase processes through mechanisms such as framework contracts, electronic tenders and reverse auctions through the new Compranet, the electronic system for government procurement.
- Simplification of government procurement processes, payment to providers through unique forms and acceptance of electronic invoices.

Auditing handbook

- Auditors will be able to plan, programme and perform audits in the most efficient way, and will be able to focus on identifying, preventing and fighting serious corruption cases.

Internal control handbook

- Agencies will be able to identify the conditions that inhibit the accomplishment of their goals and objectives, and determine how to overcome them to fulfil their tasks and functions to benefit citizens.

Public works handbook

- Homogeneous formats and more transparent tender processes.
- Timely assignation of projects and their execution and conclusion.
- Monitoring physical progress of works through the electronic log in order to assure timely and quality work.
- Timely application of the budget to infrastructure.
- Triggers public investment and, consequently, development and growth in the country.

Financial resources handbook

- Establishes measures to rationalise, control and allocate public expenditure.
- Provides appropriate information about the budgeting exercise.
- Standardises financial and expenditure processes, encouraging transparency and accountability in the use of public resources.

Human resources handbook

- Reduces administrative human resources costs.
- Allows re-allocation of resources that, in the past, were lost in the administrative process, towards better service delivery to citizens.
- Guides the selection, hiring, training, evaluation and motivation of public officials to satisfy the needs of citizens and to fulfil agency objectives.

Material resources handbook

- Makes better use of the resources of the federal public administration in order to increase the effectiveness of public agencies.
- Eases the reduction of maintenance, storage and lease costs in equipment and real estate.

Information and communication technologies handbook

- Generates resource savings for citizens, businesses and the state by supplying automated digital services, formalities and processes.

Box 5.9. Objectives of the administrative handbooks of general application *(cont.)*

- Increases the effectiveness of public agencies by improving the government's digital maturity.
- Encourages governmental transparency.

Transparency handbook

- Encourages transparency by providing socially useful and focused information.
- Strengthens accountability, fights corruption and diminishes opacity.
- Facilitates citizens' access to governmental public information.

Source: Secretaría de la Función Pública (2010), Menos reglas, Mejores resultados, Gobierno Federal de México.

type of mechanism to other areas of the better regulation policy, such as in the registration of formalities in the Federal Registry of Formalities and Services, and in the compliance with consultation obligations.

Consistent with one of the latest OECD recommendations in that quantification of burdens should be used cautiously, with the concept of efficiency in mind, Mexico invested reasonable resources in producing a baseline measurement of administrative burdens. Mexico embarked in the collection of data from around 400 interviews, and using a combination of statistical and mathematical techniques, and internal assessments, extrapolated the data to estimate the burdens. Nevertheless, Mexico should consider strengthening these measurements via more interviews, or expert opinions through panels. Mexico might consider these approaches only to a core of the most burdensome formalities or key economic processes. See Box 5.10 for relevant international experiences. Finally, Mexico should consider measuring other costs of the regulation, such as substantive compliance costs. Qualitative techniques could be employed to identify other sources of irritation for businesses and citizens, which might not be correlated with the amount of administrative burdens.

Ensure the effectiveness of administrative simplification strategies

Mexico should aspire to ensure the effectiveness of administrative simplification strategies, in order to guarantee that they deliver on their promises. This could be achieved by incorporating evaluation methods early in their process of development and by integrating them on the broader regulatory policies. Over the past few years Mexico has implemented several high profile administrative simplification strategies: the online one-stop shop for business opening *tuempresa.gob.mx*, the one-stop service for foreign trade, and the programme to review the stock of regulation *Base Cero*. Mexico has placed these simplification strategies high on the priorities for regulatory improvement policies. Yet, Mexico should consider taking steps to ensure their effectiveness in terms of delivering the expected outcomes. For instance, the rate of usage of *tuempresa.gob.mx* can be increased significantly.

Box 5.10. Focalised reduction of regulatory costs in the Netherlands and Denmark

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

In Denmark, the following measures have been taken in order to reduce the costs of specific regulations:

- *Burden Hunters Project*. It is a cross-ministerial project that focuses on administrative burden reduction experienced by SMEs, taking into account other factors besides administrative cost and time invested by the entrepreneur. In this exercise, officers from the Danish Commerce and Companies Agency (DCCA) and experts visited companies to gather evidence through interviews and observations of the practices of the enterprise, their relationship with public authorities, and the challenges and experiences connected with business regulations that they were experiencing.
- *Ten Business Flows*. The programme identifies the ten processes where all enterprises interact inefficiently with the government and finds how these processes can be optimised to benefit them. This simplification can be done through digitalisation, reusing data, strengthening of the communication channels between public and private sectors, etcetera.
- *De-bureaucratization programme*. Its main objective is to simplify rules, requirements and procedures that place unnecessary burdens on local and central governments and on public service employees, as well as documenting the results and effects of regulation.

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

- *Top Ten Bottlenecks*. This programme identifies the ten most irritating burdens and interactions between government and citizens, and makes recommendations on how to improve the experience.
- *Life Analysis*. It consists in the mapping of the nine possible routes that a citizen may take throughout his life in respect of bureaucratic procedures, viewed from the perspective of the citizen. The areas that stood out were paying taxes, obtaining a passport, and getting a driver's license. The main aim is to reduce administrative burdens for citizens.
- *Citizens Service Number*. It gives a unique number to citizens, businesses and other government organisations in order to simplify their interactions with government agencies.
- *Kafkabrigade*. It represents a group of experts that adopt the perspective of the citizen to resolve problems in the public sector that affect its interaction with the citizen. After a review was carried out with the authorities and civil servants involved, the experts issued recommendations to improve the current functioning of the system.

Source: OECD (2010), *Better Regulation in Europe: Denmark*, OECD, Paris, doi: 9789264084551-en, and OECD (2010), *Better Regulation in Europe: Netherlands*, OECD, Paris, doi: 9789264084568-en.

The Ministry of Economy is currently developing the version 2.0 of *tuempresa.gob.mx* which aims at improving the interface with entrepreneurs and notaries, and addressing several of the challenges detected in the first version. One way to complement these efforts and contribute to safeguard the effectiveness of administrative simplification strategies is to incorporate an evaluation plan before the project is launched. The aim would be to systematically assess the progress of the project throughout its life cycle: its development phase, once the initial outputs are obtained, and in a periodic way afterwards to assess whether the expected outcomes are reached.

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

Notes

1. In 2010, there were 11 572 sole proprietors and 1 316 other types of companies registered with the Tax Authority (OECD 2011).
2. The portal *tuempresa.gob.mx* comprises the federal formalities only, and it ends at the stage in which a legal business has been created and registered with the tax authority. State and municipal licenses are still needed for the entrepreneur to make the first sale.

Bibliography

COFEMER (2010), Informe de Actividades 2009, Gobierno Federal de México, Ciudad de México.

COFEMER (2011a), Impacto del Sistema de Apertura Rápida de Empresas (SARE) en México, Gobierno Federal de México, Ciudad de México.

COFEMER (2011b), Informe de Actividades 2010, Gobierno Federal de México, Ciudad de México.

Cordova-Novion, C. and S. Jacobzone (2011), "Strengthening the Institutional Setting for Regulatory Reform: the Experience from OECD Countries", OECD, Paris.

OCDE (2011), Portal Tuempresa.gob.mx: Diagnóstico de operación. OCDE, Ciudad de México.

OCDE (2012), *Guía para mejorar la calidad regulatoria de trámites estatales y municipales e impulsar la competitividad de México*. OCDE, Ciudad de México.

OECD (1999a), *Regulatory Reform in Mexico*, OECD Publishing, Paris, doi: 9789164180315-en.

OECD (1999b), *Regulatory Reform in the Netherlands*, OECD Publishing, Paris, doi: 9789264173774-en.

OECD (2002), *Regulatory Policies in OECD Countries: From Interventionism to Regulatory Governance*, OECD Publishing, Paris, doi: 9789264177437-en.

OECD (2003), *OECD Reviews of Regulatory Reform: Norway*, OECD Publishing, Paris, doi: 9789264103122-en.

OECD (2004), *OECD Reviews of Regulatory Reform: Mexico, Progress in Implementing Regulatory Reform*, OECD Publishing, Paris, doi: 9789264017528-en.

OECD (2006), *Cutting Red Tape: National Strategies for Administrative Simplification*, OECD Publishing, Paris, doi: 9789264029798-en.

OECD (2007), *OECD Reviews of Regulatory Reform: Italy, Ensuring Regulatory Quality Across Levels of Government*, OECD Publishing, Paris, doi: 9789264037984-en.

OECD (2009a), Indicators of Regulatory Management Systems, Regulatory Policy Committee, OECD, Paris.

OECD (2009b), *Regulatory Impact Analysis: A Tool for Policy Coherence*, OECD Publishing, Paris, doi: 9789264067110-en.

OECD (2010a), *Better Regulation in Europe: Denmark*, OECD, Paris, doi: 9789264084551-en.

OECD (2010b), *Better Regulation in Europe: Netherlands*, OECD, Paris, doi: 9789264084568-en.

OECD (2010c), *Better Regulation in Europe: United Kingdom*, OECD, Paris, doi: 9789264084490-en.

OECD (2010d), *Cutting Red Tape: Why is Administrative Simplification so Complicated? Looking Beyond 2010*, OECD Publishing, Paris, doi: 9789264089754-en.

OECD (2010e), *Multi-level Regulatory Capacity in Australia*, OECD Publishing, Paris, doi: 9789264067189-en.

OECD (2010f), *OECD Reviews of Regulatory Reform: Australia, towards a Seamless National Economy*, OECD Publishing, Paris, doi: 9789264067189-en.

OECD (2011a), *Competition Assessment Toolkit*, OECD, Paris.

OECD (2011b), *Regulatory Policy and Governance: Supporting Economic Growth and Serving the Public Interest*, OECD Publishing, Paris, doi: 9789264116573-en.

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

OECD (2012b), *OECD Review of Telecommunication Policy and Regulation in Mexico*, OECD Publishing, Paris, doi: 9789264060111-en.

OECD (2012c), Principles for the Governance of Regulators - Discussion Paper, Paris.

OECD (2012d), Recommendation of the Council on Regulatory Policy and Governance, OECD, Paris.

Secretaría de Economía y OCDE (2009), Programa de Medición del Costo Administrativo Empresarial en México: Informe de resultados del costeo de tuempresa.gob.mx, Gobierno Federal de México y OCDE, Ciudad de México.

Secretaría de la Función Pública (2010), Menos reglas, Mejores resultados, Gobierno Federal de México.

Straightforward BC (2012), Achieving a Modern Regulatory Environment: BC's Regulatory Reform Initiative, First Annual Report – 2011/2012, available at www.straightforwardbc.gov.bc.ca.

World Bank (2012), *Sub-National Doing Business in Mexico, The World Bank Group*. The World Bank Group, Washington.

Chapter 6

Independence, performance, and accountability of regulators in Mexico

This chapter deals with the governance of the so-called regulatory authorities (regulators) in Mexico. It takes an example of three Mexican regulators and draws some general conclusions on the overall governance framework. Special attention is paid to the issue of independence and accountability of the regulators.

Introduction

Regulators are "agencies" entrusted with significant regulatory powers that are granted a certain level of independence in order to ensure that decisions affecting key infrastructure and economic sectors are shielded from short-term political considerations and from specific private interests.

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

Independent regulators pose unique problems and challenges. They represent one of the most widespread institutions of modern regulatory governance, operating at arm's length from line ministries or even the executive power. They create significant challenges in many democratic institutions, as they represent a sort of "non-majoritarian" institution, embodied in the executive, but not necessarily under the direct hierarchical authority of ministers. As such, they differ from other agencies, and need specific governance and institutional structures to be fully effective.

The nature of regulators within the OECD context

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

The *Recommendation of the OECD Council on Regulatory Policy and Governance* sees a consistent, whole-of-government policy on regulatory agencies as a crucial element of ensuring citizens' and businesses' trust in regulatory decisions and the whole regulatory framework (see Box 6.1).

Regulators are in theory rule enforcers and are applying sanctions for non-compliance with rules relating to their areas of competence and authorisations for the issue of licences and permits. However, the difference between policy making and regulation is not always clear: the line is often blurred between rule making and rule enforcement. Accountability mechanisms need therefore to be put in place. A clear framework for high-quality regulation is also needed to guarantee transparency, predictability and efficiency for clear and open market frameworks and rigorous enforcement of the rules.

Box 6.1. An excerpt from the Recommendation of the OECD Council on Regulatory Policy and Governance

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

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

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

7.3. Independent regulatory agencies should be considered in situations where:

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

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

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

7.6. Agency performance should be subject to regular external evaluation.

Source: OECD (2012), *Recommendation of the Council on Regulatory Policy and Governance*, OECD, Paris.

Independent regulatory authorities need proper institutional design as well as a strong governance framework to generate the expected benefits of a high-quality regulatory framework. Independent regulators are not without risk, however. In some cases, independent regulators set up for a narrow sector may "slow structural change", or obstruct the governance across sectors. They are also at risk of becoming captured by their sector and their regulatees, losing the sense of a broader market vision. This is particularly true when their oversight is limited to one aspect of a market, or one segment.

Independent regulators are set up under various constitutional regimes, including parliamentary and presidential systems. The extent to which a country can delegate powers to an independent authority depends on its constitutional framework and history.

Box 6.2. Four basic types of regulatory agencies

1. ***Ministerial department:*** Bodies that are part of the central government and do not have the status of a separate corporate body. They are headed by or report directly to a minister in Cabinet. They are typically and largely funded from tax revenue, and are part of the civil service. They can have statutory independence in carrying out some regulatory functions, and can have considerable administrative autonomy from ministers.
2. ***Ministerial agency:*** Executive bodies, set at arm's length from central government, which may or may not have a separate budget and autonomous management. They may be subject to different legal frameworks (civil service regulations may not apply). They may have a range of powers, but are ultimately subordinate to a ministry and subject to ministerial intervention.
3. ***Independent advisory body:*** Agencies with the power to provide official and expert advice to government, lawmakers, and firms on specific regulations and aspects of the industry. The agency may also have the power to publish its recommendations. The scope for public decisions to depart from this advice or recommendations may vary.
4. ***Independent regulatory authority:*** Public bodies charged with regulating specific aspects of an industry. They are typically under autonomous management, and their budget may be under a ministry. However, there is no scope for political or ministerial intervention in the body's activities, or intervention is limited to providing advice on general policy matters rather than specific cases. These bodies have a varying range of powers.

Source: OECD (2005), *Designing Independent and Accountable Regulatory Authorities for High Quality Regulation,* OECD Publishing, Paris.

The issue of independence and accountability

The issue of independence and accountability deserves special attention in the Mexican context. Despite some reforms aiming at strengthening the decision-making autonomy of some regulators,[1] the institution of independent regulatory authorities is clearly missing in Mexico as we know it from many other OECD countries such as the UK or Australia and most of the EU countries, where regulators operate at arm's length from government, meaning that the regulator is not subject to the direction on individual regulatory decisions by executive government.

The 2012 *Recommendation of the OECD Council on Regulatory Policy and Governance* sets the criteria to be considered when deciding whether an independent regulatory authority should regulate a given area. These should be established in the cases where:

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

The notion of independence of regulators is paradoxical, as an agency is always acting as the "agent", on behalf of a principal. The problem of delegation has been the focus of significant applied economic literature as well as political science. Regulatory agencies are receiving delegated powers on condition that they exert them fulfilling the long-term goals that justified their establishment.

If regulatory agencies are to run independently, requirements in the organisation of the relationship between government and the economy are needed. Certainly, independent regulators cannot operate in a "vacuum". They have to take into account the political and institutional environment. However, they still need to be given solid technical independence in order to achieve long-term goals.

The independence has therefore to be balanced with sufficient accountability mechanisms. The following aspects need to be considered for balancing the independence of a regulator with its accountability: building appropriate governance structures; designing a proper system of appeal, including defining which authority will hear appeals; and instituting a dialogue between regulators and Congress and citizens in order to build institutional trust in regulators.

A key dimension for accountability is the availability of performance evaluation. Assessing the performance of a regulatory agency is nevertheless difficult. In theory, the independence of regulatory institutions is justified by their contribution to economic efficiency and is balanced by accountability requirements. Assessing performance involves either *ex ante* or *ex post* evaluation. *Ex ante* evaluation is performed through regulatory impact analysis in the case of rule-making. *Ex post* evaluation implies reassessing the objectives assigned to the regulatory institution to measure how well they were met and if they still apply.

This assessment includes the following:

- Pure financial assessment of the use of budgetary funds (prudent use of resources complying with financial regulations).
- Legal review of the regulator's decision and institutional setting (compliance with the law, legal framework).
- Broader performance assessment (value for money).

The pure financial assessment is usually undertaken by the national audit office, but may be performed differently for independent bodies in some countries. The legal review of the regulator's decisions and institutional setting also contributes to accountability. The broader performance assessment itself can be conducted from several angles and may involve:

- A self assessment, conducted by the supervisory agency itself.
- An assessment carried out by an executive body, such as a ministry or the comptroller general's office.
- An assessment carried out by a national audit office, as a means to report to Congress in broad terms on the efficiency of its policies.
- An independent assessment conducted as part of academic research to contribute to the public debate.

A major precondition for performance assessment is to state the goals clearly, which are usually laid down by law. In theory, the most effective approach is to give regulators clear and possibly single goals; for example, opening up a sector to competition, or ensuring safety. However, in practice multiple goals have often been assigned to sectoral regulators.

The three analysed regulators

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

The Energy Regulatory Commission (CRE)

The CRE was first created in 1993 by a government decree as an advisory body for the electricity sector, and then reformed with the 1995 Energy Regulatory Commission Act, as an autonomous agency for electricity and natural gas. The powers of the CRE include the granting and revocation of permits for the activities of private generators, the approval of the regulatory instruments and methodologies that govern the relationship between licensees and the supplier. That includes the approval of methodologies for the calculation of the trade-offs for the services provided by the supplier to the licensees, as well as models to conclude agreements and contracts with the Federal Electricity Commission (CFE).

The main objective of the CRE is to promote the efficient development of the activities referred to in Article 2 of its own law through a regulation that allows: to safeguard the provision of public services, to promote healthy competition, to protect the interests of users and to facilitate appropriate national coverage and address its reliability, stability and security of supply and delivery of services.

In the electricity sector, the law endows the CRE to contribute to the development of the sector by participating in the establishment of rates, verifying that the energy purchased for the public transmission service is at the lowest cost available and expressing its opinion regarding the planning and execution of the nation's strategic long-term policies, as well as to determining the suitability of the Federal Electricity Commission to carry out specific projects, or that private companies might be convened to supply electric power.

Regarding hydrocarbons, the CRE is responsible for approving and issuing the terms and conditions, including price methodologies, under which first hand sales of fuel oil, natural gas and basic petrochemicals, must be carried out, as well as methodologies used to calculate the rates for certain services, such as pipeline transmission, storage and pipeline distribution of this products and those that are a by-product of oil refining. Also, the CRE is responsible to issue, modify and revoke permits for these activities.

Regarding transversal functions, the CRE can also request from the Ministry of Energy to apply any and all necessary measures needed to assure the continuity of services; approve and issue accession agreements and contracts to carry out regulated activities; propose to the Ministry of Energy updates to the legal framework in its scope of competence; act as a mediator in dispute settlements; conduct verification visits, request information, and impose sanctions (according to Article 15 Bis of the *Ley Reglamentaria del Artículo 27 Constitucional en el Ramo del Petróleo*).

The managerial and decision-making autonomy of the CRE was strengthened through several decrees in 2008. The reforms included, e.g., a requirement to publish an annual report and submit it to Congress and a limit of only one reappointment of the commissioners. In addition, the CRE was given greater powers to regulate the development of other activities in the hydrocarbon industry, as well as generating energy from renewable sources.

The National Banking and Securities Commission (CNBV)

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

When Mexico established the Mexican Derivatives Exchange in 1996, a futures and options market, the CNBV assumed supervisory responsibility for the new marketplace. As the Mexican financial system consolidated over the next few years, the responsibilities of the CNBV continued to expand.

A major change in the Mexican financial oversight architecture was an amendment to the Banking Law in February 2008 whereby most regulatory powers of the Ministry of Finance (SHCP) were relocated at the CNBV. The aim of this amendment was to establish an authority capable of overseeing the complete regulatory and supervisory cycle of banking institutions and providing efficiency to the administrative procedures, avoiding duplicity.[2]

Arguably, the regulatory powers' realignment fostered the technical autonomy of the CNBV by relocating the processes of issuing banking regulation and granting authorizations for banks to undertake corporate acts; thus, the CNBV has the power to issue and withdraw licenses to banks and bank subsidiaries, approve changes in ownership structure, mergers and spin-offs, as well as major acquisitions and investments. In terms of prudential regulation, the responsibility for establishing capital adequacy and loan classification standards regulation was realigned from the SHCP to the CNBV. As mentioned, these actions enhanced CNBV's status as an autonomous financial regulator, together with its regulatory powers over the securities markets.[3]

Moreover, the CNBV was restructured to promote full consolidated supervision of financial conglomerates, that is, every financial institution that is part of a financial group is supervised by the same team within CNBV (except pension funds and insurance companies).

The CNBV and the Bank of Mexico (BoM) signed an MOU which facilitates stronger co-ordination by sharing information and joint examinations between these organisms. The MOU enables BoM to request a joint examination when necessary, specially to validate the accuracy of the information submitted by financial institutions and to assess the observance of the rules issued by the BoM.

Additionally, special efforts have been put in place in order to enhance the exchange of information and to improve co-ordination. In 2010 the National Financial Stability Council was created, as an instance of assessment, analysis and co-ordination to promote financial stability, where all the main financial authorities are represented.

Although many of these actions strengthened and granted full technical autonomy to the CNBV in the supervisory cycle of the most important financial institutions, the SHCP still has the power to grant and revoke licenses for financial holding companies, stock exchanges, general deposit warehouses, credit unions, financial leasing companies, financial factoring companies, saving and loans firms, foreign exchange firms and clearing houses.

Besides the CNBV, the regulatory and supervision framework of the Mexican financial sector involves a number of major actors: the Bank of Mexico, the Ministry of Finance, both directly and through a number of agencies linked to it: the CNBV, the Insurance Commission, the Retirement Fund Commission (CONSAR). Other agencies not related to SHCP are also involved: the IPAB (Institute for the Protection Bank Savings)), and a body to protect and advise users of financial services (CONDUSEF).

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

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

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

SENASICA is headed by a director appointed by the minister of SAGARPA and has a Technical Council composed of the minister, as chairman, the assistant secretaries, the chief administrative officer and the general coordinator of Livestock, undersecretaries from several ministries, other representatives of federal agencies and representatives of social organisations and producers of food products.

Assessment of current situation

Mexico's main regulatory agencies are "administrative deconcentrated bodies"; they are subordinated to a ministry in terms of their property, accountability and budget, which implies that there are insufficient safeguards protecting their decision-making process from political interference.

Most of the main regulatory agencies in Mexico have the statute of the so-called "administrative deconcentrated bodies". They have generally been created either through laws or decrees without a whole-of-government perspective. The relative situation of the various regulatory agencies reflects a fairly heterogeneous institutional design. The hierarchical subordination implies technical autonomy, but the degree of organic, administrative or financial autonomy substantially differs. The differences and main weaknesses of the governance system of regulators are described in three recent reports produced by the COFEMER dealing with institutional strength of economic, financial and social regulators (COFEMER, 2011c, 2011d, 2011e).

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

The deconcentrated bodies were created by a specific organic law (*Ley Orgánica de la Administración Pública Federal* of 1976) (LOAPF), which governs matters related to the administrative order. They originate in the 1970 public management reforms, which aimed at increasing administrative efficiency through managerial deconcentration. According to this law, for the most effective and efficient attention and dispatch of affairs within their jurisdiction, line ministries may have decentralised administrative bodies, which will be hierarchically subordinated to them and will have specific powers to rule on the applicable subject matters and in accordance with the relevant provisions. The deconcentrated authorities have been gradually implemented in this framework, while searching for increased autonomy.

In the Mexican context, the practice of ministerial oversight has generally overshadowed the role of regulators, particularly in the most important cases. Ministers are accountable for regulators' decisions to the president and to Congress, which can also influence the content of policy contained in legislation. In general, this means that there are no restrictions protecting the decision-making process from political interference. The line ministries have a power to give direct instructions to the regulatory authority or to veto its decision. This distinguishes the Mexican regulators from their OECD counterparts and may cause problems in case of conflicting goals of the regulator and the line ministry. One of the examples may be taken from the energy sector, where the goals of the ministry (SENER) are primarily focused on price control and lower inflation, while the CRE perceives supporting competition as more important. The conflict of interest in case of SENER may be also caused by the fact that SENER in fact chairs the two major state-owned oil and electricity companies—PEMEX and CFE. According to some respondents, there are also conflicting interests between SENASICA and SAGARPA, and due to this fact, technical regulations may be issued that only certain parties benefit from.

Mexico currently lacks a distinction between agencies, which are simply deconcentrated or decentralised parts of a central public administration and independent regulators. Independent regulators should be specific institutions entrusted with regulatory powers, granted with institutional independence and charged with implementing regulation. As a result, the Mexican regulatory bodies face significant difficulties in exerting some of the powers that have been devolved to them.

Decentralised administrative bodies were established under the LOAPF, that dates back to December 1976. At that time, the state was mostly a supplier of goods and services in various sectors, but not a regulatory state. The statute of the decentralised administrative institutions created in 1976 was not considered in an institutional framework characterised by the total delegation of powers, but a partial delegation. This logic is far from the characteristics of a new regulatory state that emerged in Mexico in the 1990's.

Modernisation and the immersion of the Mexican economy into international networks have shown the need for reforming the regulatory agencies. It has also been at the forefront of past assessments by the OECD, as well as the World Bank.

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

In some cases, there is no clear division of attributions between Mexican regulators and their parent ministry or other regulatory entities.

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

In some cases, overlapping demands for licensing and prudential requirements may trigger a heavy and uncoordinated regulatory burden. For example, the CRE regulates the first-hand sales of gas, basic petrochemicals and combust oil. It also regulates the conditions for gas ducts. However, there is no regime on permits for regulating the transport of gas or oil and, hence, the CRE is unable to regulate the matter. In other cases, the regulators may share the right of licensing with the ministry, which can blur the situation for regulatees. In the financial sector, the power to release and revoke authorisations is shared by the CNBV and the Ministry of Finance. The second greatest difficulty is when regulatory responsibilities overlap at the federal and local levels (e.g. in case of regulating water management).

