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Chapter 2

Government Capacity to Assure High Quality Regulation

This chapter discusses recent developments of market openness policies that have taken place since the 1999 Review on Regulatory Reform. *The chapter provides an assessment of the implementation of past policy recommendations, reporting progress made in promoting a free trade and investment environment and identifies new challenges.*

Introduction

Mexico has made significant progress in improving its regulatory system and tools in recent years, which puts it in the forefront among Latin American and well-advanced OECD countries. Market-oriented regulatory policies and related instruments have been strengthened since 2000 with the enactment and amendments of different laws and the creation of new institutions. Mexico is undertaking a major transformation of its regulatory approach in a more democratic and transparent political framework.

The main goal of the Monitoring Exercise is to show how Mexico has tackled the recommendations made by the OECD, published in 1999 in the *OECD Review of Regulatory Reform in Mexico* (hereafter "1999 Report"). The analysis of the extensive changes introduced to regulatory and governance arrangements in Mexico, as well as the new trends in regulatory policy, provide a starting point for discussion, since much has changed in a very short period of time. After the analysis of the main trends of regulatory policy in Mexico, an assessment of the implementation of the recommendations will be given. The aim of the chapter is not only to highlight the elements of success, but also to point out the shortcomings of the process: what can be achieved in the present administration and what can be started now with long-term benefits for the Mexican society. The identification of strengths of the programme, as well as remaining gaps and challenges to be addressed will be part of the policy option section.

The scope of the reforms and the current trends of the regulatory system in Mexico were highly influenced by the OECD recommendations of the 1999 Report. Since its conception in the early 1990s, Mexican regulatory policy has tried to move closer to best practices on regulatory reform applied in OECD countries. The 1999 Report pointed out some of the weakness of the process to assure high quality regulation, recommending moving forward in key areas (see Annex A). These recommendations covered a very broad range of regulatory aspects, tending to improve high-quality regulation for government effectiveness. In the Mexican case, key elements were successfully put in place and implemented as a direct result of a strong commitment at the highest political level.

Regulatory policy became an important tool to adapt the economy to the transformations that structural reforms required. In 1999, Mexico had recovered from the financial crisis that had hit the country in 1994-95, undertaking a deep economic transition: trade and price liberalisation was in place; privatisation was extended to most state-owned enterprises; competition policy was promoted across the economy; deregulation was introduced to reduce rigidities of the national economy. The economic strategy achieved the goal to create the basis for a non-inflationary growth: the link between devaluation, inflation and higher public sectors deficits, which had affected the country recurrently, was broken. Private investor confidence led to the increase of inflows into financial markets, mainly due to the openness of the economy and the structural reforms implemented. Despite these achievements, Mexico was facing considerable problems: economic growth was not sufficient to absorb a growing labour force; the

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amount of credit to the private sector was limited, and regional disparities increased as positive economic results were not shared equally by all social groups. In addition, serious economic imbalances and challenges remain in a number of sectors, such as access to credit or banking services, telecommunications, energy capacity or availability of water.

Regulatory policies

The election of a new administration in 2000 transformed the political landscape. The presidential victory of the *Partido Acción Nacional* (PAN) put an end to the *de facto* one-party system, dominated by the *Partido Revolucionario Institucional* (PRI), which was in power for more than 70 years. A pluralistic democracy was already manifest in the 1990s at the state level. Mexico moved forward a more open political system, reducing a centralist tradition in the decision making-process. Federal elections in 2003 confirmed this trend, opening a new stage for co-operation and conflict among powers, with a "horizontal" division of powers, as the federal Executive no longer enjoys a political majority in Congress, and a "vertical" division of powers across levels of government.

In this political framework, the restructuring of the public administration in Mexico remains a fundamental step to strengthen modernisation and decentralisation. Even if this reform is a cornerstone of the current government and the need for a more transparent, responsive and accountable public administration has been explicitly recognised in the National Development Plan[1] (*Plan Nacional de Desarrollo 2001-06* – PND), the Mexican public administration system still requires significant changes.[2] The historical merger of political and administrative elites previously frustrated the attempts to reform the administrative system. The lack of a high-level career civil service confers large discretionary powers to the president.[3] The mobility of public servants is hindered by a well-entrenched bureaucracy facing a highly complex decision-making process, some duplication of tasks, overlapping of functions and an often fragmented co-ordination among ministries.

