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.

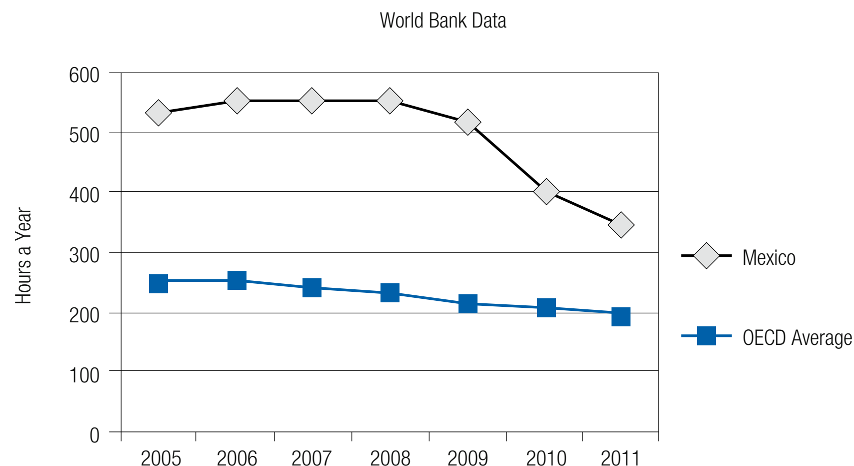
2009: Introduction of the electronic filing system for payroll taxes, property taxes, and social security.

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.

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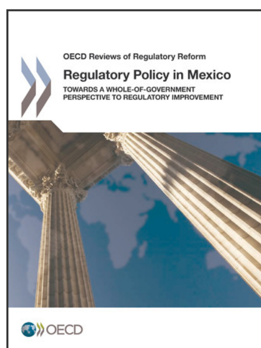

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