Price setting power is generally shared. In the energy sector, the CRE "participates" in setting the prices; however, it is the Ministry of Finance which in fact decides. According to some of the respondents, CRE's opinions and even in-depth analysis on the benefits of lowering electric tariff prices have not been taken into account in the past.

In case of new regulations, even when they are prepared by the regulatory agency, the draft has to be submitted to the COFEMER through the head of the sector (e.g. the minister of Finance in case of CNBV's draft regulations).

There is a wide diversity of procedures for appointment and dismissal of managers for Mexican regulators.

The governance structures and procedures for appointment and dismissal of managers matter for effective functioning of regulatory authorities, and they influence the level of independence. Heads of some of the regulatory authorities are appointed by the president (CRE) but proposed by the parent ministry (in this case SENER), while in some cases it is the management board of the agency that appoints the chair (COFETEL). In the case of SENASICA, it is the Ministry of Agriculture, Livestock, Rural Development, Fisheries and Food that appoints its chairperson. CNBV's chair is appointed as well as removed from office by the minister of Finance.

The length of the term of office is not unified, usually from two to five years; in some cases it is not even fixed at all. The situation of the members of management boards (*juntas de gobierno*) of regulators is similar. In the case of some of the regulators, ministries are directly represented in the board. This is, for example, the case of the CNBV, where the Ministry of Finance is represented in the board (five members), and so is the Bank of Mexico (three members) and other institutions. There are no clear rules providing for political independence of the management board. The length of the term may be fixed and usually is renewable.

A degree of independence in decision making and budgetary autonomy, below the OECD average, and lack of performance assessment mechanisms characterise most of Mexico's regulators.

The social and financial regulators generally have weaker decision-making independence than the economic ones. Social regulators are directly reporting to the government and the ministries can intervene in their decision-making. In the case of economic regulators, usually only the courts can overrule their decisions; however, there are cases where the government can even directly interfere and change the decision (COFETEL).

Some of the decisions have to be approved by the management board where other institutions are represented. For example, the CNBV must issue certain regulations (capital, outsourcing, risk diversification) through its board, where the Ministry of Finance and the central bank are represented. The central bank also must issue a favourable opinion before the CNBV's draft regulations are submitted to the COFEMER. The SENASICA has a right to issue regulations (with the exception of technical norms) only with an approval of SAGARPA.

Budgetary autonomy is also a significant practical dimension for independence. In general, regulatory authorities in Mexico are funded through public budgets which are proposed annually to Congress via the Ministry of Finance. This budgetary control derives from the statute of a deconcentrated body where budgets are determined by the "parent" ministries. In some particular cases, there might be levies and fees charged by regulatory authorities for their services to the regulated subjects; nevertheless, these resources are revenues of the central budget, not of particular regulators. The CNBV charges fees to the supervised entities; however they are set by the Federal Law of Fees, not by the agency, and they are also an income of the central budget, not the one of the agency. To change this system, an amendment to the Constitution would be necessary. The budget control also lays, with some exceptions, with the ministries, not regulatory authorities.

Regulators are mostly able to independently set their internal structure. The degree of control over human resources and personnel policy differs; in some cases, regulators need to coordinate with the ministry, especially in the cases of higher-level managerial positions. In most cases, employers of regulatory authorities are subject to the Law of Civil Service, with an exception for the top management positions. This might restrain capacity of regulators to hire the most qualified personnel, especially in those sectors such as finance, telecommunication, etc.

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

In general, when analysing the Mexican regulators, it can be said that there are substantive differences among them in many aspects of their independence and accountability. Nevertheless, the degree of independence and institutional strength is below the OECD average. Economic regulators such as the CRE and the COFETEL enjoy, in general, more autonomy than the social and financial regulators. On the other hand, in the

case of economic regulators and especially the CRE and the COFETEL, they share regulatory attributions with the ministries. Budgetary independence is also relative. Strengthening independence and accountability of regulators could help to increase their efficiency while balancing this accordingly with improved accountability mechanisms.

Key findings and policy options

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

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

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

Some of the factors to consider are set out in Table 6.1 below:

Table 6.1. Factors to consider in creating an independent and structurally separate regulatory body

Factor	Description
Credible commitments over the long term	Establishing a more independent regulator can send an important message to regulated entities about the commitment of government to objective and transparent administration and enforcement of regulation
Stability	Greater distance from political influences is more likely to result in consistent and predictable regulatory decision-making
Addressing potential conflicts of interest	Regulatory decisions that have significant flow-on impacts for government, e.g. on budgets or service delivery, or that must be seen to be applied impartially to both government and non-government entities may be better made by entities at arm's length from ministers and ministries
Development of regulatory expertise	Where there is a need for specialist regulator expertise, which is best maintained in a specialist unit with quarantined resources

Source: OECD (2012), Principles for the Governance of Regulators - Discussion Paper, Paris.

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

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

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

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

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

The Norwegian White Paper for improving the quality of the institutional framework of the tilsyn can be used as an example of such review (See Box 6.3).

The governance framework of the Mexican regulatory authorities needs to be strengthened to ensure independence from direct political intervention and regulated interests.

Establishing a regulatory agency with a degree of independence (both from those it regulates and from the government) can provide greater confidence that regulatory decisions are made with the aim to maximise public value. Moreover, the nature of some regulatory decisions can at times involve higher risks to the integrity of the regulatory process; for example, due to pressures from the affected interests or the contentious and sometimes politically sensitive nature of the decisions. In terms of the regulators explicitly covered in the review, the division of powers between regulators and their "parent" ministries was not always clear. Careful consideration should therefore be given to suppressing joint powers shared between the agencies and ministries. Reinforcing independent regulatory decision-making, at arm's length from ministries, is likely to be appropriate where:

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

Box 6.3. The 2003 White Paper for improving the quality of the institutional framework of the tilsyn

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

The objectives of the White Paper were to:

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

Source: OECD (2003), *OECD Reviews of Regulatory Reform: Norway*, OECD Publishing, Paris, doi: 9789264103122-en.

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

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

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

Box 6.4. Rationales for independent regulatory agencies (IRAs) according to Gilardi

1. Expertise. IRAs are closer to the regulated sector than ordinary bureaucracy and can thus more easily gather relevant information. Their more flexible organisational structure also constitutes a more attractive working environment for experts, who are thus more willing to work for IRAs than for traditional bureaucracies.
2. Flexibility. IRAs' autonomy makes them more able to flexibly adjust regulations to changing conditions.
3. Credible commitments. IRAs are insulated from day-to-day political influence and electoral constraints, have a longer time-horizon than politicians and can thus increase the credibility of the pro-market and fair-regulation commitments of governments. This is important notably to attract investment.
4. Stability. For roughly the same reasons, IRAs provide a stable and predictable regulatory environment.
5. Efficacy and efficiency. As a result of the previous factors, IRAs lead to better regulatory outputs, which are translated into a better performance of markets.
6. Public participation and transparency. The decision-making process of IRAs is more open and transparent than that of ministerial departments, and is thus more sensitive to diffused interests such as those of consumers.
7. Decision-making costs. Delegation to IRAs reduce decision-making costs, as, in the presence of disagreement about policies, majorities are more easily found to "let someone else decide", especially if the political gains and losses of policies are not clear.
8. Blame shifting. IRAs enable politicians to avoid blame when regulatory failures occur or when unpopular decisions are taken.
9. Political uncertainty. As institutions are less easily changed than policies, IRAs are a means for politicians to fix policies so that they will last beyond their term of office.

Source: COFEMER (2011), *Institutional Strength of Economic Regulators in Mexico*, COFEMER, Mexico City.

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

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

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

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

Most of the regulators in Mexico already adhere to the principles of transparency and open government, including public consultations, especially as part of the regulatory impact assessment process. Nevertheless, it is rather rare that regulators conduct consultations with the stakeholders at the earliest stages of the regulation-making process, i.e. before the draft is submitted to the COFEMER. Full transparency of the decision-making procedures and consultation with stakeholders on regulatory proposals and measures are key for accountability. Therefore, the consultation mechanisms should be even strengthened and the obligation not limited to the RIA process (see Chapter 4 for further recommendation on public consultations).

The last important element for ensuring accountability is the existence of the system of appeals including the judicial review of regulators' decisions. The legislation establishing regulatory authorities should indicate transparent procedures to be followed, and whether decisions are binding and have the force of law. Such decisions should be subject to review by the courts to allow an "appeal" mechanism and ensure the validity of decisions, if in doubt. This would enhance both independence from political intervention and transparent accountability and assessment of performance. The new model should also delineate clear appeal procedures with tighter timeframes that envisage limited possibilities of suspension in case an *amparo* is raised, avoiding costly delays. This possibility clearly exists in Mexico but may need to be adjusted if a new type of administrative institution is created. The recently created specialised chamber on regulators of the Federal Tribunal of Fiscal and Administrative Justice is an important step forward.

Special section: Progress towards addressing the recommendations on the governance of the regulatory system by the 2012-18 administration

Mexico has given serious consideration to OECD's recommendations on strengthening the institutional capacity and independence of its regulatory bodies. There has been a substantive amount of analysis and debate amongst the executive and legislative powers, the political parties and civil society on the importance of strengthening regulators. As a result, there is currently a national consensus that these institutions should feature sufficient independence and clearly outlined regulatory powers. Specifically, reforms have been approved or are currently being promoted to strengthen governance arrangements of regulators in the areas of competition, telecommunications, transparency, anti-corruption, and evaluation of educational performance, under the framework of the "Pact for Mexico".

The "Pact for Mexico" and its materialisation through constitutional reforms

The "Pact for Mexico" is an unprecedented engagement between the political forces and powers in Mexico, where constitutional reforms that grant independence and strengthen the institutional capacity of key regulators have already been approved or are currently under discussion at Congress. Amongst its main achievements there is the concession of constitutional autonomous status to some regulators. This status consists in full autonomy through their own legal personality established in the Constitution, their own budget and assets without any hierarchical or financial dependence, as they are not ascribed either to the executive, legislative or judicial power.

The "Pact for Mexico" is the most significant political agreement that has been negotiated in Mexico in the past decades. It consists of a formal engagement between the president and the leaders of the three major political parties in Mexico to achieve a full state of rights and liberties, to promote economic growth, to reduce poverty and to abate social inequality. The "Pact for Mexico" consists of five main agreements intended to attain: i) a society of rights and liberties; ii) economic growth, employment and competitiveness; iii) security and justice; iv) transparency, accountability and fight against corruption, and v) democratic governance.

Each of the five agreements encompasses specific commitments (95 in total, with an addendum of 11 recently agreed). The commitments were selected in accordance with their impact on national public policy, such as access to health services and education, human rights and transparency, and with regard to their impact on the GDP, such as telecommunications, energy, fiscal reform and competition policy. To materialise, the "Pact for Mexico" implies accomplishing high-level legislative reforms, such as the enactment of primary legislation, but, most importantly, constitutional reforms, which entail the highest level of agreement ever to take place at Congress.

Amongst the constitutional reforms that have already been approved by Congress there is the upgrading to constitutional autonomous bodies of the Federal Commission of Economic Competition (CFCE) and the Federal Institute of Telecommunications (IFT), formerly COFECO and COFETEL, as well as the creation of the National Institute for the Educational Evaluation (INEE). The president has also presented to Congress the proposal to promote the Federal Institute for Access to Information and Data Protection (IFAI) to a constitutional autonomous body, while also seeking for the establishment under the same status of the National Anti-corruption Commission (CNAT). Both proposals are currently under discussion at Congress.

Competition and telecommunications

The second agreement of the "Pact for Mexico" comprises specific commitments to enhance an economy of competitive markets and to ensure equitable access to world-class telecommunications. To meet these objectives, Congress approved important reforms to the Constitution that granted access to information technologies and established telecommunications as services of general interest. The reforms consist in several measures that promote effective competition in open and restricted television, radio, mobile and fixed telephony, as well as data and telecommunications services in general.

The constitutional reforms approved in April 2013 conceded important attributions to the CFCE to enact measures that remove barriers to competition, prevent and avoid monopolies, monopolistic practices or concentrations, and regulate access to essential inputs. The reforms also entitle the CFCE to command the disincorporation of assets, rights, and shares of economic agents in case of concentration and in the proportion necessary to eliminate such anticompetitive effects.

In the case of the IFT, the reforms empowered the institute to regulate, promote and monitor broadcasting and telecommunications, as well as to grant and revoke concessions in such matters (upon non-binding opinion of the federal executive), with a sanctioning capacity over concessionaires. Most importantly, the IFT became the competition authority in the economic sectors of broadcasting and telecommunications, which enables it to asymmetrically regulate participants in these markets in order to effectively remove barriers to competition. The IFT may also impose limits on national and regional concentration of frequencies and on the concession and cross-ownership of various media that serve the same market or geographic area. The IFT may also request the disincorporation of assets, rights and shares to comply with such limits.

To promote competition and create the conditions that give effect to the rights contained in the reform, the CFCE and the IFT were created as autonomous constitutional bodies, which are independent in their decisions and performance, exercise their budget independently, issue their own organic statute and enact regulation according to their attributions. The governing bodies of the CFCE and the IFT will be integrated by seven commissioners, including the president commissioner, for a period of nine years without possibility of re-election. They will be appointed on a staggered basis, under proposal of the federal executive and upon ratification by the Senate. Before being ratified, applicants will be evaluated by a committee composed of the Bank of Mexico, the National Institute for Educational Evaluation and the National Institute of Statistics and Geography.

The reforms also provide for the obligation of the Federal Judicial Council to establish circuit courts and district courts specialised in antitrust cases, broadcasting and telecommunications. The reforms also established that the general rules, acts or omissions of the CFCE and IFT may only be challenged through an indirect *amparo* and will not be subject to suspension. Regarding accountability, the reforms command for the heads of both autonomous bodies to present to the executive and legislative powers an annual report of their activities, whilst they must also appear before Congress in the terms provided by law.

Transparency and fight against corruption

The fourth commitment of the "Pact for Mexico" aims to strengthen transparency and accountability, and to fight corruption. To meet these objectives, two initiatives for constitutional reforms have been presented by the president to Congress and are currently under discussion. One of them is upgrading IFAI to a constitutional autonomous body with attributions on access to public information and data protection over any authority, entity or public body of the executive, legislative or judicial power. The initiative also comprises the creation of a National System of Transparency and Access to Information. It proposes to grant constitutional autonomy to all the specialised agencies on transparency and access to information that already exist locally in the states and the Federal District.

The IFAI is currently a decentralised body, with legal personality and its own budget. It is composed of five commissioners, who adopt its resolutions by majority vote. Its mission is to guarantee the right of citizens to access government information and to the privacy of personal data, as well as to promote in society and within the government a culture of access to information, accountability and the right to privacy. The objective of the constitutional reform is to grant IFAI full autonomy through the status of autonomous constitutional body, with its own management, budget and technical autonomy and with legal personality, whereas the state bodies will also be granted the same constitutional autonomy. The reform aims at broadening the attributions of IFAI over the Executive, Legislative and Judiciary, the three levels of government (federal, state and municipal), all agencies of the federal public administration, the Superior Audit Office of the Federation, the Federal Judiciary Council, the Federal Electoral Tribunal of the Judiciary of the Federation, and the already existent constitutional autonomous bodies. The Supreme Court of Justice of the Nation (SCJN) is exempted from IFAI's attributions. Instead, it will have a Guarantee of Transparency Committee composed of three ministers.

The proposed new IFAI would be composed of seven commissioners, while respecting the appointment of the five commissioners in function, for a period of seven years without possibility of re-election. The responsibility to appoint the commissioners remains with the president, yet the Senate may object to the appointment with a majority of votes. The IFAI would be empowered to bring actions of unconstitutionality before the SCJN against laws that hinder access to information and transparency. Such attribution would also be granted to the state institutes of transparency with powers against state legislation. Nonetheless, the IFAI will have the power to review the resolutions of the state institutes when there is an appeal of their decisions by individuals, and it may also attract and resolve on relevant cases of national interest. On matters of accountability, the IFAI would present to the Senate an annual report of its activities and the state of affairs at national level on access to information, transparency and data protection. IFAI's resolutions will be final, binding, and incontestable for the authority. In exceptional cases, to safeguard national security aspects, the heads of the state powers may appeal to the SCJN.

The second initiative consists in the creation of a national anti-corruption system, through the establishment of a National Anti-corruption Commission and state commissions with powers to prevent, investigate, sanction and denounce cases of corruption before competent authorities. The National Anti-Corruption Commission would be created as a constitutional autonomous body, with legal personality and complete independence to decide on the exercise of its own budget, internal organisation and management. The CNAT would be entitled with authority to prosecute and sanction acts of corruption of public servants in the three levels of government, other autonomous bodies as well as individuals and corporations who participate or instigate corruption. It may resolve on cases of corruption incurring by states and municipalities and in cases of corruption in the Federal budget detected by Federal Supreme Audit (ASF). The CNAT will be constitutionally attributed to act against crimes of corruption and to ensure the correct management of public assets. Its creation will result in the disappearance of the Ministry of Public Administration (SFP).

The reform also proposes the establishment of state anti-corruption commissions, which will be autonomous from the national body and will be competent to apply the Federal Anti-corruption Law in their respective jurisdictions. Furthermore, the reform enables Congress to enact laws that will institute courts for administrative litigation, which will be given full autonomy to resolve and will also be responsible for settling disputes that arise between the federal public administration and individuals, while establishing the rules for its organisation, functioning, and appeal procedures.

Education

The first agreement of the "Pact for Mexico" pursues promoting legal and administrative reforms in education with the objectives of increasing the quality of education, expanding the enrolment and enhancing the government's rectorship of the national education system. To ensure the provision of quality educational services, in February 2013 Congress approved constitutional reforms to create the National Educational Assessment System. The National Institute for the Educational Evaluation is in charge of the co-ordination of this system. The INEE is an autonomous constitutional body with legal personality and its own property. It is attributed to assess the quality, performance and results of the national education system in preschool, primary, secondary and high school. To do so, the INEE will design and conduct measurements, as well as issue guidelines on evaluation that will be subject to federal and local education authorities.

The Governing Board is the management body of the institute and consists of five members. The federal Executive submits a list of three people for consideration by the Senate, which appoints the members of the board. The members are elected on a staggered basis for periods of seven years with the possibility of re-election. Yet the members cannot remain in office for more than 14 years. The Governing Board shall appoint the person who will preside the board, with a majority vote of three of its members, who shall remain in office for as long as required by law. Congress will issue the National Law of the Institute for the Educational Evaluation, which will further detail the attributions and jurisdiction of the INEE.

The independence of regulators is an important step forward to achieving a "whole-of-government" approach on regulatory policy

Mexico is undertaking significant engagements to review and modernise its institutional regulatory framework. It is taking very important steps towards a "whole-of-government" approach to regulatory policy by strengthening the independence, accountability, and governance arrangements of some of its key regulatory authorities through constitutional reforms, including in the fields of telecommunications, competition, transparency, fight against corruption, and education. One of the most important features is that these reforms aim to grant such regulatory bodies the highest level of independence existing in the Mexican legal system: constitutional autonomy.

Mexico's reforms, which create specialised and more autonomous regulators with better defined functions and objectives, are likely to yield faster and higher quality regulatory decisions. With the recent debate, Mexico is demonstrating its conviction to address, at the highest political level, the state of independence of its regulators.

The future impact of these reforms will allow Mexico and OECD countries examining the specific effects of the constitutional autonomy model and define the future framework of sectoral and structural reforms. In any case, the evaluation of the optimal model of institutional arrangements for regulators should consider industry-specific factors, in order to define the design and adequate institutional capacity to be granted to regulators, with the aim of strengthening their organisational strength, in addition to increase their degree of independence, without losing efficiency or coherence with the objectives of the public policy in the sectors under evaluation.

Notes

1. For example, the decrees of November 28, 2008, on some modification in the energy sector and its institutions, which strengthened the Energy Regulatory Commission's managerial and decision-making autonomy, or various initiatives in the Senate and Chamber of Deputies.
2. Before the amendment to the Banking Law, the SHCP was responsible for granting the authorizations seconded by the opinion of the CNBV and the Bank of Mexico.
3. These powers were transferred from the Ministry of Finance in 2008.

Bibliography

COFEMER (2010), Informe de Actividades 2009, Gobierno Federal de México, Ciudad de México.

COFEMER (2011a), Impacto del Sistema de Apertura Rápida de Empresas (SARE) en México, Gobierno Federal de México, Ciudad de México.

COFEMER (2011b), Informe de Actividades 2010, Gobierno Federal de México, Ciudad de México.

COFEMER (2011c), Fortaleza Institucional de los Reguladores Financieros en México, COFEMER, Mexico City.

COFEMER (2011d), Institutional Strength of Economic Regulators in Mexico, COFEMER, Mexico City.

COFEMER (2011e), Institutional Strength of Social Regulators in Mexico, COFEMER, Mexico City.

Cordova-Novion, C. and S. Jacobzone (2011), "Strengthening the Institutional Setting for Regulatory Reform: the Experience from OECD Countries", OECD, Paris

OECD (1999a), *Regulatory Reform in Mexico*, OECD Publishing, Paris, doi: 9789164180315-en.

OECD (1999b), *Regulatory Reform in the Netherlands*, OECD Publishing, Paris, doi: 9789264173774-en.

OECD (2002), *Regulatory Policies in OECD Countries: From Interventionism to Regulatory Governance*, OECD Publishing, Paris, doi: 9789264177437-en.

OECD (2003), *OECD Reviews of Regulatory Reform: Norway*, OECD Publishing, Paris, doi: 9789264103122-en.

OECD (2004), *OECD Reviews of Regulatory Reform: Mexico, Progress in Implementing Regulatory Reform*, OECD Publishing, Paris, doi: 9789264017528-en.

OECD (2005), *Designing Independent and Accountable Regulatory Authorities for High Quality Regulation,* OECD Publishing, Paris.

OECD (2007), *OECD Reviews of Regulatory Reform: Italy, Ensuring Regulatory Quality Across Levels of Government*, OECD Publishing, Paris, doi: 9789264037984-en.

OECD (2009a), Indicators of Regulatory Management Systems, Regulatory Policy Committee, OECD, Paris.

OECD (2009b), *Regulatory Impact Analysis: A Tool for Policy Coherence*, OECD Publishing, Paris, doi: 9789264067110-en.

OECD (2010a), *Better Regulation in Europe: Denmark*, OECD, Paris, doi: 9789264084551-en.

OECD (2010b), *Better Regulation in Europe: Netherlands*, OECD, Paris, doi: 9789264084568-en.

OECD (2010c), *Better Regulation in Europe: United Kingdom*, OECD, Paris, doi: 9789264084490-en.

OECD (2010d), *Cutting Red Tape: Why is Administrative Simplification so Complicated? Looking Beyond 2010*, OECD Publishing, Paris, doi: 9789264089754-en.

OECD (2010e), *Multi-level Regulatory Capacity in Australia*, OECD Publishing, Paris, doi: 9789264067189-en.

OECD (2010f), *OECD Reviews of Regulatory Reform: Australia, towards a Seamless National Economy*, OECD Publishing, Paris, doi: 9789264067189-en.

OECD (2011a), *Competition Assessment Toolkit*, OECD, Paris.

OECD (2011b), *Regulatory Policy and Governance: Supporting Economic Growth and Serving the Public Interest*, OECD Publishing, Paris, doi: 9789264116573-en.

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

OECD (2012b), *OECD Review of Telecommunication Policy and Regulation in Mexico*, OECD Publishing, Paris, doi: 9789264060111-en.

OECD (2012c), Principles for the Governance of Regulators - Discussion Paper, Paris.

OECD (2012d), Recommendation of the Council on Regulatory Policy and Governance, OECD, Paris.

Office of Best Practice Regulation (2008), Best Practice Regulation Guidance Note: Value of Statistical Life, Australian Government, Canberra, www.finance.gov.au/obpr/docs/ValuingStatisticalLife.pdf.

Office of Best Practice Regulation (2011), Best Practice Regulation Report 2010-11, Australian Government, Canberra.

Office of Management and Budget (2003), Circular A-4: Regulatory Analysis, United States Government, Washington, www.whitehouse.gov/omb/circulars_a004_a-4/.

Parliament of Victoria, Australia (1994), Subordinate Legislation Act 1994 (No. 104/1994). www.legislation.vic.gov.au.

Straightforward BC (2012), Achieving a Modern Regulatory Environment: BC's Regulatory Reform Initiative, First Annual Report – 2011/2012, available at www.straightforwardbc.gov.bc.ca.

Chapter 7

Multi-level regulatory governance in Mexico

This chapter discusses progress and achievements in terms of the management of the different stages of the regulatory governance cycle and the development of policies, institutions, and tools for better regulation in Mexico's states and municipalities. Likewise, it analyses current weaknesses and challenges, proposing a set of recommendations to overcome them. The report relies on good national and international practices to derive lessons for Mexico's federal and sub-national governments to improve co-ordination and raise regulatory reform to a priority in the political agenda. Four states were used as case studies, based on their progress in the better regulation agenda and the suggestion of the COFEMER. These states were Aguascalientes, Colima, Jalisco, and Nuevo León. Likewise, the experience accumulated by the OECD in working with Mexico's states and municipalities was the main input for the analysis.

Introduction

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

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

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

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

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

The organisation and distribution of competences in Mexico are determined by constitutional law, which defines Mexico as a federal state made up of 32 federal entities (31 states and the Federal District). These entities, in turn, have the municipality as the fundamental element of their organisation. The legal framework grants the federation, through the activities of Congress, attributions to regulate most economic, social, cultural, and political activities, leaving to the states the attribution to regulate household assets as well as a set of residual competences, defined as those activities not granted specifically to the federal level.

Nevertheless, the distribution of legal attributions is more complex. There are in the Constitution up to 14 concurrent or overlapping attributions that allow states to participate jointly with the federation, including rule-making in activities such as education, health, public security, planning, urban regulation, environmental protection, civil defence, tourism, fisheries, culture, enforcement of labour laws with some exceptions, definition of municipal boundaries, and co-ordination with municipalities and other states.

In the case of municipalities, the Constitution explicitly defines their functions and powers. The Constitution allocates the municipality the powers and responsibilities related to the delivery of public services such as drinking water, sewage, treatment and disposal of wastewater, public lighting, urban cleaning, waste collection, transfer, treatment, and final disposal of waste, and commercial markets, among others. On matters related to capacity to regulate local economic activities, the Constitution gives powers to municipalities to develop, adopt, and manage zoning and municipal urban development plans, authorise, control, and monitor land use, according to their attributions and inside their own territory, engage in the urban land use regularisation process, and grant construction licenses and permits, among others.