Mexico's legal environment can still be improved to deliver good policy results. The legalistic structure of the whole system contributes to a rigid administration which hinders effectiveness, but relies sometimes on the discretion of authorities to exercise its powers. In a new political environment, these features are challenged, as well as the relative harmony that they used to provide: tensions among the separate branches of government, a strengthening of federalism, as well as a less powerful executive, all of which are normal in many democracies and especially in large countries, undoubtedly will impact on the regulatory reform process.

The Regulatory Improvement Programme

Regulatory policy has remained a high priority of the Mexican government, accompanying the process of structural reforms. The administration of President Fox recognises the explicit goal of achieving a "government with regulatory reform".[4] Nevertheless, it was at the end of the administration of President Zedillo that major changes to the institutional framework for the regulatory reform in Mexico started being introduced. In March 2000, the Mexican Congress approved reforms to the Federal Administrative Procedure Law (*Ley Federal de Procedimiento Administrativo* – LFPA), in order to institutionalise a regulatory improvement system. The reforms were published in the Federal Official Gazette (*Diario Oficial de la Federación*) in April 2000, extending the scope of regulatory improvement policy, as recommended in the 1999 Report.

These reforms applied not only to substantive laws and lower-level rules that involve business formalities and regulations, but also to those imposed to citizens. Areas such as federal public procurement and public works, social security and technical standards were included in the scope of the law. The programme also established a clearly defined scheme for the review of all regulatory activities of all ministries; regulatory agencies, such as the Regulatory Energy Commission (*Comisión Reguladora de Energía* – CRE) or the Federal Telecommunications Commission (*Comisión Federal de Telecomunicaciones* – COFETEL) and decentralised bodies, such as the Mexican oil company (*Petróleos Mexicanos* – PEMEX), the Federal Electricity Commission (*Comisión Federal de Electricidad* – CFE) or the Mexican Institute of Social Security (*Instituto Mexicano del Seguro Social* – IMSS). Procedural requirements were extended beyond federal ministries to decentralised agencies, with respect to their acts of authority and services they provide on an exclusive basis, and to asymmetric regulation of dominant firms. The LFPA also replaced the Agreement for the Deregulation of Business Activity (*Acuerdo para la Desregulación de la Actividad Empresarial*) of 1995, as the main legal document supporting the regulatory programme.

The reforms to the LFPA have consolidated a system of regulatory management, moving away from an *ad hoc* deregulation model. This trend has been reinforced at the highest political level, as recommended in the 1997 OECD *Report on Regulatory Reform*:[5] the regulatory policy in Mexico is part of the National Development Plan 2001-06, which led to the publication of the Regulatory Improvement Programme 2001-06 (*Programa de Mejora Regulatoria 2001-06*) in the Official Gazette in January 2002. The LFPA created the Federal Regulatory Improvement Commission (*Comisión Federal de Mejora Regulatoria* – COFEMER), which is in charge of the implementation of this Programme of the Mexican government.

The Programme sets the following strategies as main components of the federal government's activities in the administration and reform of regulations:

- To elaborate two-year improvement programmes of high quality.
- To conform, streamline, actualise and maintain publicly available the electronic system of federal formalities and services (Federal Registry of Formalities and Services – RFTS).
- To review and improve drafts of legislative and administrative regulations that imply costs to enterprises and private agents.
- To promote the incorporation of good regulatory practices in the federal public administration.
- To analyse and to propose drafts of regulations in order to improve the regulatory framework of specific economic sectors and regulatory areas.
- To deepen the collaboration and technical support about regulatory improvement process on the three government levels.