Regulatory policies and institutions

Institutions integrated into decision-making processes can help ensure that regulatory reform is sustainable and does not fall prey to the political cycle. It has not been uncommon for regulatory reform efforts to be dismantled after a transition from one government administration to another. In fact, maintaining regulatory reform as a political priority in state administrations that last six years and municipal ones that last three years, with no possibility for re-election, has been quite a challenge.[1] The problem is worsened due to the fact that usually these transitions are accompanied by high staff rotation.

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

Even though it is impossible to come up with a unique "recipe for success", there are some good practices that have proved to be successful to develop and sustain regulatory reform and institutions at the sub-national level. Of course, it is important to consider the current status of regulatory reform in a state or municipality when thinking about developing or strengthening such institutional infrastructure. In other words, priorities differ according to progress achieved in the past. Three elements of regulatory policies and institutions will be addressed in this chapter: laws on regulatory reform, units in charge of operating regulatory reform, and citizen councils.

Laws on regulatory reform

Twenty-two out of 31 states and the Federal District (DF) have laws on regulatory reform. In addition, six states have laws mandating the adoption of specific strategies for economic growth, such as regulatory reform. Laws on regulatory reform have mainly two objectives: designating and often establishing the institutions to lead the regulatory reform policy in the state and mandating the design, implementation, and evaluation of tools and practices to deploy regulatory reform. A review of the 22 state laws for regulatory reform found that they include some common institutions, practices and tools such as bodies in charge of regulatory reform, citizen councils, business support centres, SARE, centralised registries, registries for accredited persons,[2] RIA, and co-ordination with municipalities (see Annex 2.1).

However, issuing a law has sometimes not been enough to guarantee that regulatory reform takes root as a permanent public policy. The 22 state laws on regulatory reform establish, for example, the implementation of RIA and, with a few exceptions, it never became a reality. Hence, it is necessary to issue the bylaws (reglamentos) of the primary laws in order to devise the specifics of implementation and avoid the ineffectiveness of the letter of the law. Only eight of the 22 states that have issued a state law on regulatory reform have also promulgated bylaws. In Colima, for example, re-launching the Law for Regulatory Reform proved to be an effective strategy to provide impetus to the process of implementation of tools, such as RIA, and institutions, such as the State Council for Regulatory Reform. The new law, published in July 2011 (see Box 7.1), replaced another one that had been published in April 2005, but whose implementation was very weak. The bylaws, published in October 2011, complemented the new law.

The experience is mixed concerning having regulatory reform in a law specifically devoted to the matter or in a law for the promotion of economic development. As said, the 22 state laws on regulatory reform mandate the application of RIA and, with a few exceptions, states have not achieved its implementation, despite progress in the use of other tools. Jalisco's law, published in October 2009, also established the application of RIA and it is one of the few states that do it. On the other hand, the Law for the Promotion of the Economy, Investment, and Employment of the State of Aguascalientes has been successful in facilitating the continuity of regulatory policy in the state, but has not achieved the implementation of some of the tools that it established, such as RIA. Likewise, the Law for the Promotion of Competitiveness and Economic Development of the State of Baja California has been successful in creating some basic institutions to control the flow of regulations and consult the public, but it is quite limited in the number of tools mandated to be applied.[3,4,5] Despite the mixed results, laws specifically devoted to regulatory reform are more comprehensive and consider a wider set of regulatory tools than general laws on economic development.

Box 7.1. The Law for Regulatory Reform in the State of Colima

The *Law for Regulatory Reform in the State of Colima* designates five bodies in charge of regulatory reform:

- State Council for Regulatory Reform: It is a body for deliberation, participation and implementation, composed by the state public administration, the municipalities and the private and social sectors, with the objectives of designing, regulating, managing, sanctioning, and assessing regulatory reform initiatives to speed up government services and formalities.
- Quality Committee for Regulatory Reform: It is the mechanism for institutional co-ordination of the agencies of the state public administration. Its objectives are to design, implement, and assess the process of regulatory quality for regulations inside government (RIG).
- Ministry for Economic Promotion (SEFOMEC): This ministry is charged with the co-ordination and management of the State Programme for Regulatory Reform.
- Ministry of Administration: This ministry is mandated to coordinate with the SEFOMEC to design the centralised registry of formalities and services and the registry for accredited persons, set up mechanisms to communicate regulatory requirements, support other agencies in the implementation of e-government tools, and promote process re-engineering for formalities and procedures.
- Regulatory reform units in ministries and agencies.

The law mandates municipalities to incorporate regulatory reform in their legal instruments and set up their own regulatory reform units. It also establishes their specific attributions concerning regulatory policy. Furthermore, the law mandates the SEFOMEC to produce the State Programme for Regulatory Reform, which shall be approved by the State Council. Likewise, regulatory reform units in municipalities shall design Operative Programmes for Regulatory Reform. The law also mandates the application of RIA, a centralised registry for formalities and services, a registry for accredited persons, the SARE, municipal business centres,[4] and regulatory complaints and proposals.[5]

Source: adapted from the website of the Congress of the State of Colima www.congresocol.gob.mx/leyes/mejora_regulatoria.doc, accessed 12 February 2013.

Another important feature of these laws is the role granted to municipalities. Given that the autonomy of municipalities must be respected, most state laws on regulatory reform establish that municipalities can sign co-ordination agreements with states to implement it. Some establish specific attributions for municipalities concerning regulatory reform, and mandate them to set up a unit to lead regulatory reform efforts.

Units in charge of operating regulatory reform policies

Promoting regulatory reform requires the allocation of specific responsibilities and powers to agencies at the centre of government to monitor, oversee, and promote progress across the whole of the public administration (OECD, 2002, p. 84).

Box 7.2. International experience with legal instruments to promote regulatory reform at the sub-national level

In British Columbia, Canada, legal authority for regulatory reform comes from a Cabinet Directive from the Executive branch of government, which includes the Premier and ministers. Including all these offices provides horizontality to the regulatory reform policy, which enhances co-ordination and coherence.

In Catalonia, Spain, a number of decrees advanced regulatory reform policies and tools:

- Law 26/2010 (3 August, on legal regime and procedures of the Catalonian public administration): It establishes that draft regulations must always be accompanied by a general memory, an impact assessment memory, and other reports as required. On the one hand, the general memory must include a justification of the need of the regulation, the legal framework of the regulation, and a list of individuals and entities that should be granted audience, among other items. On the other hand, the impact assessment memory introduced the evaluation of the effects and impacts of the different alternatives under consideration, including budget, economic and social impacts, as well as gender impact, administrative simplification, and burden reduction for citizens and businesses.
- Decree 1/2011 (4 January, on restructuring the Department of the Presidency): It establishes that the Office of Government takes over the functions and structure of the Direction for Normative Quality, which had been established by Decree 93/2008.
- Decree 325/2011 (26 April, on restructuring the Department of the Presidency): It establishes, in its article 10, the functions of the Area for Better Regulation of the Office of Government, including promoting a better regulation culture, producing guidelines and methodologies for regulatory improvement and, particularly, for impact assessment, and providing advice and technical assistance concerning impact assessment to the different departments of the Catalonian government.

Source: García Villarreal, Jacobo Pastor (2010), "Successful Practices and Policies to Promote Regulatory Reform and Entrepreneurship at the Sub-national Level", OECD Working Papers on Public Governance, No. 18.

The Mexican states usually use one of two forms of bodies to manage regulatory reform, a unit within a ministry or a body in the form of a commission, which can be decentralised (e.g., Sinaloa, see Box 7.3) or deconcentrated (e.g., the state of Mexico). Eleven out of the 31 states and the DF have a commission in charge of advocating and implementing regulatory reform, 19 have a unit within a ministry (commonly the Ministry for Economic Development or equivalent) and two some other body fulfilling this role.[6] In principle, commissions may have some advantages vis-à-vis units within a ministry. First, a commission is usually backed by a law or a legislative decree or both, which makes it harder to abolish the institution. A unit within a ministry can easily be abolished by an administrative order, unless it is supported by law. Second, a commission usually gets a budget annually and holds assets, which strengthens its capacity. A unit within a ministry is funded by the ministry's budget, but if the minister is not committed to regulatory reform, the unit might not get sufficient resources to carry out its tasks effectively. Third, a commission is better protected from interests against regulatory reform.

Box 7.3. Institutional design in the state of Sinaloa

The Law for Business Procedures and Regulatory Reform in the State of Sinaloa gave birth to the State Commission for Business Support and Regulatory Reform, which is defined as a decentralised public body with legal personality and the capacity to own assets, under the umbrella of the Ministry for Economic Development.

Article 15 of the law establishes the attributions of the commission, which include the following:

- Establishing policies and initiatives for an efficient regulatory framework that strengthens the competitiveness of the state, its municipalities, and its business community, as well as providing legal certainty to economic activities by improving business formalities.
- Collaborating with state ministries, agencies, municipalities, the federal government, the private and social sectors to promote, identify, review, and analyse regulatory reform proposals that strengthen the competitiveness of the state and position it as a leader in the field.
- Establishing a project for business support, regulatory reform, and administrative simplification for the long, medium, and short terms, as well as the evaluation criteria to measure its progress.
- Establishing programmes and initiatives aimed at the review of the legal instruments in force and those that are proposed, so that resolutions propose regulatory reform criteria to advance transparency and clarity, avoid discretion, increase benefits, and decrease costs for the public administration and the private sector.
- Establishing and applying, in co-operation with other agencies, programmes to advance business development and competitiveness by providing services such as diagnostics, consultancy, advisory services, financing, technological development, and so on.
- Preparing training activities for those ministries and municipalities that request it, as well as carrying out seminars, polls, and consultations, nationally and internationally, to identify best regulatory practices, and laws, regulations, and formalities that hinder economic and entrepreneurial activities.

The commission is headed by a board and, in terms of operation, by a director general. Its activities are followed up by a council that incorporates citizen participation.

Source: Law for Business Procedures and Regulatory Reform in the State of Sinaloa.

Practical experience in Mexico is still not enough to determine whether commissions perform better than units. For example, in Colima and Jalisco, regulatory reform is led by units within the SEFOMEC and the SEPROE, respectively. In Nuevo León, regulatory policy is headed by the Unit for Regulatory Reform (UMR), which is located within the Executive Office of the Governor. In the three cases, significant achievements have been realised, but Colima and Nuevo León are still to see if these institutions will go on after a change in the state administration. In Puebla, the State Commission for Regulatory Reform, established by a decree in November 2002, was abolished after the transition to a new administration for 2011-17, and its functions were transferred to the Ministry for Control. Annex 2.2 provides a description of how each state in Mexico organises its regulatory reform bodies.

Box 7.4. International experiences with institutional design for regulatory reform at the sub-national level

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

The core responsibilities of Straightforward BC include developing and executing the government's regulatory reform strategy, maintaining the central database of regulatory counts, and producing reports for cabinet and quarterly reports for the public (advocating). Furthermore, under the Regulatory Reporting Act, enacted in November 2011, the province is now required to publish annual reports on its regulatory reform progress.

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

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

In Australia, all states have established a body responsible for screening compliance with regulatory impact assessments. In Victoria, for example, the Victorian Competition and Efficiency Commission (VCEC) was established under an executive order that explicitly provides for its independence. The scope of its oversight function includes the review of measurements of the administrative burdens of regulations. The VCEC also introduced in 2005 the Victorian Guide to Regulation, later revised in 2007. It provides detailed information of the legislative process and a step-by-step guide to the preparation of RIA and business impact assessments.

Source García Villarreal, Jacobo Pastor (2010), "Successful Practices and Policies to Promote Regulatory Reform and Entrepreneurship at the Sub-national Level", OECD Working Papers on Public Governance, No. 18, and Straightforward BC (2012), Achieving a Modern Regulatory Environment: BC's Regulatory Reform Initiative, First Annual Report – 2011/2012, available at www.straightforwardbc.gov.bc.ca.

Citizen councils for regulatory reform

The OECD has documented that the benefits from regulatory reform can be reversed if the policy lacks permanence and a continuous improvement perspective. As it has been already stated, continuity is often challenged at the time of transition of state and municipal administrations. Short administration terms, particularly in the case of municipalities, and high staff rotation, call for other stakeholders of regulatory reform to play a role in promoting regulatory quality as a permanent policy. Hence, it is necessary to create institutional mechanisms to allow business and citizen participation in the guidance, management, and evaluation of regulatory reform. This has turned out to be a critical element for the continuity of regulatory policy in Jalisco, for example (see Box 7.5).

Box 7.5. The Committee for Regulatory Reform in the State of Jalisco (COMERJAL)

In 1995, a decree by the governor of Jalisco established the State Committee for Deregulation and Economic Promotion (CEDESPE). The meetings of the committee addressed the main obstacles for business activities and deregulation issues related to water, urban development, and the environment, among others. It continued working during the 2001-06 administration, and during the current one (2007-13) it led the initiative to issue the Law for Regulatory Reform in the State and Municipalities of Jalisco, which changed the name of CEDESPE to COMERJAL, institutionalising the committee.

According to this law, the COMERJAL is integrated by honorary members from the federal, state, and municipal governments, the legislative and the judicial branches of the state government, and representatives from the private and social sectors. It is presided by the governor. The vice-president is the head of the SEPROE and the technical secretary is the general director for Regulatory Reform of the SEPROE. Its functions, as defined by the law, include the following:

- Identifying and analysing cases that call for new regulations or that are overregulated.
- Submitting cases presented to the committee to its working groups, so that they are reviewed and solutions are proposed.
- Proposing and recommending reforms to requisites, formalities, and deadlines required for business start-up and operation.
- Issuing opinions about the evaluation scheme of the regulatory reform process.
- Communicating widely the achievements of regulatory reform among the public, private, and social sectors.

The general meetings take place every three months and the working groups meet every two months. The resolutions of the committee are taken by simple majority and are binding for the state authorities. Some of the main achievements of the committee have been the improvement in turnaround times of environmental formalities, the implementation of the electronic signature in the executive agencies of the state government, and the development of electronic procedures in the Public Registry for Trade and Property.

Source: Government of the State of Jalisco, Ministry of Economic Promotion responses to OECD questionnaire, 2012.

Box 7.6. The experience of British Columbia on promoting citizen engagement in regulatory reform

When the government of British Columbia committed to reduce red tape by one third in 2001, it created the Red Tape Task Force, largely made up of industry representatives. This group was tasked with reviewing and prioritising 150 different submissions with 600 proposals for reform from the business community. The Minister for Deregulation gave the priorities and recommendations reached by the task force to other ministers so that they would consider them in the preparation of their three-year deregulation plans.

Besides the Red Tape Task Force, the government established other mechanisms, permanent and ad hoc, to request advice and specific suggestions for improving economic competitiveness. For example, the Small Business Roundtable was set up in 2005 to consult with small business owners and provide advice to the government on strategies to enhance small business growth. It included small business owners and representatives from small business organisations and it was chaired by the minister for Small Business, Technology and Economic Development. Regulation is regularly raised by the group as an important issue in its annual report, but it is not exclusively focused on regulatory reform.

The British Columbia Competition Council was also set up in 2005 with a mandate to review the province's competitiveness and identify barriers to economic growth and solutions to overcome them. The Council established Industry Advisory Committees for 12 sectors. Each one drafted a report with specific recommendations. Regulation was an issue raised in five of the 12 committees and there were also three major across the board recommendations regarding regulatory quality.

Source: García Villarreal, Jacobo Pastor (2010), "Successful Practices and Policies to Promote Regulatory Reform and Entrepreneurship at the Sub-national Level", OECD Working Papers on Public Governance, No. 18.

There is a wide variety of forms for sub-national governments to allow business and citizen participation in the management of regulatory reform and, even though each form may not be perfect, the important point is that they create mechanisms to sustain regulatory reform as a long-term policy (see Box 7.6 on the experience of British Columbia). Several Mexican states and a few municipalities (e.g.., Tuxtla Gutiérrez, Chiapas) have set citizen councils to follow up and strengthen regulatory reform as an institutional policy. In fact, 20 out of 22 regulatory reform state laws establish a citizen body to accompany regulatory reform policies, but sometimes political commitment to the work of these bodies has been weak and they have lost influence and operational capacity. In total, 21 states make use of a citizen council on regulatory reform.

These councils are usually defined as permanent co-operation mechanisms for the private, academic, and social sectors with state and municipal authorities. Their main objectives are to promote and follow up public policies that impact positively on the regulatory and competitiveness environment. States such as Colima, Chiapas, Guanajuato, Jalisco, Nuevo León, and the DF have established this kind of councils as a way to anchor regulatory reform and as accountability mechanisms. Citizen councils usually perform some of the following activities:

- Participating in the design and strengthening the implementation of regulatory reform programmes.
- Communicating information about the impacts that regulation may have on different sectors.
- Supporting the evaluation of the impacts of programmes on regulatory reform and demanding accountability from the responsible authorities.
- Supporting the communication of the regulatory reform agenda, its achievements, results, and challenges.
- Following up regulatory reform programmes in the medium and long term, facilitating their continuity beyond political cycles.
- The COFEMER has documented good practices to strengthen the role of these councils and help them play a prominent role in regulatory reform policies at the sub-national level.
- Developing a multi-disciplinary, representative, and diverse structure that includes the different stakeholders of regulatory reform.
- Having political support from the top level: This is important since the inability or unwillingness of the authorities to implement the decisions of the council may render it useless.
- Playing a consultative role: In the experience of some states, these councils represent a consultation mechanism, not only for regulatory proposals, but also for specific programmes.
- Having a citizen leadership: In some state councils, the representatives of the private, academic, and social sectors assume the board seats and the leading positions in working groups.
- Having a well-defined structure that establishes who does what, who assumes the leadership positions, and how the council organises itself to carry out its mandate.
- Having autonomy to manage its budget: The Economic and Social Council of Mexico City is vested with technical and financial autonomy to carry out its mandate. Its resources come from the Fund for the Economic and Social Development of Mexico City, which is managed by a technical committee.
- Meeting periodically: The standard is that these councils meet at least three to four times a year ordinarily, but as many times as it is necessary extraordinarily.[7]
- Organising working groups on specific issues: The COMERJAL, for example, has working groups on laws and regulations, energy and the environment, water, urban development and housing, intellectual property and innovation, and administrative modernisation.
- Having legal support: It is customary that these councils are established by state laws on regulatory reform and their bylaws.
- Becoming a forum to present and discuss achievements, programmes, and challenges related to regulatory reform.

Capacity building for regulatory reform in states and municipalities

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

One of the main highlights concerning capacity building is that the COFEMER has been moving from a concentration on the SARE to more comprehensive reform approaches to support states and municipalities. The yearly programmes of activities of the COFEMER represent evidence of this last statement. While in 2011 the programme focused on the SARE, the national conferences on regulatory reform, state laws on regulatory reform, and the implementation of the OECD *Guide to increase the regulatory quality of states and municipal formalities in Mexico,* the programme for 2012 was much more comprehensive and included, in addition to the SARE, a new model of state laws on regulatory reform integrating a governance approach, citizen councils, regulatory reviews, and the use of RIA, among others. This comprehensive approach is also reflected in training strategies for local officials, such as workshops to implement regulatory guillotines (i.e., in Nuevo León and Zacatecas) and an online diploma in which, for example, 109 officials from the state and municipalities of Colima are participating.[8] In fact, the number of state and municipal public servants trained by the COFEMER went from 147 in 2008 to 370 in 2009 and 484 in 2010. The themes addressed by the COFEMER include designing and operating the SARE, institutionalising regulatory reform in states and municipalities, reviewing the local regulatory framework and designing legislative and administrative strategies to improve it, constructing centralised registries of formalities and services, applying methodologies for RIA and public consultation, and creating citizen councils on regulatory reform (COFEMER, 2011b, pp. 34-35).

This comes in addition to the National Conference on Regulatory Reform that the COFEMER organises twice a year. However, COFEMER resources are limited to address the needs of every state and municipality in the country, so the key to advance capacity building even further is to gain the commitment of state governments to add up to the work of the COFEMER, as well as to engage municipalities.

The cases of Colima, Jalisco, and Nuevo León illustrate the importance of state governments to engage municipalities in regulatory reform. In the case of Colima, the state has led the initiative so that each one of its 10 municipalities implements the SARE and establishes a Municipal Business Centre. The achievement of this goal has taken not only leadership, but also pooling resources from the three levels of government. However, it is clear that the smallest municipalities would not have been able to accomplish this goal without the leadership of the state government and the support of the COFEMER. In Jalisco, the state government plays the leading role in promoting the one-stop portal "Your business in one day" (*Tu empresa en un día*) and engaging municipalities to participate, as well as in making the investment for the technical infrastructure. In Nuevo León, the state government took the leadership for an initiative to uniform business formalities in the seven municipalities of the greater metropolitan area of Monterrey. The state government not only advocated the project, but also contributed resources and helped to obtain federal support.

Multi-level co-ordination and convergence

Multi-level co-ordination and governance arrangements are required to enable governments to balance their obligations to be responsive to citizens and communities and to manage the consequences and opportunities of globalisation and the national interest (OECD, 2010f, p. 7).

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

The main multi-level co-ordination mechanisms used in Mexico consist in covenants between the COFEMER, states and municipalities, as well as regulatory improvement state laws. The covenants between the COFEMER and states and/or municipalities basically establish that the COFEMER will provide training, advice, and implementation assistance concerning regulatory policies and tools. Regarding co-ordination between states and municipalities, the 22 state laws on better regulation establish co-ordination mechanisms, such as via the signature of covenants or the implementation of specific programmes and tools (i.e., the SARE and centralised registries).

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

Regulatory tools

Administrative simplification as a starting point

Most of the states and municipalities that have worked on regulatory issues have done it by administrative simplification initiatives. This focus on simplification can be explained by several reasons. First, officials in states and municipalities do not always understand the difference between regulatory reform and administrative simplification, and the latter is easier to carry out than the former. Second, states have been immersed in a competition dynamic aimed at getting a good ranking in the sub-national edition of the Doing Business report and other competitiveness indexes. While this competition has been a positive force to position regulatory reform in the political agenda, it is also true that the indexes deal basically with simplification. Finally, until a few years ago, the COFEMER devoted much of its attention in states and municipalities to the promotion and implementation of the SARE.[9]

Box 7.7. Intergovernmental dialogue in Italy

In Italy, the amendments introduced to the Constitution in 2001 established the transfer of legislative and regulatory competences from the state to the regions. In general, regions have gained legislative powers due to the increase of matters of concurrent competence. In the new constitutional balance of power among different levels of government, co-ordination mechanisms play a fundamental role. The main mechanism in Italy is the so called "Conference System", based on three co-ordination bodies:

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

Source: García Villarreal, Jacobo Pastor (2010), "Successful Practices and Policies to Promote Regulatory Reform and Entrepreneurship at the Sub-national Level", OECD Working Papers on Public Governance, No. 18.

Administrative simplification has been a good starting point to raise regulatory issues on the political agenda. In part, this is due to the fact that simplification has allowed states and municipalities to achieve "quick wins" and realise benefits from enhanced interactions between public agencies, on the one side, and businesses and citizens, on the other. The four states consulted for this review have justified their simplification efforts on the competitiveness agenda and the need to provide incentives for growth and job creation. But simplification also has the potential to rationalise public administrations and save public resources, which is something local governments are looking for in times of fiscal austerity.

The SARE

For the past ten years, the simplification of formalities to start up a business has been the main strategy employed by the COFEMER to promote the regulatory reform agenda at regional and local level in Mexico. This was partially because back then, according to the Doing Business report, the process to start up took in average 58 days. The agreement that established the SARE was published in 2002.

The SARE is a programme for regulatory simplification, process re-engineering, and administrative modernisation of the municipal formalities involved in the start-up process of low-risk businesses. It allows differentiated regulation based on economic activities and replaces a previous approach that treated all start-ups the same way, disregarding the risk implied by their activities. One of the main ideas behind the programme is to deregulate as much as possible activities with low or no risk (i.e., for public health, civil protection, or the environment).

Up until November 2012, 210 SARE modules had been implemented,[10] leading to the establishment of 292 321 businesses and 778 286 jobs, implying an investment of $53 090 million pesos.[11] According to the COFEMER, the turnaround time for the municipal start-up license went down from 25.2 to 2.4 days in the municipalities that established the SARE between March 2010 and November 2011.

In 2011, the COFEMER assessed the impact of SARE on the creation of new businesses and jobs in the formal economy of representative municipalities from five states. The number of entrepreneurs in the sectors included in SARE catalogues increased in every state after a trimester of implementation: 27.4% in the representative case of Chiapas, 11.6% in that of Colima, 23.6% in that of Hidalgo, 14.3% in that of Morelos, and 29.9% in that of Puebla (COFEMER, 2011a, p. 6).

Twelve out of 22 regulatory reform state laws mandate the establishment of the SARE. It has been an attractive programme for states and municipalities as a way to improve their rankings in the sub-national edition of the *Doing Business* report. For example, Colima was ranked in the last place of the report for 2009 in the indicator starting up a business. Even though the indicator refers to the specific case of the municipality of Colima, the state government launched a renovated effort to simplify start-up formalities in different municipalities. As part of this effort, the COFEMER provided support to the municipalities of Cuauhtémoc, Tecomán and Manzanillo during 2010, and Comala, Minatitlán, Armería and Ixtlahuacán in 2011. As a result of this work and several other strategies, Colima moved up to the 6th place in the ranking of starting up a business and first place in the overall ranking of the 2012 edition (World Bank, 2012).

The case of Colima illustrates that a poor ranking in a recognised study has been a motivation to address regulatory issues via the SARE, in the first place. Incentives based on benchmarking have also been successful in other countries, such as Australia, to engage sub-national governments (see Box 7.8).

In many states and municipalities, the establishment of the SARE represented a breakthrough in their regulatory reform initiatives. In Baja California, for example, the state government, the COFEMER, and the municipalities of Mexicali and Tijuana signed an agreement to apply SARE in 2002. The process of regulatory reform has continued and several significant achievements followed, such as the Law for the Promotion of Competitiveness and Economic Development (2005), which includes a chapter on regulatory reform, the Law on Electronic Signature (2009), and the Law for Regulatory Reform (2012).

Box 7.8. Benchmarking regulatory performance at the sub-national level

Benchmarking performance of regulation can help identify opportunities and challenges of regulatory reform. It can be a good strategy to direct efforts and resources towards areas of reform that might be lagging behind and identify emerging best practices. In a multi-level governance system, it is particularly important as it has the potential to create incentives for jurisdictions to catch up with champions of reform and scale up efforts towards regulatory quality. Competition across jurisdictions can thus generate a "race to the top", benefiting the regulatory system as a whole.

In Australia, through COAG, states have committed to a rigorous process of benchmarking conducted by the Productivity Commission (PC). The methodology adopted by the PC relies on the adoption of regulatory management practices as a proxy for the quality of regulation. It is based on four sets of indicators: *i)* indicators of quantity of regulation, including the number and scale of regulators, *ii)* indicators of the quality of regulation, using processes for the design and review of regulation as a proxy for good regulation by looking at consultation, analysis of proposals, gate keeping, plain language drafting, and *ex post* review of regulation, *iii)* indicators of regulatory structure and activity, and *iv)* indicators of the quality of regulatory administration.

Western Australia, for example, introduced a comprehensive set of regulatory reform measures, including RIA and gate keeping, in January 2009, partly to correct its performance as poorest in the nation for its rule-making practices.

Source: OECD (2010), *OECD Reviews of Regulatory Reform: Australia, towards a Seamless National Economy*, OECD Publishing, Paris, doi: 9789264067189-en.

The main disadvantage of the SARE is that it is subject to the political willingness of municipal administrations that change every three years. Hence, it has not been uncommon that the SARE is terminated once an administration different from the one that established it takes over. The role of state governments in persuading incoming municipal administrations to continue SARE has proved to be critical. Including SARE in the state laws on regulatory reform and in the scope of work of citizen councils have been good strategies to facilitate its continuity. Municipalities also strengthen the perspectives for continuity of SARE by establishing the programme in an agreement of the city council (acta de cabildo).

Furthermore, the COFEMER has developed a certification system based on the norm SARE-01, which aims at motivating and recognising the implementation of good practices of regulatory reform in municipalities, as well as promoting continuous improvement in the operation of the SARE. The certification reviews the organisational structure, resources, processes, planning, and documentation of SARE. The COFEMER is also increasingly applying a quality system methodology developed by the ITESM to identify the most suitable municipalities for SARE implementation, according to an analysis of potential impact. During 2010, 100% of SARE implemented lay on this methodology, while only 61% did in 2009 (COFEMER, 2010; COFEMER, 2011b).

Good practices of administrative simplification at the sub-national level

This section will present examples of good practices in the use of some techniques for administrative simplification to illustrate progress in states and municipalities.[12] Administrative simplification can make use of different techniques, such as removing existing legislation/regulation, changing legislation/regulation to ease compliance, harmonising report obligations, data-sharing, risk-based approaches, and packaging different formalities in a single window (i.e., one-stop shop) (OECD, 2006, p. 62).

The Unique Environmental License (LAU) used in the state of Jalisco is a good example of an initiative to simplify administrative procedures and advance multi-level co-ordination. The LAU is based on a joint scheme between authorities from the different levels of government. A one-stop shop for environmental formalities consolidates different procedures for the entrepreneur to obtain the environmental permits to legally operate an industrial, trade, or services business. This consolidation includes regulations managed by the federal Ministry of the Environment and Natural Resources (SEMARNAT), the state Ministry for the Environment and Sustainable Development (SEMADES), civil protection state authorities, the Sewage and Potable Water System of Jalisco (SIAPA), and the municipalities of Guadalajara, Tlaquepaque, Tonalá, and Zapopan.

Before this scheme, entrepreneurs had to go to different government offices, from the three levels of government, to comply with environmental formalities. This implied wasted time, confusion among entrepreneurs to determine to which offices they had to go, and multiple formats to fill out. The covenant to establish LAU was signed on March 2008 and the one-stop shop was set on June 2008. The implementation process required reforms to the State Law for Environmental Equilibrium and Protection.

The one-stop shop receives and classifies the applications and attachments from entrepreneurs and turns them to the corresponding offices according to the permits required. Likewise, each one of these offices delivers its resolution to the one-stop shop, so that it can provide all the authorisations to the entrepreneur in a single visit. This process should not take longer than 47 working days, which represents a reduction of 65% of the time taken under the old scheme. After the simplification of the process, there was an increase in the number of applications for LAU: from 1 081 in 2008 to 2 247 in 2009 and 2 835 in 2010.[13]

The Express Construction License of the municipality of Tuxtla Gutiérrez, Chiapas, is an illustrative case in which changing regulations helped ease compliance. Since March 2011, the municipality of Tuxtla Gutiérrez is implementing a pilot programme to reduce the turnaround time for an application for a construction license. Previous to this new scheme, the process took from two to eight weeks for a resolution. Currently, it takes two business days. This reduction was achieved by assigning shared responsibility to the responsible director of the work (*director responsable de obra*—DRO) and the owner, as well as by improving the internal flow in the Direction for Urban Control.

The DRO and the owner sign statements in which they are hold responsible for the information provided in the application, attachments, and the construction process. The *ex ante* inspection that the municipality used to carry out was also eliminated. This simplification was accompanied by more severe sanctions for DROs that do not comply with their shared responsibilities. Even though this is applied only for low-risk businesses, the reduction in turnaround time decreases administrative costs.[14]

The Permit based on Trust of the municipality of Escobedo, Nuevo León, illustrates the use of risk-based approaches. Its objective is to grant a provisional construction permit, one working day after application, so that entrepreneurs may start building quickly. During this day, there is a general review of the application to make sure that minimum requirements to mitigate risks are fulfilled. At the same time that the construction is going on, the authorities make a more in-depth assessment of the application, so that the final permit can be issued. If necessary, the municipality may order adjustments to the construction plans to satisfy safety concerns. Applicants are bound to comply with these adjustments; otherwise, the final permit is not issued.

This scheme is based on a risk approach given that its target population is businesses that have got construction permits in the past and that apply the same standards in all their shops (i.e., supermarket chains). This allows municipal authorities to assume that the construction for which the application stands meets the same technical criteria as those built in the past. In any case, the municipality keeps the right to deny the permit if this is not so. Between December 2009 and December 2011, the municipality of Escobedo issued 1 862 permits, leading to the creation of 10 500 jobs (direct and indirect), and revenue for $10.3 million pesos.[15]

Concerning electronic one-stop shops and data-sharing for business start-ups, a good case to review is that of the portal of the state government of Colima miempresa.col.gob.mx. This website allows entrepreneurs to complete online state formalities required to start up a business and find information and advice about the process. When entrepreneurs complete their formalities in this portal, they are able to see the progress of their applications online, receive e-mails informing such progress or additional requirements, upload documents and information, make online payments, and print payment receipts and licenses with electronic signature.

Previous to the establishment of miempresa.col.gob.mx, the sub-national edition of the 2009 *Doing Business* reported that the process to start up took 57 days in Colima, considering federal, state, and municipal formalities. This delay implied transaction costs that hindered productivity and growth. Furthermore, entrepreneurs had to go to different offices, fill out different formats, and duplicate documents, which implied time and economic resources. Now, all the process concerning state formalities is solved in less than 72 hours, and the resolution for some of them is immediate and does not require the physical presence of the entrepreneur in the public offices.[16]

The OECD-Mexico programme of co-operation to enhance competitiveness

The initiative Strengthening of economic competition and regulatory improvement for competitiveness in Mexico has been a positive influence on the efforts carried out by different states and municipalities. In this context, the Ministry of Economy and the OECD carried out the project Short-term measures to improve competitiveness at the sub-national level to identify the most burdensome formalities for the business sector in each participating state and simplify them. The nine participating states were Baja California, Colima, Chiapas, Jalisco, Michoacán, Puebla, Sinaloa, Tabasco, and Tlaxcala.

In parallel to short-term measures, the Ministry of Economy requested OECD to provide good international practices of regulatory reform and management to illustrate opportunity areas for the Mexican states that were performing well relative to their pairs. The OECD established the project Successful practices and policies to promote regulatory reform and entrepreneurship at the sub-national level to analyse best international practices from three sub-national governments recognised as top performers in different OECD countries and

including three Mexican states as well. On the international side, British Columbia, Catalonia, and Piemonte participated in this study and, on the national side, Baja California, Jalisco, and Puebla. States such as Colima and Nuevo León have explicitly modelled their regulatory reform programmes after the recommendations contained in this report.

These two projects led to the presentation of the *Guide to improve the regulatory quality of state and municipal formalities and strengthen Mexico's competitiveness* and to a follow-up exercise to apply its recommendations, particularly in four states (Baja California, Colima, Chiapas, and Sinaloa) and municipalities (Tijuana, Colima, Tuxtla Gutiérrez, and Culiacán, respectively). The four states welcomed the recommendations of the guide and established an agenda to accomplish them. Notably, after the follow-up exercise, the state of Colima had fully applied the recommendations of the guide and those of the project Short-term measures. The follow-up exercise was also useful to identify good practices in the implementation of the guide and make them available to other states and municipalities.[17]

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

Tools for the development of new regulations at the sub-national level

All 31 states and the DF have their own legislative body and prepare laws and regulations that apply at state and local level. In addition, municipalities and the 16 *delegaciones* (local authorities in the DF) have attributions to supply services, participate in the preparation of subordinate regulations, and actively engage in ensuring their compliance and enforcement.

All these actors at the sub-national level of government contribute to the regulatory flow in the country. It is therefore essential to ensure that good practices in the preparation of new laws and regulations at sub-national levels of government are promoted systematically, as the positive results obtained at the federal level can be challenged by poor quality regulations at other levels.

Improving the quality of new regulation at the sub-national level has been a concern for the COFEMER for several years. In consequence, it has recently focused more on promoting regulatory quality improvements at state and municipal level through encouraging them to adopt explicit regulatory policies to promote higher quality regulation in a systematic and consistent way. This approach has necessarily involved promotion of the use of impact assessment at the sub-national level (mainly at state level).

Box 7.9. Administrative simplification at the sub-national level: The case of Piemonte

Piemonte has implemented some techniques to minimise the requirements imposed on businesses. For example, the instrument of *reporting the commencement of an activity* enables citizens to start up business initiatives on the sole basis of a statement that they have done so, without the need for an administrative authorisation. Even though there are exceptions, this practice eliminates waiting time for the authorisation reply. A law issued on 29 July 2003 formalised the self-certification procedure, so that the administration is only required to make sure that permits are used properly, instead of issuing them.

Piemonte also makes use of data-sharing to speed up administrative procedures through an important instrument called the *Conference of Services*. This makes it possible for the object of the procedure to be examined simultaneously by all the required offices. It is, therefore, the main instrument to accelerate and simplify complex procedures that require the validation of different agencies of the administration.

Furthermore, Piemonte has a network of one-stop shops, which involves the different levels of government and the various stages of the life cycle of business. This network allows simplifying interactions between businesses and the public administration:

- Giving entrepreneurs a single window for all procedures dealing with start-up, operation, and closure of business facilities.
- Simplifying procedures as the entrepreneur obtains permits after submitting a single application.
- Facilitating access for city governments to all the necessary information from the various authorities involved.
- Providing entrepreneurs with specific deadlines defined by the relevant regulations, as well as information and advice about localisation, financial, and job-creation incentives.

Source: García Villarreal, Jacobo Pastor (2010), "Successful Practices and Policies to Promote Regulatory Reform and Entrepreneurship at the Sub-national Level", OECD Working Papers on Public Governance, No. 18.

The approach has proved satisfactory at least in paper, as 22 states have engaged in improving regulatory quality by establishing principles and the use of regulatory tools in laws and bylaws. There are specific references to the relevance of improving regulations *ex ante* in all of the regulatory improvement state laws. The Law for Regulatory Reform in the State and Municipalities of Jalisco, for instance, acknowledges that RIA is "the public policy tool that allows government decisions and regulations to be more transparent and rational".[18] The use of public consultation, to a lower degree, has also been promoted to improve the rule-making process. Implementation of RIA principles and a systematic use of the tool, however, remain challenging.

The application of RIA at the sub-national level

State level

Concerning the use of RIA as a tool to improve the quality of new regulations, various Mexican states have introduced it. All of the 22 regulatory improvement state laws contain RIA requirements, which mirrors the trend at national level by which the use of RIA is compulsory by law.

The introduction of RIA, however, represents a recent reform for many state governments. Recent adopters include the states of Colima, Guanajuato, Morelos, Nuevo León, and Sonora. Annex 3 shows the current institutional trends in the introduction of RIA in selected Mexican states, and Table 7.1 shows the total number of RIAs conducted at state level until May 2012.

Table 7.1. Total RIAs prepared at state level

State	Number of RIAs
Colima	1
Guanajuato	25
Jalisco	14
Morelos	500
Nuevo León	1
Puebla	10
Sonora	4

Source: Federal Commission for Regulatory Improvement of Mexico responses to OECD questionnaire, 2012.

In other states the implementation of RIA remains at planning stages. In Aguascalientes, for instance, the Law for the Promotion of the Economy, Investment, and Employment, and the State Government Plan 2010-16 incorporate regulatory quality principles, including the requirement to conduct RIA.

The current discussion to pass a regulatory reform state law envisages a more comprehensive approach to RIA, following principles and good practices promoted by the COFEMER. In other states the situation is still at initial discussions, and political commitment is required to formally introduce the tool.

The publication of RIAs prepared at state level is evolving in Mexico. The state of Sonora has an electronic portal, Electronic Regulatory Impact Studies (*Estudios de Impacto Regulatorio en Electrónico,* EIRE), where all impact assessments are published,[19] providing the public with the opportunity to send specific comments on draft regulations via e-mail. The state of Morelos has also established an electronic portal where draft proposals and RIAs are published.[20] It allows interested parties to make comments on the proposals and it shows the review assessments prepared by the Regulatory Improvement Commission of the State of Morelos. The state of Guanajuato also publishes some of the RIAs sent to the state Ministry of Public Management for review.[21]

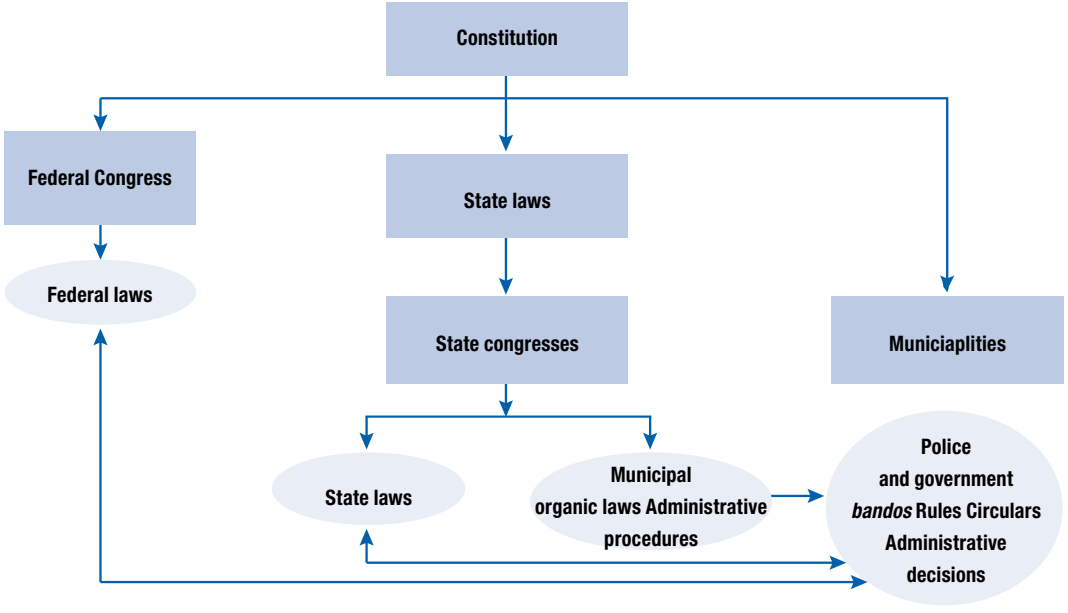
Municipal level

In addition to the initial use of RIA at state level, several municipalities in Mexico are embracing regulatory improvement practices. Various Mexican states have now comprehensive regulatory improvement programmes that call for regulatory co-ordination and coherence between the state and the municipal level. Some states that are at the front of regulatory reform have also made efforts to encourage their municipalities to follow better regulation practices. Smaller states, like Aguascalientes or Colima, have been successful in integrating a coordinated approach, inviting their municipalities to adopt the same tools as that of the state level, which include the mandate to carry out RIAs. Other states, like Jalisco, with 125 municipalities, need to take into consideration the degree of economic development and capacities to implement regulatory improvement practices, which calls for prioritisation in the efforts and better co-ordination mechanisms. Guanajuato, with 46 municipalities and high population density, is also encouraging the use of RIA at the municipal level. Despite the fact that the size of the state and a reduced number of municipalities may facilitate the transfer of good regulatory practices from the state to the municipal level, the critical factor is not size, but rather political commitment.

The COFEMER has published guidelines to describe legal techniques to prepare regulations at the municipal level (COFEMER y CIDE sin año). In Mexico, municipalities not only provide services to citizens, but also have the prerogative to prepare several types of subordinate regulation, such as bylaws (*reglamentos*), *circulares* and other administrative requirements, that directly impact on the economy and the behaviour of economic actors.

Some municipalities have already started to explore the possibility to introduce RIA mechanisms to improve the quality of new regulations and support their decision-making processes. Most of the cases are just at the stage where regulatory improvement regulations include the use of RIA and describe in a general way the application of the tool. In most cases, the set-up of a unit in charge of regulatory reform in the municipality is charged with the responsibility to review the quality of produced RIAs (see Box 7.10). Implementation, however, is at initial stages and there is limited evidence of the use of RIA at the municipal level.

Figure 7.1. Multi-level regulatory governance in Mexico



Source: Government of the State of Jalisco, Ministry of Economic Promotion responses to OECD questionnaire, 2012.

Box 7.10. RIA experiences at the municipal level in Mexico

The Bylaw for Regulatory Improvement of the Municipality of Monterrey, in Nuevo León, establishes a municipal regulatory reform unit at the Department for Planning and Communication, which has, among other responsibilities, that of providing opinions about draft regulations and RIAs. A RIA should be prepared both in case of reviewing existing regulation and proposing new rules. The RIA should provide the Regulatory Municipal Commission with information and evidence about the need for regulatory changes. Similar examples in the state of Nuevo León can be found in the municipalities of Escobedo and San Pedro Garza García.

In Mexicali, Baja California, RIA has been formally introduced. The regulatory improvement programme of the municipality envisaged the establishment of a focal point in various departments in charge of regulatory co-ordination. These officials are responsible for sending the RIAs to a committee in charge of their review.

In Celaya, Guanajuato, the municipality is undertaking RIAs to improve the quality of regulations they are responsible for. As an example, they conducted RIA on a proposal of bylaws to regulate merchants and traders that establish their shops in public spaces.

Source: OCDE (2009a), Estudio de Caso: Baja California. Prácticas y políticas exitosas para la mejora regulatoria y el emprendedurismo a nivel subnacional, available at www.oecd.org/document/15/0,3746,en_2649_34141_44973455_1_1_1_1,00.html. and www.escobedo.gob.mx.

RIA requirements

The application of RIA requirements at state and municipal level seems to be broad and does not follow a clear prioritisation system where efforts concentrate on those regulatory interventions that impose significant costs. Most of the current regulatory reform state laws do include a broad list of regulatory instruments that are subject to RIA, as Annex 3 shows. In some OECD countries, particularly in those that are just starting the introduction of RIA, the scope at sub-national level is more modest (see Box 7.11).

Responsibilities for RIA

The state laws on regulatory reform and the guidelines to conduct RIA that have been prepared by various state governments, such as that of Jalisco (see Figure 7.2 for an illustration of the RIA process), acknowledge that RIA has to be prepared by public officials in charge of producing regulatory instruments. This represents an important challenge that might slow down the implementation and full use of RIA. In particular, the estimation of costs and benefits, where certain expertise is required, may become an obstacle for a full use of RIA. In that sense, some states such as Guanajuato, Morelos, Nuevo León, and Sonora have also produced guidance materials providing methodological support to help government officials in the preparation of sound analyses (see Annex 2.3). In Nuevo León, for example, the Agreement for Regulatory Quality in the State of Nuevo León, published on 27 September 2010, called for the implementation of the "Guide to produce RIA and submit draft regulations", which provides methodological advice to fill out RIA templates. In Nuevo León, RIA includes justifying the regulatory proposal, analysing the draft project and the impact on formalities and services, as well as a section on public consultation.

An additional issue is that the endorsement and final responsibility for RIA is not explicit in the regulatory reform state laws.

Box 7.11. **The experience of Western Australia on defining the scope of RIA**

In Western Australia, RIA is a two-tiered process for assessing regulatory proposals, to determine their impacts on business (including government businesses), consumers, and/or the economy:

- A preliminary impact assessment (PIA) must first be undertaken on each regulatory proposal to determine its impact on business, consumers, and/or the economy. All cabinet proposals of a regulatory nature and all subordinate legislation made by the governor in Executive Council require assessment in the form of a PIA.
- If the PIA identifies a significant negative impact associated with the regulatory proposal, a regulatory impact statement (RIS) is required to be completed prior to consideration by the decision-maker. The RIS process consists of a consultation RIS and a decision RIS.

A RIS is not required for regulatory proposals where a PIA has been completed and shows no significant negative impact on business, consumers or the economy. Proposals that are non-regulatory fall outside the RIA process and assessment is not required. A Treasurer's exemption from the RIA process may be sought at any stage during policy or regulatory development.

Source: Website of the Government of Western Australia, Department of Treasury, www.treasury.wa.gov.au, accessed 14 February 2013.

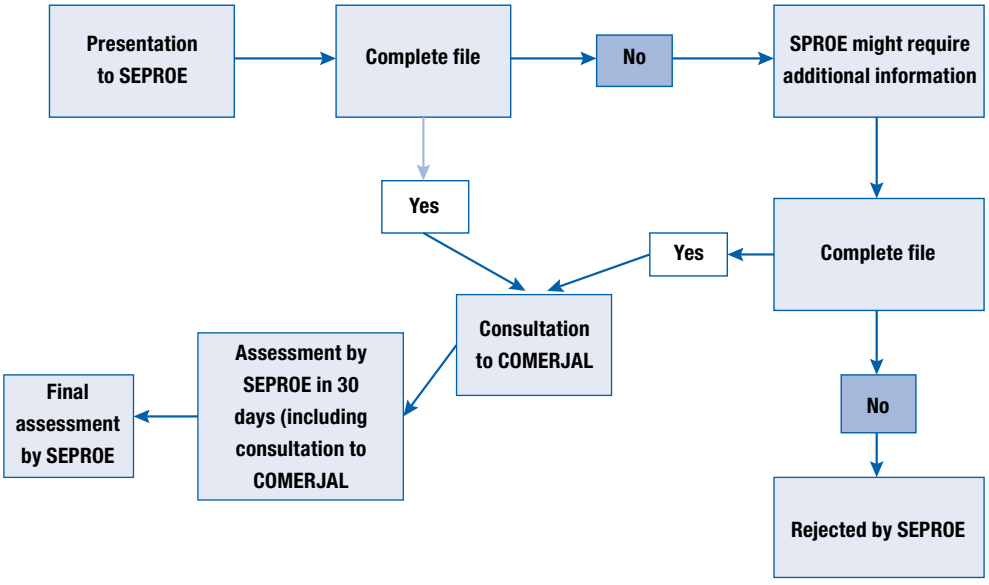
RIA quality control

As at the national level, RIA systems at sub-national levels of government depend greatly on quality control mechanisms and the role of oversight bodies for regulatory management and reform. In OECD countries, for instance, the role of oversight bodies at state level is a key element to ensure the systematic use of RIA. This is even more relevant in the case of federal countries, where sub-national levels of government have clear regulatory powers and an institution must be in charge of ensuring co-ordination and reviewing the quality of draft RIAs.

In Mexico, several states and some municipalities have established regulatory improvement units with the clear responsibility to review the quality of RIAs and draft regulatory proposals. The institutional set-up of these units varies, in part due to the political configuration of state and municipal governments and in accordance with some pre-established institutional features. As a result, there is no clear uniformity on where these units are located or to whom they report, but in most cases they are linked to relevant ministries in the government structure (i.e., the Ministry for Economic Development or equivalent).

A clear trend in Mexico, however, is the fact that these units are in charge of monitoring RIA implementation and ensuring the quality of draft RIAs, as shown in Annex 3. Other OECD countries also have units at the sub-national level reviewing and challenging RIA (see the case of Western Australia in Box 7.12).

Figure 7.2. RIA process in the state of Jalisco



Source: Government of the State of Jalisco, Ministry of Economic Promotion responses to OECD questionnaire, 2012.

Box 7.12. **Oversight body in charge of RIA quality control in Western Australia**

In Western Australia, the Regulatory Gatekeeping Unit (RGU) at the Treasury administers the RIA process. The RGU assists state government agencies in achieving best practice in accordance with RIA requirements, and in monitoring, assessing, and reporting compliance with those requirements. The RIA process applies to both new and amending regulatory proposals. It has been designed to encourage careful consideration, at an early stage, of the fundamental question of whether regulatory action is required or if policy objectives can be achieved by alternative measures, with lower costs for business and the community. The RIA process is designed to improve the quality of regulation by ensuring that the decision-maker is fully informed when approving new and amending regulatory instruments. RIA is aimed at ensuring rigorous analysis of regulatory proposals, effective and appropriate consultation, and transparency of the process. It also provides an early warning to the government of unintended consequences of regulatory proposals.

Source: Website of the Government of Western Australia, Department of Treasury, www.treasury.wa.gov.au, accessed 14 February 2013.

Improving technical and human capacities to conduct RIA

Despite the achievement of having introduced the concept of RIA to sub-national levels of government, there is not much evidence that RIA is systematically used at state level in Mexico. The number of RIAs produced at state level is still very limited and their quality is hard to be assessed at this stage. For those analyses published in states' websites, the identification of problems and alternatives is not always developed. In addition, there is little quantification of costs and benefits, despite the fact that it is required in most cases by law or established in guidelines. Even the identification of possible costs and benefits for regulatory proposals is underdeveloped.

Box 7.13. International experiences in building technical and human capacities for RIA at sub-national level

Some sub-national governments have established technical approaches to help coordinating RIA efforts and data management for better quality of regulatory proposals:

In Catalonia, Spain, an integrated system for inter-departmental legal processing, SIGOV, has been established. The SIGOV (*Sistema de Información, Gestión y Tramitación de los Documentos del Gobierno*) is an electronic management platform that facilitates the processing of regulations at all stages, from drafting to approval. The SIGOV uses an intranet system for the whole government that enables discussions among departments on draft regulations that are being prepared. All government departments have to place their proposals in the system, in addition to analysis, opinions, and the impact assessment, so others can make comments. Government departments have to reply in case of getting opinions and comments on their proposals. This platform ensures that all government departments share information and documents on regulatory proposals. The Office of Government manages the platform.