Assessment

The OECD recommended Mexico in 1999 to close gaps on government-wide standards for regulatory quality, to eliminate exemptions in the current policy framework and to expand the review programme beyond "business" regulations to all significant regulations. Even if the LFPA has increased the scope of the regulatory reform, the law still maintain some exemptions, particularly on regulations related to contributions (taxes and payments made to the federal government), public servant obligations, agrarian and labour justice and those established by the Prosecution and the Ministries of Defense and Marine. The

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gaps on fiscal issues, particularly, are an issue of concern, since a complicated fiscal system remains a burden for business activity and imposes unnecessary complications to citizens. This issue will be discussed in section *Policy options*.

The Biennial Programmes

Ministries and decentralised organisms are also carrying out the Regulatory Improvement Programme. The LFPA enforces Ministries to designate an Undersecretary (or equivalent) responsible for regulatory reform (*responsable oficial*). This person is in charge of promoting and co-ordinating regulatory reform within his ministry or decentralised organism, submitting the proposed regulations and their regulatory impact assessments to the COFEMER, and also of presenting a regulatory improvement programme to the COFEMER every two years (*programas bienales*). The Biennial Programmes of each Ministry include a list of potential regulations that Ministries and decentralised organisms may submit to COFEMER the following two years. In terms of administrative regulation, the Biennial Programmes include two main elements:

- A list of normative regulations, including objectives and justifications that need to be issued, reformed, repealed or abrogated during the term of the Programmes.
- A list of official technical regulations (*Normas Oficiales Mexicanas* – NOMs) that according to Article 51 of the Federal Law on Metrology and Standardisation (*Ley Federal sobre Metrología y Normalización* – LFMN) are under revision after the five years of validity.

In terms of regulatory drafts and the creation, modification or elimination of formalities, the 2003-05 Biennial Programmes consist of:

- Federal Registry of Formalities and Services' content validation: the ministries have to validate and include all the formalities that are specified by laws and *reglamentos* in the RFTS.
- Review and migration process of formalities: the purpose of this review process is based on the fact that: *i)* many formalities lack a clear legal basis; and *ii)* the information quality of some formalities is deficient. During the migration process all formalities are transferred to a new clearer format.
- Identification of high impact formalities: ministries and decentralised agencies have to identify a maximum of three formalities that either: *i)* have significant effects on the population; *ii)* are most frequently used; or *iii)* imply high costs for a specific sector. At the same time, ministries have to propose a plan for the improvement of their impact formalities.

These objectives aim at creating an internal responsibility in each regulatory agency, establishing a discipline relating to the presentation and evaluation of activities of regulatory policy, which is fundamental for tracking the reform inside the administration.

Co-ordination between levels of government

Since 1997, when the PRI lost a majority in the federal Congress, Mexico has experienced a political competition process that has led to a new thinking of federalism: many states and municipalities, which are now governed by opposition parties, are asking for a more active role in the decision-making process. Nevertheless, a historical centralist tradition remains a challenge to those who promote the benefits of increased decentralisation and competition at all levels.

Regulatory responsibilities in Mexico are shared among federal, state and municipal levels of government. A cornerstone topic in the relation with states and municipalities has been the overlaps, duplication and inconsistency with federal regulations. This fact has been recognised by COFEMER, integrating in its main activities the assistance to states and municipalities to improve their respective regulatory programmes. COFEMER has signed co-ordination agreements (*convenios marco*), with twenty-eight (out of 31) states, in which the states agreed to implement regulatory improvement programmes similar to the one at the federal level. These agreements are negotiated at the highest political level, which is fundamental for the coherence of the mechanism. COFEMER has also signed co-operation agreements with sixteen municipalities, in order to attain an efficient and complementary regulatory framework in and across all three levels of government. In some cases, state laws containing regulatory policies have been enacted, like the Law of Regulatory Reform for the State of Puebla, in November 2002, the first for a state at national level. As part of the technical assistance provided by COFEMER, the Commission has prepared municipal guides on regulatory reform that take local governments through the process of establishing an independent regulatory review authority, creating a Registry of Business Formalities, including RIA and designing effective enforcement schemes.