In Queensland, Australia, a Regulatory Assessment Statement System (RAS) has been developed to support regulatory development and review. The RAS system was introduced in 2010 to provide more rigour, transparency and accountability in the development and assessment of regulatory proposals. It requires rigorous assessment of new proposals' impacts on business, community and government, and includes protocols that strengthen stakeholder engagement and support compliance awareness. The system is built around regulatory best practice principles and is applied to regulation produced by departments, agencies, and statutory bodies. The RAS system aims at improving the quality of information provided to government decision makers, minimising the application of unnecessary regulatory impacts on stakeholders, maximising the effectiveness and efficiency of new regulation, ensuring transparency and accountability, and achieving an overall net benefit to the broader community, business, and government.

Source: OCDE (2009b), Estudio de Caso: Cataluña, España, Prácticas y políticas exitosas para la mejora regulatoria y el emprendedurismo a nivel subnacional, OECD, Paris. www.oecd.org/document/15/0,3746,en_2649_34141_44973455_1_1_1_1,00.html.

RIA is a relatively new tool to be used by local governments, which requires creating capacities for a balanced analysis, not only for the institutions that have to prepare RIAs, but also for those that have to ensure their quality control. The change in the administrative culture of preparing regulations is still to come, and both regulators and regulatory improvement units need to be trained to develop the necessary capacities to conduct good quality RIAs.

The consolidation of RIA systems at state level is certainly work in progress that has to be supported and improved over time. The COFEMER estimates that there are now approximately 220 state officials dedicated to regulatory improvement tasks, including the implementation of RIA.

Use of consultation techniques

An additional tool that can support regulators to improve the quality of new regulation is public consultation. This technique can be either integrated in the RIA process or promoted by itself. In any case, consultation should give the opportunity to affected parties to express their views at early stages of the rule-making process and ensure that possible unintended consequences are identified.

Box 7.14. The use of public consultation to improve the quality of new regulations in Mexican states

In Aguascalientes there is no formal requirement for public consultation and RIA. However, consultation has taken place recently for relevant policy decisions. The new Urban Code has brought academia, the private sector, NGOs, citizens, and other relevant associations, to discuss in specific focus groups the various alternatives for this regulatory instrument. Consultation took place from January to July 2012 in 14 forums that were hosted in all 11 municipalities. More than 27 papers have been discussed with around 800 participants from different backgrounds.

In Colima, the state Congress uses consultation techniques, such as focus groups, public hearings and working groups, when laws are discussed and before they are approved. Opinions and recommendations are included to improve the quality of draft bills.

Source: Government of the State of Aguascalientes and Government of the State of Colima, responses to OECD questionnaire, 2012.

In Mexico, consultation with affected parties has improved over time at the sub-national level (see Box 7.14). After the promulgation of state laws for transparency and freedom of information, many states and municipalities have implemented transparency mechanisms through consultation. In addition, some of the various regulatory reform state laws acknowledge the relevance to include consultation mechanisms in the regulatory process. It is not uncommon in Mexican states and municipalities to establish inter-governmental bodies with representation from society, the private sector, and/or academia, to discuss important regulatory issues, as well as to establish consultative councils with the private sector for major regulatory decisions.

Despite these efforts, much remains to be done. In some states, for instance, consultation is rather informal and results are not public to society, which leads to opacity in regulatory decisions and still opens the possibility for excessive discretion in decision-making. Public consultation at sub-national levels of government is not yet compulsory and, in most cases, is not systematic.

Other tools to improve the preparation of regulations at sub-national level

In most OECD countries, regulatory tools such as RIA are not systematically used at sub-national levels of government. Only some OECD countries, such as Australia or Canada, have made good general progress in promoting better regulation practices at the sub-national level, including the use of impact assessment methodologies.

This might be a reflection of the size of the challenge: RIA may be an ambitious tool for sub-national levels of government if capacities and resources are not in place. As the OECD has pointed out (Rodrigo and Andres-Amo, 2009), if RIA is to be implemented in a multi-level context, a number of issues have to be solved, given that several institutional actors are involved in the policy making process. The institutional fragmentation caused by this fact implies that the dynamic relationships between all these actors have to be managed by bargaining processes, whose rules and characteristics vary across sectors.

This challenge, however, should not exclude the use of specific tools to guarantee that the preparation of regulatory proposals follows clear procedures and that there is some form of scrutiny against criteria that have to be taken into consideration *ex ante*. A few alternatives used in Mexico are presented below, and Box 7.15 illustrates other alternatives from international experience.

Box 7.15. International experience on alternatives for ex ante regulatory assessment

In British Columbia, Canada, the Regulatory Criteria Checklist (RCC) replaced RIA in 2001. Ministers and heads of regulatory authorities must make sure that any proposed legislation, regulation and new policy are evaluated according to the criteria set out in the checklist. A signed copy of the RCC or exemption form must be included with any legislation submitted for Executive Council review and any Order in Council that is being recommended by the responsible minister to the Executive Council to enact a regulation. Copies of the signed RCC and exemption forms must be provided to Straightforward BC. In addition, the responsible minister or head of a regulatory authority must make the RCC available to the public, at no charge, on request.

The RCC itself is simple and includes several questions in eleven different categories: *i)* reverse onus: need is justified, *ii)* cost-benefit analysis, *iii)* competitive analysis, *iv)* streamlined design, *v)* replacement principle, *vi)* results-based design, *vii)* transparent development, *viii)* time and cost of compliance, *ix)* plain language, *x)* simple communications, and *xi)* sunset review/expiry principle.

Each category has a yes/no checkbox next to it. If the answers to the questions in any category are "no", then an explanation must be attached. At the end of the form, there is a box that asks how many regulatory requirements will be added and how many will be eliminated, as well as what the net change will be. When the reform policy was first introduced in 2001, two regulatory requirements had to be eliminated for every one introduced. Since 2004, when the original goal to reduce regulation by one-third was met, a target of no net increase has been in place and extended to 2015. The RCC encouraged a change in culture from one where regulation was seen as the answer to any problem and the private sector was viewed with some suspicion to one where questions are asked, alternatives are considered, and the contribution that businesses make to the economy is better understood.

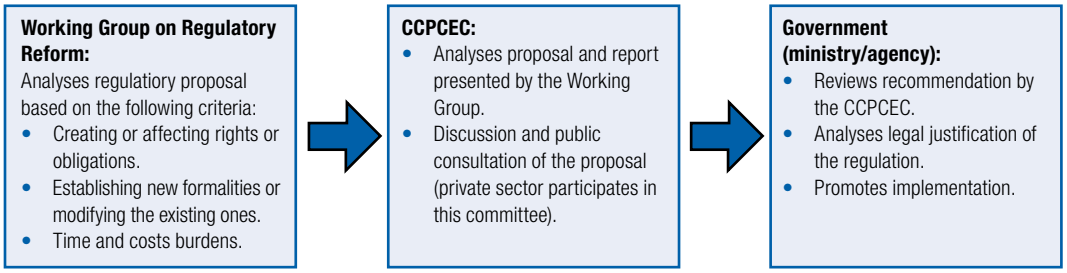
Recognising that SMEs are more vulnerable to increased costs created by accumulated administrative burdens, several jurisdictions have introduced special controls to avoid damaging the start-up and operation of small businesses. The province of New Brunswick, Canada, started the integration of a business impact test (BIT) in 2002 as part of the process for all new and amended legislation or regulations to prevent additional red tape. In 2005 the BIT application was extended to include policy advice to government. BIT ensures that decision-makers are aware of the potential impacts of any new policy, legislative or regulatory amendment on business. The BIT will determine whether or not regulatory change is the best option to address public policy problems, while taking into account stakeholders' views, the impact on the province's competitiveness, and the cost-benefit to government and business.

Source: García Villarreal, Jacobo Pastor (2010), "Successful Practices and Policies to Promote Regulatory Reform and Entrepreneurship at the Sub-national Level", OECD Working Papers on Public Governance, No. 18, and www.gnb.ca/cnb/promos/red-tape/index-e.asp

Committees/Councils

Establishing consultative bodies that support the review of draft regulatory proposals is a technique that can be used to promote the use of impact assessment. In Colima, for example, the State Council for Regulatory Reform, composed by government officials and representatives from the private sector, academia and civil society, and headed by the governor, is responsible for reviewing RIAs submitted to SEFOMEC and, through this process, consultation is also ensured.

Figure 7.3. Process to review draft regulatory proposals in Baja California



Source: García Villarreal, Jacobo Pastor (2010), "Successful Practices and Policies to Promote Regulatory Reform and Entrepreneurship at the Sub-national Level", OECD Working Papers on Public Governance, No. 18.

In Baja California, Mexico, the State Law for the Promotion of Competitiveness and Economic Development establishes guidance on how to prepare new regulations (see Figure 7.3).[22] Two institutions participate in the process, the Working Group on Regulatory Reform and the Consulting Committee to Promote Competitiveness and Economic Development (CCPCEC), a collegial body composed of public and private representatives that discuss proposals and finds agreement in a consensual way. The main responsibilities of the committee are the following:

- Promoting simplification, deregulation, improvement, and effectiveness of the legal framework linked to business activities at the state and municipal levels.
- Analysing the proposals presented by the Working Group on Regulatory Reform.

The Working Group is the first in analysing regulatory proposals. The criterion it applies includes impacts on creating or affecting rights, establishing new formalities or modifying the existing ones, and time and cost burdens implied by regulations. The Working Group is the forum for stakeholders to advance arguments on the strengths and weaknesses of regulatory proposals. Once a decision is taken, the Working Group prepares a report with a positive or negative opinion to be sent, along with the proposal, to the CCPCEC. This committee discusses the materials and holds the proposal to public consultation. If it is approved, it will be sent back to the government, which analyses its legal justification. The proposal is later on sent to the adequate institution in charge of its implementation.

Legal and budget analysis

Legal and budget analyses of draft regulatory proposals are rather common at sub-national levels. In many countries, sub-national levels of government are required to present assessments on the legality and financial resources needed to implement a proposal (see Box 7.16 for the case of Veneto, Italy).

In the case of Mexico, some states have prepared guidelines to improve legal drafting of normative acts. The state of Guanajuato, for instance, has developed a Manual to Draft Regulatory Proposals (*Manual para la Elaboración de Proyectos Normativos*)[23] and Guidelines for Legal Drafting in the State and Municipalities (*Técnica Normativa para Elaborar Instrumentos Jurídicos en el Estado y los Municipios*), which establish general rules for drafting legal instruments and help government officials to develop skills in legal drafting following quality standards.

Box 7.16. Legal and budget ex ante analysis in Veneto, Italy

In Veneto, Italy, where RIA has not been formally adopted, all draft laws are generally supported by a report that illustrates the content and purposes, and by an economic and financial analysis sheet (which can be prepared by the proposing directorate and the Budget Directorate of the Executive). This sheet is limited to information on the instrument being adopted. It does not include an assessment of alternatives and the impact evaluation is limited to the regulatory administration, without considering the target population of laws and regulations. It therefore cannot be considered a regulatory impact analysis. Draft laws submitted by the regional Executive are also appended with advice on legislative legitimacy by the Legislative Affairs Directorate under the General Secretariat of Programming of the Executive (that generally provides bodies and units involved with assistance and counsel in the preparation of draft laws, regulations, circulars, and administrative measures, as well as counsel activities).

Source: adapted from the website of the World Bank, Enterprise Surveys, (www.enterprisesurveys.org, accessed 19 Feburary 2013.

Inspections and enforcement

In OECD countries, the issue of regulatory implementation is receiving increased attention in relation to existing multi-level governance arrangements because in order to achieve policy goals, regulation must be adequately applied and enforced.

Sub-national governments play a critical role in implementation, enforcement, and ensuring compliance. In a federal context, most of the activities related to monitoring compliance lie in the sub-national levels of government. The more localised the level of government is, the closer the relationship with regulated parties tends to be. But boundaries on implementation powers and ensuring compliance are not always clear, which calls for strong co-ordination to avoid duplication and overlapping. A classification of various instruments that impose compliance obligations and facilitate enforcement shows the complexity of the interaction when they are used by various levels of government (see Table 7.2). In the Mexican context, this is even more complex for municipalities, which are responsible for several activities related to the implementation and compliance of regulatory instruments.

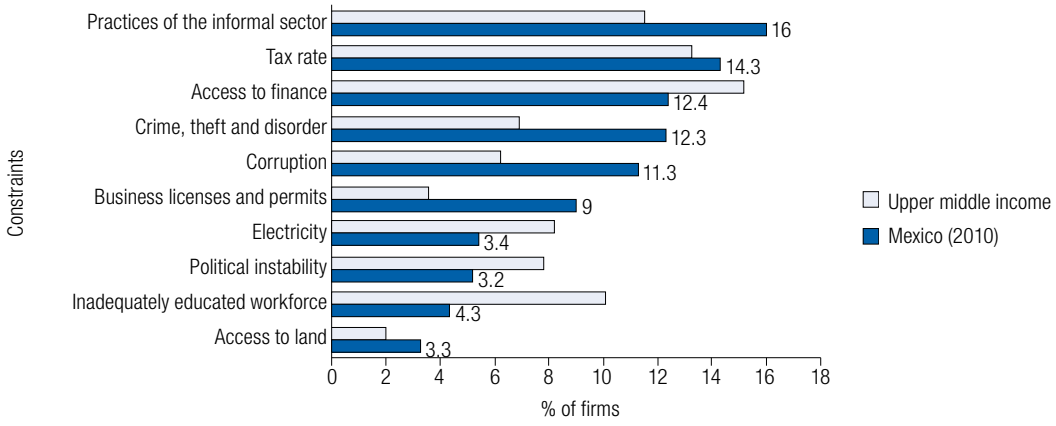
Table 7.2. Compliance and enforcement instruments that interact among levels of government

	Compliance obligations	Enforcement mechanisms	Sanctions
Type of instruments	Regulations, registrations, notifications, permits, authorisations, etc.	Reports, verifications, inspections, surveillance activities, etc.	Confiscation, demolition, imprisonment, warnings, fines, detention, closure, etc.

Source: Adapted from COFEMER y CIDE (sin año), Técnica Normativa para Elaborar Regulaciones Municipales, Mexico.

An additional issue related to compliance and enforcement is informality, not only understood as the number of unregistered companies, but also as the various practices companies might follow to avoid compliance with regulations. In Mexico the practices of the informal sector are perceived by businesses as the main constraint for development (see Figure 7.4). It is estimated that 70.3% of Mexican companies compete against informal or unregistered firms, compared to 56.3% of companies that have the same perception around the world (World Bank, 2011).

Figure 7.4. The top ten business environment constraints



Source: adapted from the website of the World Bank, Enterprise Surveys, www.enterprisesurveys.org, accessed 19 Feburary 2013.

As an example, the sub-national edition of *Doing Business in Mexico* showed in 2009 the differences of various regulatory issues in Mexican cities. The number of days taken to enforce contracts[24] varied from 248 days in Zacatecas to 560 days in Cancún (municipality of Benito Juárez). Those variations were maintained in the analysis conducted by *Doing Business in Mexico* in 2012. These numbers show not only the high variation degree in terms of being able to complete a regulatory action, and the failures of some regulatory arrangements, but also the challenge to have an efficient and effective judicial system that facilitates regulatory enforcement and compliance at sub-national levels of government.

Additional research and surveys have shown the impact of enforcement and compliance for competitiveness in Mexico. An analysis of *Enterprise Surveys*, conducted by the World Bank in seven Mexican states, shows the correlation between the ease of enforcing a contract and productivity:[25] in Coahuila, Jalisco, and Nuevo León, where resolving a commercial dispute is more efficient, labour productivity for SMEs is higher than in Mexico City, Puebla, the state of Mexico, and Veracruz, where commercial litigation is less efficient.

Only 20.4% of Mexican companies believe the court system is fair, impartial and uncorrupted, but the perception worsens among small firms with less than 20 employees, to 19.6%, certainly as a consequence of the fact that smaller companies find it more difficult to pay for legal services in case of conflicts or disputes. The Mexican case is far from the 41.6% of companies in upper middle economies or the 31.3% average registered in Latin American countries that are confident in the court system as a mechanism for conflict resolution.

This chapter will not look into the judicial system as part of enforcement and compliance in the regulatory governance structure, but it does point out that this issue deserves further analysis and research to better understand the way businesses and citizens have a proper redress system and are offered a sound mechanism for conflict resolution, in particular when it comes to solving issues arising from regulatory decisions in a multi-level context.

The business inspection system at sub-national levels of government

Inspections are key instruments for enforcement and compliance. A good inspection system brings several benefits to the whole regulatory approach (World Bank, 2006):

- Maximising compliance with clear and legitimate government regulations by detecting and deterring non-compliance consistently and fairly.
- Minimising uncertainty and regulatory risks for businesses by operating transparently and under the rule of law.
- Fighting corruption by reducing the opportunity for abuse of discretionary powers.
- Decreasing costs for businesses and optimising costs for governments by using resources efficiently to target the highest risks.

There is a broad variety of inspections, covering a wide range of policy fields. Each type requires particular skills, authorisations, forms, equipment and procedures. It would be impossible to review all current practices of inspection in Mexico. This section will therefore focus mainly on the work done so far and achievements based on current experiences, identifying further areas of analysis.

Inspections are regulated in Mexico by law. At the federal level, the LFPA establishes general guidelines for regulators to verify enforcement and compliance with regulatory requirements. Many states have mirrored this legal framework and established state laws on administrative procedure to go deeper on the legal basis for inspection and verification of obligations and rights.[26] Municipalities have also published legal documents where they explain the processes of inspection and other forms of verification.

The involvement of sub-national levels of government in inspections depends greatly on the activities, responsibilities, and attributions they have been assigned by law. Section 5.1 describes the activities in which municipalities have attributions and where inspections are applied as a way to ensure compliance with regulatory requirements. In addition, particular economic activities envisage that states and municipalities conduct inspections in a coordinated way, sometimes based on a federal framework.[27]

Co-ordination among various actors is key in order to improve inspection systems. Many states and municipalities are now discussing better ways to implement regulations and ensure that businesses and citizens comply with them. As some policy areas are part of the attributions of the three levels of government, it has been essential to talk the same language and ensure coherence in the application of regulations. An innovative scheme concerning environmental regulation and inspections was designed in the state of Aguascalientes (see Box 7.17).

In Mexico, there is little data about the compliance degree with regulations. For instance, there is no comprehensive data on how inspections contribute to increase the compliance level with specific regulations. Information on this field is collected informally through complaints made by citizens and businesses, but governments tend to see a positive trend with the inclusion of regulatory improvement programmes.

The recent efforts at federal, state and municipal level to improve the business environment have contributed to stress the relevance of streamlining inspection systems and strengthen co-ordination among levels of government. The SARE has contributed to improve these procedures by reducing the time and costs of inspections and the discretion of public servants. The SARE has also allowed conducting inspections *ex post*, instead of doing it *ex ante*, for certain procedures and in particular policy fields, such as inspecting proper land use or issuing the operations license. This feature avoids delaying business start-up. Cases like Tijuana, where the economic dynamic is intense, have showed that *ex ante* generalised inspections, even for activities implying little or no risks, might be a constraint for businesses, slowing down registration and operation (and hence, creating incentives for informality).

Box 7.17. Compliance with the Environmental Protection Law of the State of Aguascalientes

In order to ensure a high compliance rate (95% estimated by state authorities), the implementation of the Environmental Protection Law of Aguascalientes is based on the following actions:

- There is strong co-ordination between SEMARNAT and the State Environmental Protection Agency. The first one is responsible for issuing authorisations and the second one is in charge of ensuring compliance. When it comes to specific issues, the three levels of government interact to protect the environment.
- Inspections are conducted based on irregularities or complaints that authorities receive. In 2011, for instance, 55 supervision visits, 526 inspections to brick producers, and 41 inspections to waste water installations in businesses were conducted. The state government received 166 complaints and 153 citizen reports.
- In 2001, the state government provided training to 26 businesses on how to comply with the bylaws on waste prevention and management. Interaction with businesses is an integral part to ensure compliance.
- The Urban Code and the Municipal Code were amended in order to address important issues for the Environmental Protection Law, such as land use and construction.
- The state has promoted self-regulation agreements. Producers, businesses or chambers are encouraged to promote self-regulation or voluntary agreements to improve environmental performance and set up targets.
- Environmental auditing has also been promoted and it is carried out on a voluntary basis. With this scheme, enterprises can get incentives to allow authorities to make visits and assess the compliance degree with regulation. A third party environmental auditing company is certified to conduct the task.

Source: Government of the State of Colima, responses to OECD questionnaire, 2012.

Introducing a risk-based approach to inspections

Risk assessment techniques can increase the efficiency of inspection programmes: first, by facilitating the identification of high-priority problems; second, by determining the probability that a business may be out of compliance; finally, by estimating the probability that an offense will be detected during an inspection. Variables like these can be used to target inspections where they are most likely to find serious infractions, helping to reduce costs and risks, and improve overall compliance.

Mexico uses risk-based approaches to conduct inspections in specific cases, and it seems that there is a tendency to strengthen this tool and approach. For instance, the Mexican customs service supplements a small number of random inspections of shipments with risk-based inspections triggered by such factors as the type of goods declared (those that can be easily smuggled or have been smuggled in the past), new importers without previous records, customs brokers with dubious records, and strategic sectors. The time to clear a shipment at the Mexico City airport has fallen from up to three days to an average of only 20 minutes, even as the volume of trade has grown enormously (Coolidge, 2006).

The SARE includes a risk-based approach to start up businesses, which is also a starting point for authorities to treat inspections in different ways. At municipal level, business activities are classified in three main groups:

- A, for activities that do not impose any risk or harm to health or environment and where no consumption of alcoholic beverages is included.
- B, for activities that require minor inspections.
- C and D, for which inspections have to be detailed as there are possible health and environmental risks or include the consumption of alcoholic beverages.

A risk-based approach is also used in environmental regulation in Mexico. In Jalisco, for instance, the state government introduced the Unique Environmental License (LAU), which encourages co-ordination of the three levels of government and is based on a risk-approach: the riskier the activity, the more institutions and levels of government involved, as more inspections will be required.

Other mechanisms to ensure enforcement by states and municipalities

In addition to inspections, other tools and mechanisms can be used to ensure that businesses and citizens comply with regulations. Inspection costs and the resources needed to rely exclusively on inspection systems might create incentives to explore different ways to reduce non-compliance. In Mexico, the promulgation of regulatory reform state laws opened up the opportunity to new forms of planning, monitoring, and compliance mechanisms.

Auditing and monitoring

Audit offices have progressively widened their role from a purely accounting perspective. They often play an important part in assessing the administrations' performance, including their effectiveness in implementing regulation. Assessing regulatory quality at local levels of government still requires some development and improvement.

In Jalisco, the Office of the State Comptroller is in charge of monitoring the so-called Service Delivery Charters, which provide citizens and businesses with all the basic information about services and formalities. The state government has trained government officials in preparing the charters. The Comptroller is in charge of monitoring compliance with the procedures established by the charters and that citizens and businesses receive all the information they need to apply for permits and services.

Allocation of financial resources

Allocating financial resources with the condition to improve regulatory outcomes might be an additional technique to improve compliance levels. In Jalisco, the implementation of the Regulatory Improvement Programme at state and municipal levels is subject to scrutiny by the General Direction for Regulatory Reform through the Annual Operating Programme (POA). Compliance with targets and goals is essential to get allocated financial resources to continue the implementation of the programme.

The management of the stock of regulations at the sub-national level

Centralised e-registries and the use of e-government tools for simplification purposes

State and municipal government portals, such as consolidated registries and electronic one-stop shops, are common tools for simplification and regulatory transparency. These portals vary in their degrees of sophistication but, in general, four stages can be identified (OECD, 2006, p. 66):

Box 7.18. Sub-national practices to improve inspections in Mexico

In Baja California, several inspections have been subject to complaints by citizens and businesses in terms of the discretion of public servants. One of them was the car license (property and road tax). The government decided to record (video and tape) the inspections and verification units in their interactions with citizens. The Comptroller Office, the internal Auditing Office, and the Office for Control and Legality are the only institutions that can see the recordings, and inspectors have no way to modify them. Since the implementation of this technique, the number of corruption complaints has decreased.

The municipality of Guadalajara, Jalisco, established a single body of inspectors called the Multi-task Inspection Unit, which is in charge of conducting inspections dealing with licenses, public works, environment, and fire safety. This unit has made inspections less costly and helped to decrease the time taken to issue operation licenses by 70%. In addition to these benefits, the municipality can concentrate on training and controlling one single body of inspectors, instead of having different bodies with inconsistent practices. The municipality of Colima also established "multi-disciplinary inspectors" that are in charge of covering various fields, facilitating the start-up process and the issuing of a construction license.

Source: Government of the State of Baja California and Government of the State of Jalisco, responses to OECD questionnaire, 2012.

- Information necessary to start the procedures to obtain public services is available online.
- One-way interaction: Websites offer the possibility to download and print forms to start the procedures to obtain public services or apply for a permit.
- Two-way interaction: Publicly accessible websites offer the possibility of an electronic intake with an official electronic form to start the procedures to obtain public services.
- Full electronic case handling: Publicly accessible websites offer the possibility to completely manage a public service electronically, including decision and delivery.

The degree of online sophistication tends to be situated between one-way and two-way interaction. Most online government services in OECD countries provide information and downloadable forms for users, but they cannot offer the capacity to complete transactions online.

Despite these different degrees of sophistication, even tools in stages one or two can be very useful to advance regulatory transparency. Centralised registries can be found in several Mexican states and even in some municipalities. In fact, the 22 regulatory reform state laws mandate the establishment of a centralised registry of formalities and public services. Availability of regulatory information facilitates the completion of required formalities to businesses and citizens and, therefore, increases compliance with regulations. However, previous field work carried out by the OECD found that it is common to come across several sources of regulatory information (counters, hotlines, websites, etc.) that are not always consistent among them. This may lead to confusion, opportunity and administrative costs for businesses.

Centralised e-registries are a useful tool to avoid such inconsistency. They usually work as a centralised database from which other sources of information can be fed. For example, in the state of Colima, the hotline *01800 Informatel* relies on the information contained in the Registry of Formalities and Services to answer the questions of entrepreneurs looking for guidance on matters related to state regulations. Likewise, the web portals of each agency of the state government are linked to the central registry, so that the information is consistent and up-to-date.

Accessible centralised e-registries provide legal certainty to entrepreneurs and help them save on administrative costs, particularly when these registries are binding, just like in the case of the Federal Registry of Formalities and Services (RFTS). Making these registries binding implies that public servants cannot ask for more requirements or documents than those established publicly in the registry and, therefore, users have no obligation to provide them. Usually, binding registries also imply that public servants can be sanctioned if they ask for additional requirements not established in the registry. In addition, centralised registries not only provide certainty concerning the requirements to complete a formality, but also in terms of other important factors for entrepreneurs, such as turnaround times, costs, offices where the formalities must be completed, and business hours, among others (see Box 7.19 on the case of Nuevo León).

Building a centralised registry of regulations, formalities, and services is an essential step in order to be able to clean up the regulatory stock periodically and ensure that regulations are meeting their objectives (see the next section). Having such a centralised database can also be the first step to move to transactional portals, such as electronic one-stop shops. The portal *miempresa.col.gob.mx* of the state of Colima, described in section 5.3.1, illustrates the usefulness of such a tool for simplification purposes. In fact, electronic one-stop shops are widely used at the international level (see Box 7.20 on the case of British Columbia).

Regulatory reviews at the sub-national level

High quality regulation that was relevant at one point in time may become outdated as circumstances change. Periodic evaluations and reviews are needed to assess the impact of regulations and whether the desired outcomes are being accomplished. Reviews also introduce a measure of accountability on the regulatory reform policy. Regulatory reviews are a complement to *ex ante* regulatory controls, as the former correct problems and the latter avoid them. They are also being undertaken in several OECD countries as a priority to release potential for growth in response to economic crises.

The quality of reviews is an issue to pay attention to. The OECD has found that in many cases regulatory agencies have substantial discretion to conduct reviews in the absence of standardised evaluation techniques and criteria. When this happens, reviews become an ad hoc and unstructured practice that focuses only on marginal changes to complex regulatory structures (OECD, 2002, p. 35).

Regulatory review is probably one of the least used tools in Mexican states and municipalities. Contrary to what happens with RIA and centralised registries, regulatory reform state laws do not consider the implementation of reviews. In fact, the regulatory governance approach would require states and municipalities to make a more systematic and periodic use of regulatory reviews.

Even though there are different types of regulatory reviews, states such as Nuevo León and Zacatecas are applying the technique known as "regulatory guillotine", which is based on an instruction from the top level of government, aimed at regulatory agencies, to review the complete stock of regulations against criteria such as need and efficiency (see Box 7.21 on the case of Zacatecas). This type of review has a wide scope by nullifying regulations that are not formally registered after a certain date. However, exercises based on this technique may be weakened by exceptions that exclude burdensome regulations, lack of priorities, fragmentation, and lack of depth.

Box 7.19. The Centralised Registry of Formalities and Services of the State of Nuevo León

The Law for Regulatory Reform in the State of Nuevo León established a central database in which all formalities and services administered by the state public administration must be registered to advance regulatory transparency and legal certainty. It is linked to the state government's portal and allows citizens to know the requisites and criteria applied to manage the formalities and services handled by the state government.

The content of the registry is binding in the sense that public servants must manage formalities and services in the way described in the registry and cannot ask users for additional requirements. The construction of the registry is based on electronic formats distributed by the UMR to every ministry and agency of the state public administration. According to the law, the registry must include the following information for each formality: *i)* name of the formality or public service; *ii)* legal justification; *iii)* format to apply for the service or comply with the formality (specific format, written request, *etc.*); *iv)* information and documents to be attached to the application; *v)* maximum turnaround time and whether the *silent-is-consent* rule is applicable; *vi)* cost and, if applicable, the way to determine it; *vii)* validity of the permit, license, or authorisation to be obtained; *viii)* criteria for resolution; *ix)* administrative units and public servants to whom applications must be addressed; *x)* business hours of the offices managing the formality or service and *xi)* phone number, fax, and e-mail, as well as physical address of these offices.

The government of Nuevo Leon issued the Manual for the operation of the State Registry of Formalities and Services by the ministries and agencies of the state public administration, as a way to facilitate the process of construction and management of the centralised database. It describes the responsibilities of the UMR and the ministries and agencies of the state public administration, the different types of formalities and services, and the process to register a formality or service, as well as to modify or cancel the registration.

Source: Government of the State of Nuevo Leon, responses to OECD questionnaire, 2012.

International experiences indicate that there are certain features that facilitate success of regulatory reviews to meet objectives such as decreasing the burdens of regulations, simplifying and updating the regulatory stock, avoiding duplication, and releasing economic potential to advance competitiveness. These features include the following:

- Top-level political support: A core government body usually leads the reforms. High ranking officials, empowered by the highest political authorities, lead regulatory reviews.
- Engagement with regulators to maintain momentum for reform: The core government body leading the review maintains permanent communication with regulatory agencies, and also provides incentives, guidance, and advice so that they adopt a proactive stance.
- Involvement of business, unions, citizen groups, and other stakeholders of reform: Consulting businesses and other stakeholders affected by regulation implies several benefits, such as obtaining information to focus the review on the most burdensome regulations and formalities, defining objectives, and preserving the public interest over private ones.

Box 7.20. Centralised e-registries and one-stop shops in British Columbia

British Columbia is leader in e-government strategies with two simplification tools to highlight. The first is OneStop (*www.bcbusinessregistry.ca*), which was launched in 1996 to make it easier for businesses to interact with multiple levels of government. The site allows businesses to complete commonly required registrations and transactions, such as registering the business, registering to pay provincial and federal sales taxes, and applying for a municipal business license. Entrepreneurs can also get a business name approved and change their business addresses. There are 79 local governments within British Columbia that are partners with OneStop. It is user-friendly and has incorporated customer service support through online help and a toll-free help desk. OneStop is estimated to save five hours when registering a business and six to seven hours when changing address information. In fact, it takes businesses less than an hour to complete their registrations using OneStop.

The other e-tool to highlight is BizPal (*www.bizpal.ca*), which allows businesses to go online and determine all the business permits and licenses that entrepreneurs must comply with from the three levels of government. It saves more than six hours of document search time. A process that often took a full day of research now takes 20 or 30 minutes. BizPal is currently available in 110 communities throughout British Columbia.

Source: García Villarreal, Jacobo Pastor (2010), "Successful Practices and Policies to Promote Regulatory Reform and Entrepreneurship at the Sub-national Level", OECD Working Papers on Public Governance, No. 18, and Straightforward BC (2012), Achieving a Modern Regulatory Environment: BC's Regulatory Reform Initiative, First Annual Report – 2011/2012, available at www.straightforwardbc.gov.bc.ca.

- Planning, organisation, and guidance to carry out reviews: Defining objectives, responsibilities, and a schedule is key to the success of regulatory reviews. Likewise, criteria are established to simplify and eliminate regulations and the formalities derived from them. These criteria may include cost-benefit analysis and legal justification, among others.
- Organisation in stages: Regulatory reviews are usually organised in three stages: *i)* compiling the stock of regulations and formalities (i.e., a centralised registry), *ii)* classifying regulations and formalities according to their need and relevance, and *iii)* cleaning up the stock by eliminating or simplifying regulations.
- Capacity-building and facilitation: The government body leading the regulatory review produces guidelines, manuals, and other materials, besides training regulatory agencies.
- Measuring economic benefits: This is useful to maintain momentum for the different stages of the review, justify the investment that it implies, and communicate the results in a language easy to understand for the public[28] (see Box 7.21 on the experience of the state of Zacatecas).
- Communicating the results to the public: Communicating the results helps keep regulatory reform as a priority in the political agenda and facilitates the periodic repetition of regulatory reviews, instead of an approach based on a "one-off" exercise.
- Preventive measures to avoid the reconstitution of the regulatory stock: In addition to periodic reviews, other measures are established to control and limit the flow of regulations, such as RIA or regulatory contention decrees.

Box 7.21. The regulatory guillotine implemented in the state of Zacatecas

In the framework of a co-ordination agreement between the COFEMER and the state government of Zacatecas, a regulatory guillotine was launched in September 2011. The exercise aims at identifying all the formalities that the state government requires to its citizens, quantifying the compliance costs of those formalities, and decreasing those costs by implementing administrative simplification and deregulation.

The project is structured in two stages: *i*) costing of state formalities, and *ii*) proposing initiatives to decrease regulatory burdens and measuring the reductions to be achieved. The first stage took five months and consisted on the costing of 823 formalities (730 state formalities and 93 federal formalities) based on a simplified version of the Standard Cost Model. According to the results of the costing, the 730 state formalities imply 9 663 797 transactions per year, involve 56 state agencies and ministries, and took 15 days on average for resolution, with 10 requisites on average. It concluded that 37% of the state formalities impact business activities, with an average cost of $18 303 pesos. The aggregated economic cost of state formalities was estimated at 1.44% of the state of Zacatecas' GDP.

The costing exercise helped the state government identify the formalities that imply the highest administrative burdens, opportunity costs, and aggregated economic costs and, therefore, will be useful to target deregulation and simplification initiatives. Likewise, the COFEMER devised a set of recommendations for the state of Zacatecas, such as designing a centralised registry of formalities and services and publishing it on the Internet, establishing an electronic platform to manage formalities, defining turnaround deadlines for state formalities, verifying that the information about requisites and documents to be attached to applications is clear, and establishing the *silent-is-consent* rule.

The second stage was on process as of April 2012 and concentrates on eliminating and simplifying the most burdensome formalities identified, as well as on measuring the benefits to be realised.

Source: Government of the State of Zacatecas and Federal Commission for Regulatory Improvement of Mexico, responses to OECD questionnaire, 2012.

Another widely used technique at the international level is that of sunsetting or automatic review clauses (see Box 7.22 on the case of British Columbia). This consists on setting an automatic expiry date for new laws and regulations upon adoption. Regulations subject to sunsetting can only extend their effect if they are remade through standard rule-making procedures. This kind of reviews reduces the average age of the regulatory structure and ensures periodic reform of the regulatory stock.

Key findings and policy options

The agenda to strengthen and institutionalise regulatory reform at the sub-national level must be adopted by the incoming 2012-18 administration so that the resources invested so far are not wasted. A backlash may reverse the gains Mexico has experienced in terms of business environment, as reflected in indicators such as the *Doing Business* of the World Bank and the *Global Competitiveness Report* of the World Economic Forum.

Box 7.22. Regulatory reviews in British Columbia

In British Columbia, sunsetting is part of the Regulatory Criteria Checklist, but is not required for all new regulations. Although there is no formal process for reviewing existing regulations, the target of a net zero increase in regulatory requirements has developed a culture of continuous improvement. Ministries are forced to continually review their existing stocks of legislation, regulation, and policy as new regulatory requirements are introduced. There are also ad hoc reviews as suggestions are welcomed by Straightforward BC and many of the ministers responsible have actively encouraged people to give them suggestions, but there is no specific mechanism that solicits advice from the general public.

Source: García Villarreal, Jacobo Pastor (2010), "Successful Practices and Policies to Promote Regulatory Reform and Entrepreneurship at the Sub-national Level", OECD Working Papers on Public Governance, No. 18.

Significant progress has been achieved in terms of raising regulatory reform in the political agenda of states and municipalities. It is time now to strengthen the institutions that support regulatory reform, upgrade multi-level co-ordination, and move to more comprehensive and participative regulatory policies, at the same time that administrative simplification continues to be an important tool.

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

The federal states and municipalities of Mexico have been paying more and more attention to regulatory reform in the last few years.[29] However, the degree of political commitment to better regulation varies significantly from one state to another. While some states have built centralised registries of formalities and regulations, carry out RIA, and apply administrative simplification making use of e-government tools, in others the issue is not the political agenda. The same happens in municipalities, but the degree of diversity is more significant.

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

In order for regulatory reform to take root and achieve continuity in the states and municipalities of Mexico, solid institutions need to be developed. Having regulatory reform in a law (devoted exclusively to the matter or in the context of economic development) is absolutely necessary to set the basic institutions to deploy it, but it is far from being sufficient to guarantee success. A law exclusively dedicated to regulatory reform may provide the opportunity to consider more regulatory tools but, again, it is not a guarantee for implementation. Bylaws must also accompany the primary laws so that specific implementation mechanisms are anticipated. Tools and procedures such as consultation, e-government, and regulatory reviews may be considered in these legal instruments, so that the approach of a regulatory governance cycle is embedded. Likewise, comprehensiveness, citizen participation and long term perspective must be principles to follow. Above all, there must be empowered institutions in charge of following up the implementation of regulatory reform, so that the application of the most sophisticated tools is facilitated.

A target must be set for every state to have a law on regulatory reform (with its respective bylaws), a citizen council, and a unit in charge of regulatory reform. Where implementation has not taken place, reforming and re-launching the state law for regulatory reform may create momentum for the development of tools and institutions (as was the case in Colima). Municipalities must be included in these institutions, so that they develop their own units and programmes.

States and municipalities must designate a unit in charge of leading regulatory reform and following up programmes and objectives, so that the initial momentum created by the publication of a law on regulatory reform is not lost over time. Whichever the institutional structure chosen, it must be set in a law and politically empowered to carry out its objectives. Its organisation and attributions must also be defined by law, including, at least, three different roles (OECD, 2002, pp. 89-90):

- The "Police" task (challenge function): A central pillar of regulatory policy is the concept of a body at the centre of government assessing the substantive quality of new regulation and working to ensure that ministries comply with the quality principles embodied in the assessment criteria. This is particularly relevant for states and municipalities that are already applying RIA or some other form of control on the flow of regulations.
- The "Advisor/Facilitator" task (providing advice and support): Government bodies in charge of regulatory reform also advise state offices and municipalities to draft their regulatory programmes and train their staff through seminars, workshops, and good practices.
- Advocacy: Drafting annual reports and programmes, strategically guiding regulatory policy, and communicating its achievements are activities carried out by regulatory reform bodies.

Political commitment to regulatory reform, illustrated by empowered institutions, is key to move forward. Governors, ministers, and mayors must empower the units in charge of regulatory reform, for example, by referring to regulatory reform in their public interventions, participating in the events organised by these units, and evaluating closely the results of regulatory reform policies. "Naming and shaming" is another good strategy to empower the units to follow up those agencies that are underperforming.

Concerning citizen councils, their roles, characteristics, and working protocols must be reviewed, particularly where they are notoriously inactive, to make sure they fulfil the good practices documented by the COFEMER and the OECD. Councils must be active, representative, inclusive, and have a well-defined structure and mandate, established by law.

Regarding capacity-building, while it must be recognised that the COFEMER has increased training and implementation assistance for states and municipalities, going "beyond the SARE", it is clear that its resources are limited to address the needs of every state and municipality in the country. In consequence, the key to advance capacity building even further is to gain the commitment of state governments to add up to the work of the COFEMER, as well as to engage municipalities. State governments should take a more active approach in developing and retaining talent.

Furthermore, state governments should play a critical role in engaging municipalities in the regulatory reform agenda, providing resources to achieve this engagement, and facilitating the development of their capacities. States and municipalities must be active agents, avoiding a passive stance that relies on what the COFEMER and the federal government can do by themselves. In order to facilitate an active approach, organisations such as the AMSDE, the National Federation of Mexican Municipalities (FENAMM), the Mexican Municipalities Association (AMMAC), and the Association of Local Authorities of Mexico (AALMAC) can play an important role. First of all, they can promote the political agreement that regulatory reform should be a permanent policy and institutions and capacities need to be developed to achieve this continuity beyond single administrations. Second, they can help to set standards and guidelines, and promote the exchange of good practices. Third, they can serve as intermediary bodies to channel federal resources to worthwhile projects, serving as a filter to evaluate their feasibility. Finally, they can collect the experiences of states and municipalities and provide feedback for the COFEMER and other federal agencies so that they can respond better to specific needs.

States and municipalities may also establish special regimes for personnel working in commissions and units in charge of regulatory reform (i.e., professional civil services). This would be particularly feasible in states where commissions (decentralised or deconcentrated) take the leadership of regulatory reform. Just like in some autonomous bodies, a professional service may be created for public officials who serve in these commissions, so that their recruitment, development, and dismissal are independent of political cycles and based on merits and expertise in the field.

In addition, the three levels of government could aim at developing and establishing a professional or skills certification on regulatory reform, based on the work of an independent evaluator to run the process (i.e., CONOCER or universities). Given the complexity of this proposal, there may not be enough time for the current administration to do it, but it may certainly be adopted by the incoming one.

Finally, the federal government, via the Ministry of Economy, may establish a fund to support capacity building for regulatory reform in states and municipalities. The four states consulted to carry out this review, Aguascalientes, Colima, Jalisco, and Nuevo León, agreed that a funding package based on performance would be a good mechanism to support regulatory reform at the sub-national level. During 2012, the *PYME* Fund would devote some resources to projects related to regulatory reform. This is a step in the right direction, but it is important that funding is based on performance, so that incentives are created to continue progressing. Hence, an evaluation methodology needs to be devised to assess whether a particular state or municipality is making progress and can continue receiving support from the fund. This accountability mechanism could be partially based on the indicators that the COFEMER is currently developing to assess the institutional quality of regulatory reform in the states.

States can replicate this funding strategy with municipalities. Municipalities have a high level of dependence on transfers from the federal and state governments. Regulatory reform has the potential to rationalise local public administrations and make them more efficient, so it is in the interest of the three levels to advance it in municipalities. This is a legitimate strategy to guarantee a good use of public resources and evaluate their use. In Jalisco, for example, there is a budget line named "Jalisco's Productivity", which can be used to fund projects related to regulatory reform. Some of the projects funded through this budget line are the Interoperability Platform for Land Use and Official Number Formalities (SIFAE), which benefits the eight municipalities in the greater metropolitan area of Guadalajara, and the portal "Your business in one day" (*Tu empresa en un día*).

Mexico should aspire to reach convergence of regulatory policies at sub-national levels and upgrade multi-level co-ordination

Convergence of the regulatory policies of states and municipalities should be an objective to pursue in the medium term. Differences in the ability to manage bureaucratic resistance or foster change across government can make reform solely driven by the states difficult.

Mexico could replicate some of the features of "co-operative federalism" to improve multi-level co-ordination, such as a solid political agreement to pursue regulatory reform at the national and local levels, funding schemes based on performance, and institutionalised monitoring of progress. Currently, there is no mechanism for systematically pooling resources from the three levels of government on the basis of performance and the achievement of specific milestones. There is neither a monitoring mechanism, with ownership by the three levels of government, to follow up the implementation of better regulation at the sub-national level.

Co-operative federalism is based on the principle of subsidiarity, which is intended to assign decision-making to the closest level of government to the citizen. In the case of Australia, it implied commitments by the Commonwealth and states to devolve to the extent possible responsibilities for regulation and for allocation of public goods, so that government is accessible and accountable to those affected by its decisions.

The federal (Commonwealth), state and territory governments of Australia have undertaken a significant programme of coordinated national reform to improve the productivity of the economy. The Commonwealth, states and territories agreed on a reform agenda focusing on competition, regulatory reform, and human capital. This involved significant changes to the management of federal and state and territory financial relations to give the states and territories more autonomy and accountability for the delivery of services to citizens in key areas under a new intergovernmental agreement for funding arrangements, including financial incentives to facilitate or reward reforms.

Regulation reform is at the core of the Council of Australian Governments (COAG) reform agenda and improvements to national productivity (see Box 7.23). It involved actions to improve the quality of the stock and flow of regulation within the governments of the states and the Commonwealth, and to promote regulatory harmonisation and the removal of regulatory overlap and duplication at the national level. The reforms also aimed to preserve regulatory competitiveness and innovation.

The implementation of the COAG reform agenda was boosted by Commonwealth leadership and new working arrangements at the COAG, including the use of working groups of senior state officials chaired by a Commonwealth minister, to identify areas for reform and develop implementation plans. At the sub-national level, states have strengthened regulatory policies, institutions and tools to facilitate effective implementation of reform. Progress of the reforms and service delivery by jurisdictions is monitored by the COAG Reform Council (CRC), an independent body that produces ongoing reports monitoring the outcomes from the initiative. The Commonwealth agreed to provide "reward" payments to the states based on the advice of the CRC on the delivery of reforms in specified areas (see Box 7.24).

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

- A high level political agreement on public policies, including regulatory reform, which ought to be pursued permanently and under a coordinated mechanism: A national agenda to advance productivity and growth should be agreed and carried forward, facilitating ownership by the three levels of government. The top political figures, the president, governors, representatives of mayors, as well as of the legislative and judicial branches, should lead such an initiative. The agreement should aim at defining a common agenda, including regulatory reform, with specific policies that are to be pursued permanently, no matter the political party in power in any of the three levels of government. Institutions such as the CONAGO, AMSDE, FENAMM, AMMAC, and AALMAC could strengthen the call for such a far-reaching political agreement.
- Reward payments, strictly based on performance: Clearly, sub-national governments and, particularly, municipalities will need resources to upgrade their capacities, infrastructure, and governance practices. However, the international experience illustrates that multi-level transfers work better when they are conditional on performance. This would create incentives to move towards national objectives and address reasonable concerns about the efficiency and transparency in the use of resources at the sub-national level. An additional alternative is to pool resources from the three levels of government to finance regulatory reform on the basis of the achievement of specific milestones.
- Permanent and institutionalised monitoring of progress of reform initiatives through transparent mechanisms that guarantee accountability: Institutions and clear methodologies to assess progress towards national agreements should be set ensuring participation of the three levels of government, but also objectivity to carry out such assessments. Accountability should be a key feature of the scheme and its legitimacy, as well as the basis to access federal funding so that, while more flexibility is granted for states and municipalities to spend the resources, there is also a strict evaluation of the outcomes of their investments.

Regulatory policies at the sub-national level should address all the stages of the regulatory governance cycle and be participative and permanent, while incorporating an approach consisting in policies, institutions, and tools

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

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

- Federal government: Demonstrate its leadership by getting its own regulatory policy and governance structure in place as a model for states. A solid federal model with the right policy principles and governance structure to coordinate and drive a strong reform culture may encourage states to embrace it as well.
- COFEMER: Continue moving "beyond SARE" by helping states and municipalities to work on the different stages of the regulatory governance cycle through the application of tools such as RIA and regulatory reviews.

Box 7.23. The Council of Australian Governments (COAG)

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

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

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

Source: OECD (2010), *OECD Reviews of Regulatory Reform: Australia, towards a Seamless National Economy*, OECD Publishing, Paris, doi: 9789264067189-en.

- States: Integrate a regulatory governance approach into their regulatory reform laws and policies, exercise political leadership, and provide incentives for municipalities to embrace regulatory reform, particularly during transition periods.
- Municipalities: Integrate a regulatory governance approach into their acts and policies, follow state level leadership, and set mechanisms to facilitate the continuity of regulatory reform.
- AMSDE, FENAMM, AMMAC, AALMAC, etc.: Exercise political leadership, facilitate the exchange of good practices, advocate mechanisms to pool resources, and provide systematic feedback to the COFEMER.
- Citizens, business chambers, academia, NGOs, etc.: Engage, monitor, and let political leaders know that regulatory reform is important.

A core challenge for effective regulatory governance is the co-ordination of regulatory actions, from the design and development of regulations, to their implementation and enforcement, closing the loop with monitoring and evaluation which informs the development of new regulations and the adjustment of existing ones (OECD, 2011b, p. 74).

Box 7.24. The new framework for Commonwealth-states financial relations and the CRC

In November 2008, the COAG agreed to a new overarching framework for the Commonwealth's financial relations with the states, to "reduce Commonwealth prescriptions on service delivery by the states, providing them with increased flexibility in the way they deliver services to the Australian people." The Intergovernmental Agreement on Federal Financial Relations (IGA) was a new funding agreement with the objective of improving the well-being of all Australians through collaborative working mechanisms, including clearly defined roles and responsibilities and fair and sustainable financial arrangements, to facilitate a focus on long term policy development and enhanced government service delivery. The framework is also based on enhanced public accountability through simpler, standardised and more transparent performance reporting by all jurisdictions, with a focus on the achievement of outcomes, efficient service delivery, and timely public reporting.

The principles stated in the IGA require a mutually agreed statement of objectives and outcomes, outputs, roles and responsibilities, and performance indicators. In fact, for each policy area a mutually agreed statement clarifies the roles and responsibilities that will guide the Commonwealth and states in the delivery of services across the relevant sectors. The performance of all governments in achieving mutually-agreed outcomes and benchmarks is monitored by the independent CRC and reported publicly on an annual basis. The CRC also undertakes comparative analyses of the performance of governments in meeting the objectives of the national agreements.

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

Source: OECD (2010), *OECD Reviews of Regulatory Reform: Australia, towards a Seamless National Economy*, OECD Publishing, Paris, doi: 9789264067189-en.

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

- Comprehensive: Address the different stages of the regulatory governance cycle, from design and *ex ante* evaluation, including enforcement and inspection, to *ex post* assessment.
- Participative: Motivate citizen participation to provide feedback and input for regulatory proposals and facilitate the continuity of regulatory policies.
- Permanent: Stay beyond political transitions to become an institutionalised policy.

A regulatory governance cycle approach that includes policies, institutions, and tools would imply the implementation of techniques such as RIA, public consultation, risk-based regulatory management, and regulatory reviews, among others.

Regarding RIA, despite the fact that five states are using it, the quality of the analysis varies state by state and the experience is still limited. A change in the regulatory culture at

sub-national levels of government is needed. So far decisions at these levels are hardly taken based on evidence. In consequence, RIA should become the tool to ensure that evidence is put forward to decision-makers, and that they use the technical analysis to improve the decision-making process.

In states and municipalities that already have a legal basis for regulatory improvement, laws and bylaws must be reviewed to ensure the use of impact assessment is clearly adopted, introducing criteria and basic requirements for analysis. In states and municipalities that do not have any legal basis for regulatory improvement, the use of RIA and its adoption should be promoted when preparing regulatory improvement laws and bylaws.

If effectiveness and efficiency in regulatory decision-making is to be promoted through the use of RIA, the focus on key priorities could be strengthened. The instruments that should be subject to RIA could be prioritised, focusing on those that have the greatest potential to impact on the economy and society. In this way, the rigour of the analysis would match the impact of regulatory proposals. The process should be linked to particular sectoral issues or policy fields that require a better analysis for decision-making in states and municipalities. While capacities for a broad approach have been built at national level, most of the states and municipalities need additional resources and capacities to be able to use RIA for almost all regulatory interventions.

An important feature related to RIA that has to be clearly allocated for the successful use of the tool is the final signature or responsibility for the analysis. Endorsement of RIA should be done at senior and political level, which is not always explicit in the regulatory reform state laws. Furthermore, states that are already producing RIAs should make them public and facilitate public participation to comment on them. One way to do it is by preparing websites where RIAs can be systematically published, along with the review statements prepared by the quality control units in charge of regulatory improvement.