In order to strengthen the co-ordination between levels of government with a more focused programme, COFEMER designed the System for Rapid Business Opening (*Sistema de Apertura Rápida de Empresas* – SARE). The main rationale of the SARE is the analysis of the costs related to the start-up of businesses (see Table 2.1). Empirical data show that the average time needed in Mexico is 57 days,[6] which is related not only to formalities at federal level, but to important regulations imposed by state and municipal authorities, such as land use permits (*uso de suelo*) and licenses (*licencias de funcionamiento*). The SARE was prepared by COFEMER, at first instance, for the federal level (federal formalities). The system was issued by presidential agreement in January 2002, allowing businesses in 685 low risk economic activities, which represent 55% of the total classified business activities and 80% of activities carried out by SMEs, to complete just two federal formalities in one business day to start operations. These two federal formalities refer to the fiscal identification number and name registration. The remaining federal formalities, such as social security obligations, can be complied three months later of initial registration.

Table 2.1. **Start up a business**

International comparison

	Number of formalities	Days	Initial cost (USD)
Australia	2	3	402
Brazil	15	152	331
China	11	46	135
Denmark	4	4	0
United States	5	4	210
Mexico	**7**	**57**	**1 110**
Singapour	7	8	248

Source: CEESP (2003).

An important issue for SARE's success refers to local formalities. Businesses must also comply with state and municipal formalities. Therefore, the federal government is co-ordinating efforts in order to develop compatible systems at the state and local levels. The

SARE has been an important tool to reduce regulatory burden at these levels, since the creation of a one-stop-shop has simplified and tried to harmonise the administrative formalities that citizens face when they want to set up a micro, small and medium enterprise (see Table 2.2). In order to achieve this goal, the SARE required the co-ordination and agreement between different Ministries, *e.g.* Finance, Health, Foreign Affairs, Environment and Public Administration, as well as the involvement of state and municipal authorities.

Table 2.2. **Number of days and formalities required to start-up a business**

Selected municipalities participating in SARE

Municipality		Days	Formalities	Visits to offices
Puebla	Before SARE	58	27	5
	With SARE	2	5	1
Los Cabos	Before SARE	35	16	10
	With SARE	1	5	1
Aguascalientes	Before SARE	29	7	6
	With SARE	1	2-5[1]	1
Guadalajara	Before SARE	2	0-3	2
	With SARE	15 minutes	2	1
Zapopan	Before SARE	3	Variable	3
	With SARE	1	1	1
Tlalnepantla	Before SARE	20	3	3
	With SARE	15 minutes	1	1
Oaxaca	Before SARE	42	6	6
	With SARE	3	3	2
Chetumal	Before SARE	15-30	5	4
	With SARE	1	3	1

Source: Coordinación de Enlace con Estados y Municipios, COFEMER, February 2004.

Assessment

COFEMER has strengthened its relations with state and municipal governments, in order to attain an efficient and complementary regulatory framework in and across all levels of government. Most of the 31 federal states have signed co-operation agreements with the Commission, but still very few municipalities have followed this path. The political diversity at different level of governments, increased since 1997, has not impeded the efforts to spread the regulatory improvement programme. COFEMER has been able to negotiate with governments constituted by different political parties the set up of institutions and the introduction of regulatory tools. This trend shows how regulatory improvements could be extended across the country. Nevertheless, regulatory reform has not been implemented as a local policy in every state: while some of them have adopted it as a key policy issue, others do not see it as a priority.

Since the SARE is a cornerstone for multi-level regulation in Mexico, the results of SARE are of great importance. They can be analysed from different perspectives. The SARE has an impact on the economic activity. Data gathered by COFEMER in those years of implementation show that SARE has contributed to incentive the start-up of businesses. Micro, small and medium enterprises have taken advantage of the reduction of red tape, creating employment and generating investment (see Table 2.3). The SARE appears as a good tool to attract those people who are in the informal sector and integrate them into the formal economic activities. Some municipalities give direct incentives to those who want to regularise their situation, *e.g.* reduction of fines, grant of the license, elimination of extra charges due to the informality, etc.

Table 2.3. **Economic impact of SARE in selected municipalities**

City	Opened businesses	Investment (pesos)	Employment	SARE started on
Puebla	3 769	$38 745 000	8 511	May 8, 2002
Los Cabos	659	$69 382 500	1 125	October 16, 2002
Aguascalientes	447	$25 000 800	683	April 10, 2003
Guadalajara	5 024	$150 711 197	7 961	May 28, 2003
Zapopan	625	NR	3 438	May 28, 2003
Tijuana	38	$303 348	48	June 2, 2003
Mexicali	25	$1 155 000	30	June 2, 2003
León	110	$19 845 500	369	July 1, 2003
Tlalnepantla	1 192	$156 396 720	8 157	September 8, 2003
Tehuacan	45	$255 380	27	October 1, 2003
Oaxaca	25	$692 000	25	December 8, 2003
Cancún	1		1	December 12, 2003
Total	**11 960**	**$462 487 445**	**30 375**	

Source: Coordinación de Enlace con Estados y Municipios, COFEMER, December 2003.

On the other hand, the SARE has intrinsic limitations and needs to be complemented with other policies. Even if improvements at the state and local level have been achieved, in particular due to the institutionalisation of the regulatory improvement programmes and the creation of one-stop shops, more needs to be done in order to expand the SARE to other cities and strengthen co-operation with other institutions to reduce the costs of formalities.

The OECD also recommended in 1999 to review and reform the sub-national regulatory framework associated with the supply of private local infrastructure. Despite the achievements in the co-ordination front, the provision of goods and services by states and municipalities remains a key issue to address, since local regulatory frameworks for private concessions and government procurement are still weak. COFEMER has not been able to tackle this issue because the supply of private local infrastructure is a mainly municipal activity. This would require further interaction between states and municipalities.

Regulatory institutions

COFEMER and the Regulatory Improvement Council

A major achievement of the reforms to the LFPA was the creation of the Federal Regulatory Improvement Commission (COFEMER), which replaced the former Economic Deregulation Unit (*Unidad de Desregulación Económica* – UDE), which had been created in 1989 as part of the Ministry of Trade and Industry (*Secretaría de Comercio y Fomento Industrial* – SECOFI), today Ministry of Economy (*Secretaría de Economía*). COFEMER was conceived as a technically and administratively independent organism of the Ministry of Economy, for co-ordination and supervision of the regulatory improvement programme of the government.

COFEMER's mandate is to ensure transparency in the drafting of federal regulations and to promote the development of cost effective regulations that produce the greatest net benefit for society. COFEMER's approach to regulatory reform is based on its mandate and encompasses four main activities:

- Elimination and simplification of business and citizen formalities.
- Transparent and analytical review of all draft regulations and their regulatory impact assessments.

- Diagnosis of and proposals to reform existing laws and regulations in specific areas or economic sectors.
- Support for state and municipal regulatory improvement programmes.

The Regulatory Improvement Programme is designed and co-coordinated by COFEMER, supported by the Federal Regulatory Improvement Council (*Consejo para la Mejora Regulatoria Federal*), whose membership was also modified by the LFPA. The president of the Council is the Minister of Economy and other members are the Minister of Finance, the Minister of Labour, the Minister of Public Administration (former Comptroller-General and Vice-president of the Council), the General Director of COFEMER, the Governor of the Bank of Mexico, five business sector representatives and at least one representative from the labour, agricultural and academic sector. The President's Legal Counsel, the President of the Federal Competition Commission (*Comisión Federal de Competencia* – CFC) and the President of the Federal Consumer Protection Agency (*Procuraduría Federal del Consumidor* – PROFECO) are new members since 2000. As such this Council mirrors the experience of other OECD countries, involving labour and business representatives in official advisory bodies to the government for regulatory matters.