The implementation of RIA can be enhanced. States and municipalities, with the support of the COFEMER, should promote capacity-building activities to introduce the use of RIA and public consultation as tools to improve the rule-making process. Basic training on key concepts, methodologies (i.e., cost-benefit analysis) and techniques could help disseminating good practices. Guidance materials should be developed to help government officials to get acquainted with RIA requirements, methodologies and analysis criteria. Likewise, the adoption of single templates for RIA facilitates dissemination of the tool.

In addition to RIA, public consultation must be formally introduced in states and municipalities as a compulsory step in the preparation of laws and regulations. Public consultation should become one of the main tools to improve the quality of draft regulatory proposals, allowing systematic participation of business and citizens, making public their opinions, and ensuring that institutions respond to the comments provided by the public. Public consultation can also be used as a tool to identify potential risks and non-compliance issues, as well as possible gaps that can impact on compliance.

The issue of enforcement is key to understand the way regulations are being implemented. Enforcement and compliance issues and tools should be integrated in the definition of state and municipal regulatory improvement plans. So far the state regulatory programmes do not consider explicitly the issues of enforcement and compliance, and they are left in the hands of responsible authorities, which fragments the approach. It is necessary to ensure that programmes address this issue in a coherent way, establishing core principles to guide the improvement process.

Potential areas and priority targets where state and municipal institutions have attributions to enforce regulations that can be subject to review should be identified, so that the main challenges and possible improvements are clearly set. Issues such as water, urban planning, and health are examples for which there is clear potential to improve enforcement and compliance, but co-ordination among the responsible institutions is needed to clearly define what can be done, set priorities, and spot the necessary tools and approaches to tackle them.

States and municipalities should consider using RIAs to encourage regulatory institutions to define indicators and monitoring mechanisms to measure and better understand compliance and enforcement issues. These indicators could be used later on when preparing *ex post* analysis of regulations. Likewise, states and municipalities may consider promoting enforcement through strengthening auditing and monitoring. A proper regulatory governance system should have mechanisms to review the effectiveness of regulations.

Establishing co-operation mechanisms among state and municipal regulators to discuss issues related to enforcement and compliance may ensure that co-ordination is promoted at different levels of government and facilitate the sharing of good practices.

Sub-national governments should also engage in comprehensive inspection reform to address it from a systematic and coherent approach. A unit within the institution responsible for regulatory reform at state or municipal level should be defined to handle issues of enforcement, compliance, and inspections. This unit could also develop training programmes for inspectors, in particular addressing a better management of risks associated to regulatory practices.

In most municipalities, business activities are not regulated according to the level of risk and there is persistence of standard regulations across the board. This may hinder entrepreneurship by imposing excessive burdens on business activities that imply no risks. In terms of risk-based regulation, aside from the SARE, the approach needs to be embedded from the stage of regulatory design at state and municipal level, but also to provide guidelines for inspections and *ex post* evaluations. So far, there is no evidence of a systematic and widespread application of these tools at the sub-national level in Mexico.

Concerning tools to manage the stock of regulations, states and municipalities that have not established centralised e-registries should do it as a way to improve regulatory transparency and provide legal certainty to entrepreneurs. This effort should be considered as a first step towards the adoption of more sophisticated tools, such as transactional one-stop shops. These e-registries should be binding for their jurisdictions and incorporate clear, exact, and complete information.

In addition, regulatory reform state laws should incorporate regulatory reviews as a tool to be implemented periodically to update regulations and make sure they are meeting their objectives. In parallel, states and municipalities should design plans to implement systematised reviews periodically, taking into consideration the features documented by the OECD (i.e., costing of the economic benefits). Finally, states and municipalities may consider the use of sunsetting as a way to reduce the average age of the regulatory framework and ensure periodic reform.

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

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

Regarding the SARE, its continuity should be strengthened by taking the following actions by the different actors involved:

- COFEMER: The goals of the SARE programme should not only be the number of SARE modules established per year, but also the actual number of modules that are operational (balance between those created and those gave up). The certification based on the norm SARE-01 can be one of the tools to be deployed to review the operational capabilities of established SARE modules.
- States: State governments should mobilise previous to municipal transitions to promote the continuity of key institutional programmes, such as the SARE and others related to regulatory improvement. Even though compulsory strategies may not be appropriate, given the autonomy of municipalities, access to special state grants may be conditional on the operation of the SARE. "Naming and shaming" municipalities that give up the SARE can also be part of the strategy for continuity. In addition, the SARE should be part of state laws on regulatory reform.
- Municipalities: Municipal governments should enact rules and decrees to formally establish the SARE. The establishment and permanence of the programme should be part of an *Acta de Cabildo*. Furthermore, municipalities should do a systematic effort to communicate to citizens and business groups the benefits derived from the SARE, particularly to business organisations from the sectors targeted by the SARE, so that they safeguard the continuity of the programme. Citizen councils should also play a role in this regard.
- Citizen and business groups: Stakeholders of regulatory reform can favour the continuity of the SARE and other programmes by monitoring their performance and lobbying incoming administrations, letting them know that regulatory policy is important and should not be abandoned.

The next steps in the administrative simplification agenda involve targeting the SARE according to the economic profiles of the cities where it is established, upgrading co-ordination between levels of government to facilitate processes of formalities (in contrast to improving formalities in isolation), and achieving widespread use of other tools such as those based on e-government (i.e., electronic one-stop shops) and risk-based regulation. Above all, these initiatives to advance administrative simplification should open the door for states and municipalities to adopt more comprehensive regulatory policies.

In terms of targeting SARE, it is important that the COFEMER helps municipalities include in the catalogue of business activities those that are identified with the economic profile of the region. In other words, the COFEMER and municipalities should work together to "tailor" the SARE according to the economic activities that are intensive in each city.

There are already examples of such targeting strategy, such as that achieved by the "Touristic SARE". This modality of the SARE was implemented in 2007, in co-ordination with the Ministry of Tourism (SECTUR), to streamline the procedures to start up SMEs in the touristic sector. In the first place, the SECTUR and the COFEMER established the Touristic SARE in municipalities that already had their catalogues of economic activities devoted to the touristic sector. Afterwards, the programme was extended to other municipalities that already had SARE and were intensive in touristic activities, by incorporating those in the catalogue. Currently, there are Touristic SARE in the municipalities of seven states, as shown in the following table:

Table 7.3. Touristic SARE by state and municipality

State	Municipality
Campeche	Champotón
Guanajuato	Celaya, Dolores Hidalgo, Guanajuato, Irapuato, León, Pénjamo, Salamanca, San José Iturbide, San Luis de la Paz and San Miguel de Allende
Guerrero	Acapulco
Jalisco	Puerto Vallarta
Morelos	Cuernavaca
Sonora	Guaymas and Puerto Peñasco
Quintana Roo	Benito Juárez, Cozumel, Othón P. Blanco, Solidaridad and Tulum

Source: SECTUR, adapted from the website of the Federal Ministry of Tourism of Mexico, www.sectur.gob.mx/es/sectur/SARE_Turistico, accessed 20 February 2013.

Other activities that may have targeted SARE include manufacturing (i.e., maquiladora, auto industry, etc.) and agro-business (i.e., in states like Sinaloa). This strategy to target SARE can also be helpful to favour its continuity by making its benefits more visible for municipalities and businesses.

Widespread use among states and municipalities of tools and programmes to upgrade multi-level co-ordination should be promoted. The LAU and efforts to uniform start-up formalities in metropolitan areas are examples of such kind of initiatives. Co-ordination aims at achieving better regulation and avoiding overlapping responsibilities among regulatory authorities. The SARE and LAU are examples of programmes that have helped with regard to vertical co-ordination. However, there is still much to be achieved so that simplification is applied to economic processes (i.e., starting up a business, registering property, obtaining a construction permit, etc.) including federal, state, and municipal formalities. Efforts to uniform formalities in metropolitan areas advance horizontal co-ordination, such as those carried out in the metropolitan areas of Guadalajara, Puebla, and Monterrey. These initiatives are helpful to avoid confusion and administrative costs for entrepreneurs, and they must be promoted for widespread use among municipalities.

Likewise, states and municipalities should quickly move to set up electronic one-stop shops, so that they are interconnected with the federal portal *tuempresa.gob.mx* and the whole start-up process can be managed online. This would significantly reduce turnaround times and administrative costs. The examples of the state of Colima (*miempresa.col.gob.mx*) and the municipality of Tuxtla Gutiérrez (integral system for the management and follow-up of municipal formalities, see Box 7.25) illustrate that this is absolutely achievable in relatively short periods of time when the right resources are allocated to the project.

Special section: Progress towards addressing the recommendations on multi-level regulatory governance by the 2012-18 administration

The federal government administration 2012-18 has acknowledged the recommendations of this review and committed to address them. During its first few months, it pushed for an integral multi-level regulatory policy, which directly addresses the recommendation dealing with regulatory convergence and multi-level co-ordination. This effort led to a strategic agreement between the COFEMER and the AMSDE, signed on 12 March 2013, called Framework Agreement for Co-operation Concerning Regulatory Reform for Mexico's Productivity and Economic Development (*Convenio Marco de Colaboración en Materia de Mejora Regulatoria para Incentivar la Productividad y el Desarrollo Económico de México*).

The objective of this framework agreement is to establish co-operation, co-ordination, and communication mechanisms so that the COFEMER and the AMSDE join forces and technical capacities with the aim of producing information and diagnoses, as well as to develop and implement methodologies, strategies, and practices to address a regulatory reform agenda shared with the 31 federal states, the Federal District, and the municipalities. This shared agenda is composed of 21 items, divided in three groups: institutional, formalities, and systems for quick business start-up (see Box 7.26). These 21 items are aligned with the recommendations contained in the OECD *Guide to improve the regulatory quality of state and municipal formalities and strengthen Mexico's competitiveness*.

As established in the framework agreement, the COFEMER and the AMSDE also commit to promote the exchange of good practices implemented in the federal states and the Federal District, as well as guidelines issued by the federal government to increase competitiveness and economic development.

In order to achieve the objectives of this framework agreement, the COFEMER and the AMSDE will also work with the Vice-ministry for Competitiveness and Business Regulation (Ministry of Economy), deconcentrated bodies and other administrative units dealing with competition, agencies and ministries working on digital and simplification strategies, the OECD, and the World Bank.

The model for multi-level co-ordination embodies some of the features of co-operative federalism:

- High-level political commitment to regulatory reform: the COFEMER and the AMSDE, via the framework agreement, are strengthening the call for sub-national governments to move forward in the adoption of regulatory reform policies and tools. The agreement will expire on 30 November 2018, which means that it will be a valid instrument during the whole term of the 2012-18 federal administration.
- Monitoring of progress: the COFEMER and the states themselves will assess the items of regulatory reform that will be advanced every year. Even though progress is not tied to reward payments, there is a commitment to tailor specific plans for each state, according to their situations and priorities, and follow up implementation.

Box 7.25. The integral system for the management and follow-up of municipal formalities (Tuxtla Gutiérrez, Chiapas)

The "Integral System for the Management and Follow-up of Municipal Formalities" is an electronic platform that allows municipal authorities to follow up the process of an application from the moment that the user files it until a public servant issues the resolution. It allows to control the time that the application spends in each stage of the administrative process and, if it is the case, to identify bottlenecks. Furthermore, the implementation of the electronic signature is allowing entrepreneurs to file, pay, and receive responses online (19 formalities are systematised to be managed from a physical counter and four can be completed online. The municipality is working to include other formalities so that they can be completed online). From May to August 2011, the system received 1 792 applications. The system provided a solution to the following problems:

- Excessive time to manage applications and formalities: By using the system, officials can review and validate an application with their electronic signatures. In addition, users had to make long lines to file. Now, in the case of some formalities, they can file and receive a response completely online.
- It was impossible to provide information in real time to users about the status of their applications: Applicants are informed via the system, e-mail, or SMS when the response is ready or when there are additional requirements or documents to be attached.

Accumulation of physical files: The system now generates an electronic file, so that once entrepreneurs upload a document, they do not have to present it again in future applications, as long as it has not expired.

Source: OCDE (2012), *Guía para mejorar la calidad regulatoria de trámites estatales y municipales e impulsar la competitividad de México*. OCDE, Ciudad de México.

Notes

1. Municipal administrations last for four years in the state of Coahuila. A recent reform in the state of Veracruz also extended the length of municipal administrations to four years. However, it must also be considered that given the no re-election rule, mayors sometimes quit before the end of the three- or four-year term to be in possibility to run for another position. This is not an argument to support the possibility of re-election, but only an indication that its inexistence implies frequent changes in political priorities and government plans, staff rotation, and incentives that make it difficult to advance the continuity of public policies.
2. The objective of registries for accredited persons is to require the registration of official documents only once when carrying out a formality. Every formality carried out afterwards will not require citizens or businesses to present the same documents again, as public agencies can consult them from a database.
3. Municipal business centres are physical one-stop shops in which entrepreneurs can comply with the formalities required by law to start up a business and receive assistance and advisory services.
4. Citizens can file a regulatory complaint when they are unsatisfied with a public service as a consequence of the lack of success to receive a permission or service or when they consider that the service is poor in terms of opportunity, accessibility, transparency,

Box 7.26. Synthesis of the 21 items in the shared agenda established by the framework agreement

Institutional

1. Developing state laws on regulatory reform, establishing this policy in constitutional and primary law in the first instance, and then in bylaws, in the second instance.
2. Establishing units in charge of operating regulatory reform policies in the federal states and municipalities.
3. Establishing mixed councils, with public and private participation, for the discussion, analysis, and follow-up of regulatory reform proposals in the federal states and municipalities.
4. Setting up systems, methodologies, and procedures to apply regulatory impact analysis, both *ex ante* and *ex post*, as well as identifying opportunity areas to promote transparency and citizen participation through formal public consultation.
5. Undertaking periodic benchmarking of regulatory reform policies of the federal states to create incentives for competition at the local and national level.

Formalities

6. Developing and strengthening centralised registries of formalities and services at state and municipal level.
7. Prioritising simplification, improvements, and reductions of administrative burdens of formalities and services linked to the processes that add the highest value to economic activities, according to the guidelines set by the COFEMER and the AMSDE, and on the basis of the Standard Cost Model.
8. Establishing one-stop shops and transactional electronic portals to simplify the fulfilment of formalities and the request of services, as well as developing interconnection with other portals and systems of the different levels of government, preferably through the portal gob.mx.
9. Promoting the use of open electronic platforms that allow the fulfilment of formalities and the request of services in the three levels of government, mainly those formalities and services linked to the processes with the highest impact on productivity and business start-up.

Systems for quick business start-up

10. Simplifying the business start-up process by reducing the number of formalities and the days it takes to complete them, via physical and electronic one-stop shops.
11. Opening SARE modules in the municipalities in which it is convenient, according to their economic activities, population, and the time to conclude their administrations. Likewise, strengthening current SARE and developing monitoring mechanisms.
12. Setting up co-ordination mechanisms between local electronic portals, SARE modules, agencies and entities linked to the start-up process, on the one hand, and the electronic portals gob.mx and tuempresa.gob.mx, on the other hand.
13. Promoting the technical and formal feasibility of digitalisation and interconnection of notaries public in the federal states.
14. Promoting the implementation of simplification techniques in the process to obtain a construction permit.
15. Setting up urban development plans and land use digitalisation via geographically referenced maps.

Box 7.26. Synthesis of the 21 items in the shared agenda established by the framework agreement *(cont.)*

16. Encouraging the establishment of express building permits for low-risk and low-impact construction.
17. Simplifying the legal framework of property registration processes so that the number of formalities and the days it takes to complete them is reduced.
18. Advancing digitalisation in the offices of the Property Public Registry in the federal states and, if applicable, in the cadastre units.
19. Setting up online registries of government suppliers.
20. Encouraging simplification of the requisites to participate in tendering processes in the federal states.
21. Analysing agendas to advance quality in judicial processes and institutions linked to commercial contracts and business development.

Source: Federal Commission for Regulatory Improvement of Mexico, responses to OECD questionnaire, 2013.

quality, and administrative economy. Citizens can also suggest ideas, projects, and recommendations concerning a formality or public service via a regulatory proposal.

5. The Law for Regulatory Reform in the State of Baja California was published on 28 September 2012.
6. The Law for Regulatory Reform in the State of Coahuila (unanimously approved by the state Congress on 12 February 2013) establishes a commission on regulatory reform, but its status (deconcentrated or decentralised) is still undefined and will be settled in the decree to create the institution.
7. Based on the experiences of Colima, Chiapas, the DF, Guanajuato, Jalisco, and Nuevo León.
8. Article 69-E, section V, of the LFPA grants the COFEMER the attribution to provide technical advice on regulatory reform to states and municipalities, as well as to sign agreements for this purpose.
9. Another previous initiative, besides the SARE, was the publication of guidelines of regulatory reform for municipalities, which can be found at www.cofemer.gob.mx/contenido.aspx?contenido=71.
10. The 2004 OECD regulatory reform review of Mexico reported 21 SARE modules established back then. It concluded that "SARE has proved to be a successful tool to expand regulatory policy at all levels of government".
11. COFEMER six-year report, www.cofemer.gob.mx/images/cofemer/Informe_sexenal.pdf.
12. Since it would be impossible to review all the different experiences of states and municipalities with administrative simplification, these examples are only illustrative and do not exclude the possibility of other good practices in the states and municipalities that are not mentioned in this report.
13. Information provided by the state government of Jalisco.
14. Information provided by the state government of Chiapas.

15. Information provided by the municipality of Escobedo, Nuevo León.
16. Information provided by the state government of Colima.
17. These good practices can be consulted at www.oecd.org/gov/regulatorypolicy/oecdreviewofregulatorypolicy andgovernancemexico.htm.
18. Article 30 of the Law for Regulatory Reform in the State and Municipalities of Jalisco.
19. Available at *http://www.comers.gob.mx/eir/anteproyectos.php*.
20. Available at *http://cemer.morelos.gob.mx/secciones/consultas3.php*.
21. Available at *http://mejoraregulatoria.guanajuato.gob.mx/?q=mir*.
22. The Law for Regulatory Reform in the State of Baja California (2012) formally established the obligation for state agencies to prepare RIA when introducing new regulation.
23. Available at *http://mejoraregulatoria.guanajuato.gob.mx/files/Manual_para_la_Elaboracion_de_Proyectos_Normativos.pdf*
24. Indicators on enforcing contracts measure the efficiency of the judicial system in resolving a commercial dispute. The data are built by following the step-by-step evolution of a commercial sale dispute before local courts. Enforcing contracts looks at the efficiency of contract enforcement by following the evolution of a sale of goods dispute and tracking the time, cost, and number of procedures involved from the moment the plaintiff files the lawsuit until actual payment. Time is recorded in calendar days, counted from the moment the plaintiff decides to file the lawsuit in court until payment. This includes both the days when actions take place and the waiting periods in between. The average length of different stages of dispute resolution is recorded: the completion of service or process (time to file and serve the case), the issuance of judgment (time for the trial and obtaining the judgment), and the moment of payment (time for enforcement of the judgment).
25. All data available at *www.enterprisesurveys.org*.
36. In Jalisco, for instance, Chapter 6 of the *State Law on Administrative Procedure* establishes that "inspections should be undertaken when authorities need to verify that an individual duly complies with the application of regulations, if there are indications or legal presumption in relation to an irregularity, as a result of a verification, assessment or any other circumstance".
27. As an example, sanitary inspections on meat products require a coordinated effort of state and municipal authorities. Legal requirements are established in Mexican Official Technical Norms. Authorised veterinarians respond to state health departments in charge of conducting inspections, but municipalities are in charge of slaughterhouses and should also be involved in ensuring compliance with health requirements.
28. The COFEMER developed an electronic tool to provide basic information about a formality and estimate its administrative cost, as well as savings derived from simplification strategies. It also issued a manual explaining the use of this tool.
29. The 2012 report *Doing Business in Mexico* found that all the states and the Federal District had introduced at least one reform in the processes addressed from the time of the 2009 report up to the 2012 edition.

Bibliography

COFEMER (2010), Informe de Actividades 2009, Gobierno Federal de México, Ciudad de México.

COFEMER (2011a), Impacto del Sistema de Apertura Rápida de Empresas (SARE) en México, Gobierno Federal de México, Ciudad de México.

COFEMER (2011b), Informe de Actividades 2010, Gobierno Federal de México, Ciudad de México.

COFEMER y CIDE (sin año), Técnica Normativa para Elaborar Regulaciones Municipales, Mexico.

Coolidge, Jacqueline (2006), "Reforming Inspections. Countering Corruption and Waste", *View Point,* Note 308, The World Bank Group, Washington.

Cordova-Novion, C. and S. Jacobzone (2011), "Strengthening the Institutional Setting for Regulatory Reform: the Experience from OECD Countries", OECD, Paris.

García Villarreal, Jacobo Pastor (2010), "Successful Practices and Policies to Promote Regulatory Reform and Entrepreneurship at the Sub-national Level", OECD Working Papers on Public Governance, No. 18.

OCDE (2009a), Estudio de Caso: Baja California. Prácticas y políticas exitosas para la mejora regulatoria y el emprendedurismo a nivel subnacional, available at www.oecd.org/document/15/0,3746,en_2649_34141_44973455_1_1_1_1,00.html.

OCDE (2009b), Estudio de Caso: Cataluña, España, Prácticas y políticas exitosas para la mejora regulatoria y el emprendedurismo a nivel subnacional, OECD, Paris. www.oecd.org/document/15/0,3746,en_2649_34141_44973455_1_1_1_1,00.html.

OCDE (2011), Portal Tuempresa.gob.mx: Diagnóstico de operación. OCDE, Ciudad de México.

OCDE (2012), *Guía para mejorar la calidad regulatoria de trámites estatales y municipales e impulsar la competitividad de México*. OCDE, Ciudad de México.

OECD (1999a), *Regulatory Reform in Mexico*, OECD Publishing, Paris, doi: 9789164180315-en.

OECD (1999b), *Regulatory Reform in the Netherlands*, OECD Publishing, Paris, doi: 9789264173774-en.

OECD (2002), *Regulatory Policies in OECD Countries: From Interventionism to Regulatory Governance*, OECD Publishing, Paris, doi: 9789264177437-en.

OECD (2003), *OECD Reviews of Regulatory Reform: Norway*, OECD Publishing, Paris, doi: 9789264103122-en.

OECD (2004), *OECD Reviews of Regulatory Reform: Mexico, Progress in Implementing Regulatory Reform*, OECD Publishing, Paris, doi: 9789264017528-en.

OECD (2006), *Cutting Red Tape: National Strategies for Administrative Simplification*, OECD Publishing, Paris, doi: 9789264029798-en.

OECD (2007), *OECD Reviews of Regulatory Reform: Italy, Ensuring Regulatory Quality Across Levels of Government*, OECD Publishing, Paris, doi: 9789264037984-en.

OECD (2009a), Indicators of Regulatory Management Systems, Regulatory Policy Committee, OECD, Paris.

OECD (2009b), *Regulatory Impact Analysis: A Tool for Policy Coherence*, OECD Publishing, Paris, doi: 9789264067110-en.

OECD (2010a), *Better Regulation in Europe: Denmark*, OECD, Paris, doi: 9789264084551-en.

OECD (2010b), *Better Regulation in Europe: Netherlands*, OECD, Paris, doi: 9789264084568-en.

OECD (2010c), *Better Regulation in Europe: United Kingdom*, OECD, Paris, doi: 9789264084490-en.

OECD (2010d), *Cutting Red Tape: Why is Administrative Simplification so Complicated? Looking Beyond 2010*, OECD Publishing, Paris, doi: 9789264089754-en.

OECD (2010e), *Multi-level Regulatory Capacity in Australia*, OECD Publishing, Paris, doi: 9789264067189-en.

OECD (2010f), *OECD Reviews of Regulatory Reform: Australia, towards a Seamless National Economy*, OECD Publishing, Paris, doi: 9789264067189-en.

OECD (2011a), *Competition Assessment Toolkit*, OECD, Paris.

OECD (2011b), *Regulatory Policy and Governance: Supporting Economic Growth and Serving the Public Interest*, OECD Publishing, Paris, doi: 9789264116573-en.

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

OECD (2012b), *OECD Review of Telecommunication Policy and Regulation in Mexico*, OECD Publishing, Paris, doi: 9789264060111-en.

OECD (2012c), Principles for the Governance of Regulators - Discussion Paper, Paris.

OECD (2012d), Recommendation of the Council on Regulatory Policy and Governance, OECD, Paris.

Office of Best Practice Regulation (2008), Best Practice Regulation Guidance Note: Value of Statistical Life, Australian Government, Canberra, www.finance.gov.au/obpr/docs/ValuingStatisticalLife.pdf.

Office of Best Practice Regulation (2011), Best Practice Regulation Report 2010-11, Australian Government, Canberra.

Parliament of Victoria, Australia (1994), Subordinate Legislation Act 1994 (No. 104/1994). www.legislation.vic.gov.au.

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

Secretaría de Economía y OCDE (2009), Programa de Medición del Costo Administrativo Empresarial en México: Informe de resultados del costeo de tuempresa.gob.mx, Gobierno Federal de México y OCDE, Ciudad de México.

Straightforward BC (2012), Achieving a Modern Regulatory Environment: BC's Regulatory Reform Initiative, First Annual Report – 2011/2012, available at www.straightforwardbc.gov.bc.ca.

World Bank (2006), *Good Practices for Business Inspections: Guidelines for Reformers*. The World Bank Group, Washington.

World Bank (2011), *Mexico Country Profile 2010, Enterprise Surveys*. The World Bank Group, Washington.

World Bank (2012), *Sub-National Doing Business in Mexico, The World Bank Group*. The World Bank Group, Washington.

Publications without DOI

Cordova-Novion, C. and S. Jacobzone (2011), "Strengthening the Institutional Setting for Regulatory Reform: the Experience from OECD Countries", OECD, Paris.

García Villarreal, Jacobo Pastor (2010), "Successful Practices and Policies to Promote Regulatory Reform and Entrepreneurship at the Sub-national Level", OECD Working Papers on Public

Governance, No. 18.

OCDE (2009a), Estudio de Caso: Baja California. Prácticas y políticas exitosas para la mejora regulatoria y el emprendedurismo a nivel subnacional, available at www.oecd.org/document/15/0,3746 ,en_2649_34141_44973455_1_1_1_1,00.html.

(2009b), Estudio de Caso: Cataluña, España, Prácticas y políticas exitosas para la mejora regulatoria y el emprendedurismo a nivel subnacional, OECD , Paris. www.oecd.org/document/15/0,3746,en_2649_34141_44973455_1_1_1_1,00.html.

OCDE (2012), Guía para mejorar la calidad regulatoria de trámites estatales y municipales e impulsar la competitividad de México. OCDE , Ciudad de México.

OECD (2011a), Competition Assessment Toolkit. OECD, Paris.

OECD (2012), Recommendation of the Council on Regulatory Policy and Governance, OECD, Paris

OECD (2012c), Principles for the Governance of Regulators - Discussion Paper, Paris.

OECD (2005), Designing Independent and Accountable Regulatory Authorities for High Quality Regulation.

OECD Publishing, Paris.

Annex A

Implementation of the 2004 OECD regulatory reform recommendations for Mexico

Government capacity to assure high-quality regulation

Recommendation	Actions taken
1. To revise the exemptions of the LFPA, especially on fiscal issues.	Though fiscal matters remain as an exception to the LFPA, the federal government has performed several efforts to improve the regulation covered under the exceptions. It instructed the Ministry of Finance to reduce the administrative burden through the issuance of the Regulatory Quality Agreement (2 of February 2007). The Ministry of Defence also took measures by issuing the Agreement SEDENA on arms and exports. Efforts have also been done to modify Article 3 of the LFPA or Article 9 of the Law of the Social Security Institute, which is also an exception to regulatory reform, but have not been successful.
2. To broaden the scope of the regulatory improvement programme to lower levels of government.	There has been significant progress in broadening the scope of the regulatory improvement programme to lower levels of government. See Chapter 7 for a detailed discussion.
3. To promote a better legal framework for regulations with a clear hierarchy of rules. To reinforce the analysis of the legal documents that accompany the RIA.	There is no hierarchy amongst secondary regulation (manuals, agreements, guidelines, circulars, official technical standards —NOMs—, methodologies, etc.). Nonetheless, in order to enhance transparency of regulations, two websites (www.normateca.gob.mx; www.portaltransparencia.gob.mx) contain public inventories of all the federal regulation. The reinforcement of the analysis of the legal documents that accompany the RIA was addressed through the redesign in 2010 of RIA. This reform requires a previous legal analysis of the legal implications, viability, and coherence with the legal system of the regulatory projects. In addition, the Regulatory Quality Agreement issued by the president in 2007 requires that regulations should have a legal support on laws or presidential rulings and decrees, assuring legal quality of the documents that accompany RIA. See Chapter 4 for a detailed discussion.
4. To modernise the framework for regulatory authorities.	There have been improvements in the governance framework of some regulatory agencies (COFECO, COFETEL and CRE). Nevertheless, the institutional design of deconcentrated bodies remains, lacking a specific legal framework that ensures regulatory authorities' independence from direct political intervention and regulated interests. See chapter 6 for a detailed discussion and for recent progress by the federal government and the legislative power in implementing reforms to the institutional design of several regulators.

Recommendation	Actions taken
5. To strengthen the efforts on quality regulation through the refinement of some regulatory tools.	Some of the adopted tools to enhance regulatory quality are: (i) redesign of RIA through the incorporation of a regulatory impact calculator; (ii) inclusion of competition and risk analysis in RIA, as well as *ex post* evaluation of RIA, in technical standards; (iii) a system to assess the quality of RIAs; (iv) reinforcement of public consultation process and the use of ICT tools at all times and stages of the regulatory process; (v) the strengthening of the Biennial Programs to ensure administrative burden reduction; (vi) adoption of the Standard Cost Model to reduce the administrative burden of formalities and to support *ex ante* and *ex post* RIA analysis; amongst others. See Chapters 4 and 5 for a detailed discussion.
6. To strengthen compliance and enforcement mechanisms.	The federal government identifies that the following tools strengthen enforcement and compliance: As part of the implementation of the new RIA, regulators and line ministries are required to incorporate enforcement, monitoring and compliance mechanisms in their regulatory proposals, assuring that new regulations have strong enforcement rules and mechanisms; The inventory of federal regulations (Normateca Federal); The inventory of internal regulations of the federal government (Normatecas Internas), where all internal management rules are dictated by the Committees for Internal Regulatory Improvement (COMERI) to assure regulation quality; The implementation of *ex post* RIAs for the high-impact technical standards (Normas Oficiales Mexicanas) within their first year of application. The use of ICT, especially the Internet, has proved to be a valuable and key tool to implement regulatory policies as all of the public consultation and rule-making process include the use of ICT at all times and stages, allowing the public to be informed on the benefits of regulation, increasing compliance in this way.
7. To consider regulatory quality as a tool for economic and social development.	The importance of regulatory improvement was highlighted in the National Development Plan, as well as several social and economic development programs (i.e., operation rules of federal programmes, public health, etc.), reinforcing the mandatory character already stated in the LFPA. Regulatory tools and public policies have been updated and improved, such as the biennial programmes for regulatory reform, which are now implementing the Standard Cost Model to measure administrative burden reductions, and the RIA process, which now includes competition and risk assessment, and *ex post* analysis. Risk-based analysis of regulation was also incorporated and public consultation mechanisms were strengthened. This battery of changes contributes to improve the overall quality of the regulation, contributing to economic and social development.

Annex B

Multi-level regulatory governance in Mexico

1. The regulatory reform state laws and their contents

Law/State	Body in charge	Citizen council/body	CAE	SARE	Centralised registry	Registry for accredited persons	RIA	Co-ordination with municipalities	Bylaws
Law for Regulatory Reform in the State of Baja California	X	X	X	X	X	X	X	X	
Law for Regulatory Reform in the State of Campeche	X	X			X	X	X	X	
Law for Regulatory Reform in the State and Municipalities of Chiapas	X	X	X	X	X	X	X	X	
Law for Regulatory Reform in the State of Coahuila de Zaragoza	X		X	X	X	X	X	X	
Law for Regulatory Reform in the State of Colima	X	X	X	X	X	X	X	X	X
Law for Regulatory Reform in the State and Municipalities of Durango	X	X			X	X	X	X	
Law for Regulatory Reform in the State of Guanajuato and its Municipalities	X	X	X	X	X	X	X	X	
Law for Regulatory Reform in Business Activities in the State of Hidalgo	X	X			X		X	X	
Law for Regulatory Reform in the State and Municipalities of Jalisco	X	X	X	X	X	X	X	X	
Law for Regulatory Reform in the State of Morelos	X	X		X	X	X	X	X	X
Law for Regulatory Reform in the State of Nuevo León	X	X			X		X	X	X
Law for Regulatory Reform in the State of Puebla	X				X		X	X	X
Law for Regulatory Reform in the State of Quintana Roo	X	X	X		X	X	X	X	
Law for Regulatory Reform in the State and Municipalities of San Luis Potosí	X	X		X	X		X	X	

Law/State	Body in charge	Citizen council/body	CAE	SARE	Centralised registry	Registry for accredited persons	RIA	Co-ordination with municipalities	Bylaws
Law for Business Procedures and Regulatory Reform in the State of Sinaloa	X	X	X	X	X	X	X	X	
Law for Regulatory Reform in the State of Sonora	X	X	X		X	X	X	X	
Law for Regulatory Reform in the State of Mexico and its Municipalities	X	X			X		X	X	X
Law for Regulatory Reform in the State of Tabasco	X	X		X	X	X	X	X	X
Law for Regulatory Reform in the State of Tamaulipas	X	X		X	X		X	X	
Law for Regulatory Reform in the State of Veracruz Ignacio de la Llave	X	X		X	X	X	X	X	
Law for Regulatory Reform in the State of Yucatán	X	X	X		X	X	X	X	X
Law for Regulatory Reform in the State and Municipalities of Zacatecas	X	X			X	X	X	X	X
TOTAL	22	20	10	12	22	16	22	22	8

The fact that the law considers a specific institution or tool does not imply that it has been effectively implemented. This table reflects just the contents of the laws and not their effectiveness.

- Body in charge: The law establishes the body responsible of regulatory reform policies (unit within a ministry, commission, etc.).
- Citizen council/body: The law establishes a consultative council/body with citizen participation to follow up regulatory reform policies.
- CAE: The law mandates the establishment of business centres or physical one-stop shops that consolidate formalities and services for business start-up and operation.
- SARE: The law mandates the establishment of SARE.
- Centralised registry: The law mandates the state government to build a centralised registry of formalities and services.
- Registry for accredited persons: The law mandates the state public administration to establish this tool.
- RIA: The law mandates ministries and agencies to prepare a RIA when proposing new regulations (ticking this box does not imply that the state is actually making use of RIA).
- Co-ordination with municipalities: The law establishes mechanisms for regulatory reform to be implemented in municipalities. In some cases, the laws just mention the possibility to establish co-ordination agreements between states and municipalities, while in others they are more explicit about the attributions of municipalities.
- Bylaws: Bylaws for the state laws on regulatory reform have been issued.

2. Regulatory reform bodies at the state level in Mexico

State	Commission	Unit within a ministry	Others
Aguascalientes		X	
Baja California	DO		
Baja California Sur		X	
Campeche	DO		
Coahuila		X	
Colima		X	
Chiapas		X	
Chihuahua		X	
Distrito Federal		X	
Durango	DO		
Guanajuato		X	
Guerrero		X	
Hidalgo		X	
Jalisco		X	
Estado de México	DO		
Michoacán		X	
Morelos	DE		
Nayarit		X	
Nuevo León			X
Oaxaca		X	
Puebla		X	
Queretaro		X	
Quintana Roo	DE		
San Luis Potosí		X	
Sinaloa	DE		
Sonora	DO		
Tabasco		X	
Tamaulipas	DO		
Tlaxcala		X	
Veracruz	DE		
Yucatán			X
Zacatecas	DO		
TOTAL	11	19	2

Source: Federal Commission for Regulatory Improvement of Mexico responses to OECD questionnaire, 2012.
DO: Deconcentrated commission.
DE: Decentralised commission.

3. Main trends in the institutionalisation of RIA at state level in Mexico

State	RIA elements	Quality control institution	Regulatory instruments subject to RIA	RIA Guidance Material
Colima	Motivation of the proposal Legal basis of the proposal and existing regulations Risks of not regulating Alternatives considered and options suggested Costs and benefits of the proposal Identification and description of additional procedures Compliance mechanism	State Council for Regulatory Reform (*Consejo Estatal de Mejora Regulatoria*)	Laws, decrees, regulations	Not yet developed
Guanajuato	General data Legal analysis Administrative analysis Economic and business analysis Social analysis Formality improvements	Ministry of Public Management (*Secretaría de la Gestión Pública*)	All regulatory instruments	Basic guidance to undertake RIA (*Guía Básica para la Elaboración de la MIR*)
Jalisco	Justification of the regulation Identification and description of new procedures Legal framework of the project Analysis of risks if regulation is not approved Legal mandate of institution Linkages to the federal and state legal frameworks Estimate of costs and benefits for the society and public administration Enforcement mechanism Public consultation mechanism	SEPROE	Acts, regulations, agreements, handbooks, circulars, guidelines, and any other document or rule that impacts on society	RIA guidance (*Guía de Manifestación de Impacto Regulatorio*)
Morelos	Justification of why a regulation is being presented with the identification of the problem Analysis of risks if regulation is not adopted Legal analysis of the draft proposal Identification and analysis of alternatives to the draft proposal Estimation of costs and benefits for the private sector and citizens	State Regulatory Improvement Commission (*Comisión Estatal de Mejora Regulatoria*)	Any intervention that creates or modifies obligations to individuals; creates or modifies requirements; restricts the rights, obligations or provisions to individuals; introduces new requirements to the activities conducted by individuals; or has a potential negative impact on the economy, industry or commerce in the state, region or particular area	Instructions to conduct RIA (*Instructivo*)
Nuevo León	Justification of the draft regulation with detailed identification of the problem to be solved Identification of alternatives Estimation of costs and benefits for third parties Risks associated with lack of regulation. Linkages to the current federal and state legal frameworks	UMR and Legal Counsel Office (*Consejería Jurídica*)	Laws, regulations, Executive decrees and agreements, inter-ministerial agreements, circulars, instructions, guidance, criteria and any other regulation that might produce impacts on third parties	Guide to produce RIA and submit draft regulations (*Manual para la elaboración del Manifiesto de Impacto Regulatorio y Remisión de Anteproyectos*)
Sonora	Reasons for introducing new regulations Consideration of alternatives and justification of the choice made Possible risks to introduce the regulation Legal assessment Cost and benefits of the regulation Identification and description of requirements introduced by the regulation Resources and mechanisms needed for enforcement	Executive Co-ordination of Legal and Regulatory Studies (*Coordinación Ejecutiva de Estudios Legislativos y Reglamentarios*) and Regulatory Improvement Commission of Sonora (*Comisión de Mejora Regulatoria de Sonora*)	Draft laws, regulations, decrees and general administrative norms	General guidelines to prepare and present regulatory impact studies (*Lineamientos Generales para la Elaboración y Presentación de los Estudios de Impacto Regulatorio)*

4. Regulatory reform in the state of Aguascalientes

Aguascalientes is one of the smallest states in Mexico in terms of territory, but it has a dynamic economy, based on industries, such as automotive, textiles, and cattle farming. The capital city, Aguascalientes, ranks second in Mexico in the *ease of doing business* indicator of the 2012 *Doing Business in Mexico* report, which reflects the work undertaken on administrative simplification. The state government promotes regulatory reform as a way to increase competitiveness and create a sound business and investment environment. The current governor, former head of the state Ministry for Economic Development, has committed to consolidate a better approach to regulatory governance to maintain the state as a leader in regulatory reform for better economic performance.

Simplification of business formalities in Aguascalientes has been an important part of the political agenda since 1989. A number of agreements of the state government with its municipalities, its capital city, and the Federation have been signed to establish guidelines for administrative simplification, in order to keep a sound investment climate. Some of the administrative simplification programmes have been promoted at municipal level with positive results. Private sector participation in these efforts, through the set-up of various advisory councils, has been key to advance regulatory reform.

Robust initiatives have been implemented in order to reduce administrative burdens for business. Since 2001 the implementation of SARE allowed to reduce time and costs to start up a business and to upgrade the efficiency of the administration. Over time, the government has improved risk management for business start-up, and with the One Programme (*Programa Uno*), it has made possible to start business activities in one single day, visiting one single window, and dealing with one single application. Such a programme was made possible through strong co-operation between the federal, state and municipal level, as it required the harmonisation of various procedures.

In addition, the state Congress has also started to take steps to adopt regulatory quality principles. In fact, in October 2011, the state Congress signed a co-operation agreement with the COFEMER to get its technical advice, have access to the materials it has developed to illustrate public officials on the basics of regulatory reform, and organise joint events.

Aguascalientes has been successful in the implementation of simplification programmes and initiatives to review the stock of regulations, but needs to move on to institutionalise its regulatory reform programme. The Government Development Plan (2010-16) contains some initial references to this process of institutionalisation. It is an initial diagnosis of what has to be done in order to promote a coherent approach.

In summary, some of the main remaining challenges for an integral regulatory reform policy are to approve the Regulatory Reform State Law, as well as to allocate resources and responsibilities for an entity that enforces this law and its mandates. The consolidation of the Directorate for Regulatory Improvement, as an institution in charge of advocating and promoting regulatory reform, is essential for the process. This would also allow introducing other regulatory and policy tools that are missing in the current approach, such as RIA or *ex post* evaluation. RIA, in fact, has already been conceptualised in the State Law to Promote the Economy, Investment and Jobs, but its implementation is very limited and there needs to be stronger political commitment to achieve its full use. In addition, it is essential to establish capacity-building programmes to create a new regulatory reform culture in the state and municipal administrations, and develop a functioning regulatory governance system.

5. Regulatory reform in the state of Colima

Colima is a small state located in western Mexico and composed of 10 municipalities. Despite its small territory, it is strategically located at about 200 kilometres from Guadalajara, Mexico's second biggest city. Manzanillo is one of the main ports of Mexico and the main one in the Pacific coast. The recent inauguration of a gas plant as part of its infrastructure made it strategic in terms of energy supply. Services are the main economic activity, particularly commerce, trade and transport services. Construction and the production of electricity are also important components of its economic activities. In fact, Colima has had strong growth in the last years, well above the national rate.

The state was ranked in the first place of the 2012 sub-national edition of the *Doing Business* report and sixth in the *starting up a business* indicator, coming from the last place in the 2009 edition. In fact, benchmarking was a powerful motivation for the governor to mobilise the state public administration to improve its regulatory quality and raise the issue to the top of the political agenda. The State Development Plan 2009-15 mandates the implementation of the Law for Regulatory Reform, redesigning and streamlining procedures with a citizen perspective, and establishing a business centre (one-stop shop) in each municipality.

Colima was also very successful in the modernisation of its Public Registry of Trade and Property (RPPC). In November 2009, the RPPC was one of the entities that took longer to deliver on the formalities it manages, since it took 35 working days on average. There were 26 500 applications delayed and under process. The governor was directly involved in negotiating with the union of the RPPC to agree on a solution, which implied extended working hours and the hiring of a few temporary lawyers to conclude the delayed procedures. By 31 December 2009 there were no applications in the queue anymore. A redesigned process took effect in January 2010 and, since then, applications are classified in two groups: the ones that do not have any problem are resolved the same day, while the ones that require more profound research should be delivered in a maximum of three working days. Furthermore, the RPPC has established the electronic signature and most of the formalities can now be completely managed online.

Colima was one of the participating states in the project Short-term Measures to Improve Competitiveness at the Sub-national Level, led by the OECD and the federal Ministry of Economy. Since then, an interdisciplinary group within the state government was created to analyse, address, and evaluate the recommendations derived from it. This working group has a leader for each agency involved, whose role is to prepare a plan to address the recommendations that apply to it and document the initiatives undertaken. The group was headed by the SEFOME, which was empowered by the governor to lead the efforts.

In January 2011, the governor participated in an event jointly organised by Mexico's Ministry of Economy and the OECD to launch the *Guide to improve the regulatory quality of state and municipal formalities and strengthen Mexico's competitiveness*. Since then, he assumed the recommendations of the document as a firm commitment of the administration and it was communicated as such to his cabinet. A programme of work was prepared by each agency involved including a reference to the recommendation addressed, activities to undertake, timeline, and responsible officials. Results have been directly evaluated by the governor including the following actions:

- Introduction of a complementary objective in the State Development Plan consisting on the implementation of the OECD guide recommendations.

- Implementation of an operative planning methodology, by which goals are evaluated monthly and the governor is informed of results.
- Monthly evaluation meetings of the governor with his cabinet to discuss and evaluate results.

In this context, Colima launched the one-stop shop *miempresa.col.gob.mx*, which allows entrepreneurs to complete state start-up formalities online. The state government has also embarked in a recent effort to undertake a review of the "guillotine" type and to create a register of the regulatory stock.

6. Regulatory reform in the state of Jalisco

Jalisco is one of the most dynamic states in Mexico in terms of economic performance. Its GDP ranks fourth, after the Federal District, State of Mexico, and Nuevo León. It not only has an outstanding record of traditional economic activities, such as agriculture, services, retail, etc., but it is also a leading place for the development of more innovative and high-value added sectors, such as pharmaceuticals, automotive, aerospace, and green energies. Even though the state does not perform well enough, compared to other Mexican states, in the sub-national *Doing Business* report (Guadalajara ranked 16th in the *starting up a business* and *dealing with construction permits* indicators, 29th in *registering property,* and 14th in *enforcing contracts*), Jalisco is one of the states with the most developed institutional frameworks to carry out regulatory reform, as well as a leader in the application of e-government for simplification purposes.

Regulatory improvement has been an issue of concern for the state authorities and they have pursued an institutionalisation process for two decades. Over three different governments, Jalisco has tried to incorporate good regulatory practices, consolidating one of the most advanced institutional set-ups in Mexico. The State Development Plan (2007-20) contains key elements for regulatory improvement, such as the implementation of an e-government strategy, new management techniques within the administration, administrative simplification of procedures and requirements, and ICT tools to simplify procedures for citizens and businesses. In addition, an institutional plan at the SEPROE incorporates general guidelines for regulatory reform.

Regulatory policy in Jalisco has been characterised by an active participation of the business community and strong political support from the top levels. With collaboration of stakeholders, COMERJAL has become a key institution to promote regulatory quality. The governor heads the committee, which is composed by representatives of public, private, and social sectors. There are technical sub-committees that are in charge of specific issues of concern for businesses and citizens, which facilitate agreement on adequate solutions. COMERJAL operates now under the basis of the Law for Regulatory Reform in the State and Municipalities of Jalisco, which is expected to give it continuity beyond the political mandate of the current administration.

The Law for Regulatory Reform was approved in the current administration and is linked with the Law of Public Officials. Jalisco is one of the Mexican states with a highly institutionalised framework for regulatory reform, as it has its own law, citizen council (COMERJAL), and a General Director for Regulatory Reform. It is also one of the few states that have effectively applied RIA. The SEPROE and the state Ministry of Administration are in charge of implementing the regulatory reform agenda. Currently, there are efforts to expand regulatory improvement practices to sectoral policy fields, such as environment, water, energy, urban planning, housing, and intellectual property.

In addition, Jalisco is disseminating good regulatory practices at municipal level. One of the challenges ahead is to ensure that municipalities comply with the Law for Regulatory Reform and, in order to achieve this goal, the state is signing co-operation agreements with several municipalities to provide technical assistance and training courses to local authorities.

Finally, Jalisco has been active on administrative simplification programmes. The state government has carried out simplification initiatives to uniform business formalities in the municipalities of the metropolitan area of Guadalajara. For instance, the harmonisation of environmental permits into a single procedure (LAU) has reduced time and costs for businesses, and has demonstrated the importance of co-ordination among institutions to simplify procedures, as well as to increase transparency in regulatory decisions. Jalisco has also developed a comprehensive public registry for formalities (REPTE), containing information of formalities managed at the state and municipal level. Finally, the state government is about to launch the portal "Your business in one day" (*Tu empresa en un día*), which is a joint effort of the state and its municipalities, to allow entrepreneurs to complete online and in just one day the start-up formalities required by these levels of government. This portal will interconnect with the federal one-stop shop *tuempresa.gob.mx*, so that the whole start-up process can be managed online.

7. Regulatory reform in the state of Nuevo León

Nuevo León has the third largest economy among Mexico's 32 federal states, only after the Federal District and the State of Mexico. Its business culture is recognised as highly entrepreneurial, aided by a group of solid academic institutions located mainly in its capital, Monterrey. The main economic activities are services, commerce, machinery, well developed industries such as automotive, and emerging clusters, such as biotechnology and software.

The State Development Plan 2010-15 is divided in four chapters: creating wealth, social development and well being, integral security, and good and productive government. Twelve strategic projects with a set of initiatives are derived from these chapters. One of the strategic projects consists on establishing a regulatory reform system with the participation of the three levels of government and civil society. In this context, the state government developed the *Special Programme for Regulatory Reform 2010-2015*, which defines the main actions to take.

On 24 September 2010, the governor issued the Agreement for Regulatory Quality in Nuevo León, which mandates a review of the stock of regulations to set the foundations for competitiveness, productivity, creating jobs, and transparency. Fifty-five state government ministries and agencies participated in the actions set by the agreement, which were included in the State Programme for Regulatory Reform 2011. This programme was discussed and approved by the Citizen Council for Regulatory Reform in May 2011. The review was finished in February 2011 and, through the analysis of 1 615 regulatory instruments, 286 regulatory reform proposals were generated for implementation in a 12-month period. The proposals are classified in three streams: modernisation of the regulatory framework, regulatory transparency, and administrative simplification.

At the same meeting of the Citizen Council, the governor signed the Agreement for Regulatory Contention, which prohibits agencies and ministries from issuing additional administrative regulations, with the exception of cases when there is a clear justification via a RIA. Furthermore, the project to design the regulatory reform agenda of the seven municipalities of the metropolitan area of Monterrey was launched during the meeting. This project aims at producing the regulatory reform agendas of the municipalities involved, based on diagnoses to determine which are the formalities and regulations that are the most complicated for businesses and citizens. The study will identify the regulatory and administrative actions that should be taken to align the most important business formalities in the seven municipalities.

Clearly, Nuevo León has achieved significant progress since 2010. It has established the basic institutions to advance regulatory reform, such as a law for regulatory reform, a citizen council, and a unit in charge of regulatory policy, which is unique in the country in the sense that it is organically attached to the Office of the Governor. This fact illustrates the political commitment that has accompanied regulatory policy. In addition, Nuevo León is one of the few states that have carried out a regulatory review, and is currently working on the implementation of RIA and the drafting of legislation to establish the electronic signature to simplify formalities.

All this work has set the ground to proceed on an agenda that should include the actual implementation of RIA, the establishment of an electronic one-stop shop for business start-ups, and the widespread adoption of better regulation policies in the municipalities of the state.

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

The OECD is a unique forum where governments work together to address the economic, social and environmental challenges of globalisation. The OECD is also at the forefront of efforts to understand and to help governments respond to new developments and concerns, such as corporate governance, the information economy and the challenges of an ageing population. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies.

The OECD member countries are: Australia, Austria, Belgium, Canada, Chile, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The European Union takes part in the work of the OECD.

OECD Publishing disseminates widely the results of the Organisation's statistics gathering and research on economic, social and environmental issues, as well as the conventions, guidelines and standards agreed by its members.

OECD PUBLISHING, 2, rue André-Pascal, 75775 PARIS CEDEX 16
(42 2014 24 1 P) ISBN 978-92-64-20337-2 – 2014

OECD Reviews of Regulatory Reform

Regulatory Policy in Mexico

TOWARDS A WHOLE-OF-GOVERNMENT PERSPECTIVE TO REGULATORY IMPROVEMENT

Contents

Executive summary
Chapter 1. Assessment and recommendations
Chapter 2. The importance of regulatory policy and governance
Chapter 3. Regulatory policy and institutions in Mexico
Chapter 4. Regulatory impact assessment and consultation in Mexico
Chapter 5. Administrative simplification and management of the stock of regulation in Mexico
Chapter 6. Independence, performance, and accountability of regulators in Mexico
Chapter 7. Multi-level regulatory governance in Mexico
Annex A. Implementation of the 2004 OECD regulatory reform recommendations for Mexico
Annex B. Multi-level regulatory governance in Mexico

Consult this publication on line at ***http://dx.doi.org/10.1787/9789264203389-en.***

This work is published on the OECD iLibrary, which gathers all OECD books, periodicals and statistical databases.
Visit ***www.oecd-ilibrary.org*** for more information.

OECD publishing
www.oecd.org/publishing

ISBN 978-92-64-20337-2
42 2013 24 1 P