The Council meets approximately four times per year and gives direction to COFEMER. President Fox has chaired the four meetings of the Council, backing up the whole process. This forum also allows the business sector to express its concerns on regulatory issues. In the last meeting of the Council, in April 2004, President Fox announced a moratorium for one year on regulations as part of an effort to reduce burdens in businesses (see Box 2.1). Furthermore, the government established in 2002 a Presidential Council for Competitiveness (*Consejo Presidencial para la Competitividad*), in order to foster and consolidate the competitiveness of the Mexican industry. Private agents can liaise with different Ministries and other agents from the social sectors, analysing concrete structural and sector-focused strategies to increase competitiveness. The set up of a sound regulatory framework and administrative simplification have been recognised as key strategies to

Box 2.1. **Regulatory moratorium in Mexico**

The Presidential Decree that establishes a regulatory moratorium was published the 12th of May, 2004. The Decree entered into force the next day and restricts the emission of new regulation until the 29th of April, 2005. It also forces federal agencies to conduct, in conjunction with the COFEMER, a review of existing regulations. The moratorium does not apply to certain limited categories of regulations, including those that respond to situations posing an imminent danger to human health or safety, promote ordered economic growth and protect natural resources.

The purpose of the moratorium is to order and to prioritise government's regulatory activity. Due to the fact that entrepreneurs are important promoters of many regulations, President Fox invited them, their organisations, chambers and associations to collaborate with this effort. The government and the private sector are working on establishing an agreement which will define the way how private sector requests of regulation will flow.

The regulatory moratorium aims at reinforcing Mexico's competitive position. The purpose is to transform the Mexican business environment, by promoting competition and competitiveness, making regulation transparent and strengthening the rule of law.

Source: COFEMER.

develop further. This Council for Competitiveness reports directly to the Cabinet of Growth with Quality and the Office of Public Policies, attached to the Presidency.

Within this framework, COFEMER has become a driving force for regulatory reform in the country, overcoming some of the limitations of the UDE. With a budget of approximately 5 million dollars per year, COFEMER is staffed by 69 employees, of which 60 are professionals (mostly economists, lawyers and industrial or computer engineers). It is headed by a General Director, directly appointed by the Mexican President and who has the right to organise the structure and functioning of the Commission.

Assessment

The OECD recommended Mexico in 1999 to transfer the UDE to a location at the centre of government, in order to exploit government-wide policy and management authorities and to improve co-ordination and consistency in reform efforts. The 1997 *OECD Report on Regulatory Reform* recommended that governments "create effective and credible mechanisms inside the government for managing and co-ordinating regulation and its reform". Oversight bodies that work as "engine of reform" vary according their capacities and institutional design, but the OECD experience shows that regulatory oversight bodies are most effective if they maintain consistency and systematic approaches across the entire administration to provide broad-based and credible results. At the administrative level, many OECD countries have located strong central oversight bodies close to the centre of government to enhance their effectiveness.

The addition of a third title to the LFPA in 2000 allowed the creation of a technically and functionally autonomous body, the COFEMER, under the leadership of the Ministry of Economy.[7] Moving regulatory management and policy from a line ministry to the centre of government, like *Presidencia* or the Ministry of Finance, was discussed during the debate around the LFPA, but the idea was not approved by Congress. The possibility of creating COFEMER as a completely independent decentralised or constitutionally autonomous agency was also contemplated, but ultimately discarded by legislators, who opted to leave the COFEMER under the umbrella of the Ministry of Economy (former Trade and Industry) because of the nature of its duties.[8]

In the Mexican case, the regulatory system and mechanisms improved considerably with the establishment of COFEMER, which was empowered by law to conduct a more consistent, coherent and forward-looking approach to regulatory reform. While COFEMER is the expert administrative institution and the Regulatory Improvement Council is the political body in charge of co-ordinating and promoting the regulatory reform, the LFPA has also improved co-operation with Ministries and decentralised organisms of the Mexican administration. Most important, COFEMER has put into place a system of measuring regulatory quality (described in section *Regulatory tools and procedures*), investing in specialised expertise in regulatory reform and transparency in the development of regulations.

Nevertheless and notwithstanding the monitoring authority of COFEMER through RIA, the Ministry of Economy has no authority over other ministries. COFEMER has faced the resistance of entrenched vested interests, particularly within the public administration. Co-ordination and dialogue with other Ministries and decentralised bodies are still required in order to extend a cultural change among regulators and develop a more transparent, results-oriented and accountable way of operating the regulatory improvement system. The reinforcement of the relationship between the COFEMER and

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the Ministry of Public Administration (*Secretaría de la Función Pública*, former Comptroller General) can provide a better co-ordination between public management reform and performance management of the public sector.

The location of COFEMER in the Ministry of Economy can be understood as a sign that, in the past, regulatory policy was considered primarily a matter of improving the business environment by removing unnecessary and excessive regulation. The development of COFEMER's tasks and role has shown, however, that the focus has shifted to a broad conception of regulatory quality and to a more dynamic approach to regulatory management.

Building regulatory agencies

As in other OECD countries, so called "independent regulators or autonomous administrative agencies with regulatory powers" have emerged in the Mexican institutional landscape. Analysis of specific regulators will be subject of Chapter 4. It is important to note at this stage that this institutional setting offers great potential in improving regulatory quality and efficiency. The institutional design of independent regulators in Mexico has not followed a common pattern. Because of this lack of coherent framework, the regulatory powers of regulators vary in scope and scale.

COFEMER has undertaken some periodical diagnosis of this situation. As a result, legal gaps and political bottlenecks have been identified and tried to be solved through concrete administrative and legal reforms. A good example of this involvement was the drafting of the Law of Transparency and Access to Information (*Ley de Transparencia y Acceso a la Información Pública Gubernamental*) and the creation of the Federal Institute for Public Access Information (*Instituto Federal de Acceso a la Información Pública* – IFAI).

Regulating access to information: a new law, a new body

The Law of Transparency, approved by Congress in April 2002, represents an important effort to increase transparency within the public administration, especially regarding the access to information and the analysis about the use, distribution and destination of public resources. COFEMER, the Ministry of Public Administration and of Interior as well as other important actors, such as members of the Parliament, intellectuals and academics, participated in the elaboration and negotiation of the law. The Congress revised different proposals and was able to issue a final law unanimously. The Transparency Law entered into effect in June 2003 to guarantee people's access to Federal Government's documents and records.

The Transparency Law recognises three types of information:

- *Public information,i.e.* government information or public servants' information that must be published and can be accessed by request.
- *Classified information,i.e.* government or public information that is in a temporary embargo from publicity, up to 12 years, like if it could affect national security or defense, international negotiations before agreement is reached, severe effects on economic or financial stability, if imperils life, safety or health of any person or if law enforcement or justice could be obstructed.
- *Confidential information,* which does not belong to the government, *i.e.* individuals' and private entities' right of privacy and secrets, like industrial, fiscal and banking.

The Transparency Law includes also "transparency obligations" for agencies that have to report in their Web pages, updating them periodically, up 16 information themes. The

list includes: directory of public officials, salaries, payroll and fringe benefits; subsidies (amount and name of beneficiaries); government bids and contracts; government permits, concessions, licenses, etc. The transparency on financial issues represents a move ahead of many other OECD countries.

To oversee compliance of the Transparency Law, the Mexican government created the Federal Institute for Access to Public Information (IFAI) in 2003. The main goals of the IFAI are to guarantee the effectiveness of both the right to access public information and the right to privacy through data protection and to promote transparency and public sector accountability. The structure of the IFAI differs significantly from the structure adopted for other regulatory agencies (for "*organismos desconcentrados*" see Chapter 4) as it is neither subordinated to the Presidency nor any Ministry. It also has autonomy in its decisions regarding compliance with access to public records and has competency over the federal agencies of the Executive branch. The budget, provided by the Ministry of Finance, has to be approved by Congress; the IFAI has an internal auditor. The IFAI is directed by a Board of five Commissioners, who are proposed by the President and ratified by the Senate, which might refuse them, but not propose new ones. They are appointed for a 7 year fixed-term. They elect a Chairman among themselves every two years. The legal faculties of the IFAI are the following:

- Definitiveness of resolutions. Final decisions taken by the IFAI are definitive and the agencies are obligated to comply with them.
- Unrestricted access. The IFAI has legal capacity to request from an agency or institution any classified, reserved or confidential information to analyse whether or not it can be disclosed.
- Recommend sanctions to non-complying officials. If a public officer does not comply with the Transparency Law, he/she might face administrative or legal sanctions.
- Issue rules and oversee agencies. Design and issue rules and systems mandatory for agencies.

Unlike other OECD countries that have such an institution, the IFAI works with clear principles of costs: public information is free in nature, the cost of generating and retrieving it has been already covered by tax-payers. The only costs that can be asked for are the materials used to reproduce and the cost of delivering it to applicants. If information flows through the Internet, it bears no cost of reproduction materials and no cost of delivery. However, this generous feature might have to take into account the opportunity cost of public administrations in delivering the information in the future.

The IFAI has developed an electronic system called SISI, which manages all steps of an information request. The SISI has proved to be a useful tool: from June 2003 to January 2004, there have been more than 27 000 information requests; 93% of them have been made through the SISI.

The procedure to access the information is the following: the citizen presents the request and the concerned institution has 20 working days to reply. If the information is public, it has to make it available in the following 10 working days. If the information is denied or incomplete, the citizen has the right to present an appeal to the IFAI, which has the legal authority to determine whether or not the government must disclose the information, within 15 working days after denial by mail or through the SISI. The appeal can be discarded as inadmissible or accepted by the IFAI to be analysed. In this case, both the applicant and the agency present their arguments before one of the IFAI's Commissioners, who analyses the case and presents a draft solution before the Board

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within 30 working days. The Board issues a final resolution over the appeal in the coming 20 working days. As of January 2004, almost 700 appeals have been presented and approximately 600 of them have been resolved. The resolutions have given access to the information in 86% of the cases and confirming the no-access in only 14%.

Regulatory tools and procedures

Transparency is a key element of the regulatory process. Mexico has moved forward in increasing transparency in the design of new regulation, in particular through the RIA process and the strong role of COFEMER during the process. Excessive discretionary power during the making of new regulation has decreased and public officials have to be more accountable for its decisions and actions. Nevertheless, the reforms of the judicial system, as well as the implementation of the *amparo* process remain issues to be tackled in the future.

Transparency and predictability

Transparency in implementation of regulation: forward planning of regulatory actions

Mexico has included in its Regulatory Improvement Programme a mechanism to describe future regulations. The Biennial Programmes, described in section *The Biennial Programmes*, give a clear forward-looking approach to new regulations. The process works as follows: One or two months before the previous two-year programmes are completely executed, COFEMER submits to every regulatory agency a manual for elaborating the new regulatory programmes. This manual contains the new outlines that every programme must include, to be published in the Official Gazette, such as: a list of the formalities that will be created, eliminated or streamlined, a list of high impact formalities to be streamlined, and a list of federal regulations that will be created, modified or cancelled (including laws, lower level rules, decrees, technical standards, etc.). Each regulatory agency prepares a first draft which is submitted to COFEMER, which then is posted for public comments on COFEMER's Web site (*www.cofemer.gob.mx*) for at least thirty days. After the period of public consultation, COFEMER sends to each ministry and decentralised agency its own comments to the programmes as well as public comments received. Each regulatory agency then makes any corresponding changes to its programme or explains the reason to reject them, and then publishes the final version in the Official Gazette within a month. Every six months each agency must submit to COFEMER a report on compliance with the programme and possible modifications to the programmes are assessed.

The importance of the two-year regulatory programmes lies in the fact that every regulatory agency institutes a discipline of periodical review and planning of the regulatory framework and its amendments. The regulatory programmes help to achieve the central purpose of the federal regulatory improvement policy: to create and to modify regulations and formalities according to processes based on planning, transparency, analysis of potential effects, and public consultancy, in order to obtain the highest social benefit.

Another major instrument of forward planning is the National Standardisation Plan (*Programa Nacional de Normalización*), which is published in the Official Gazette at the beginning of every year (see Chapter 3 on Market Openness, in section *Reducing the costs of regulatory diversity*, for details). This document contains all planned activities relating to technical standards, both mandatory technical regulations (NOMs) and voluntary Mexican standards (NMXs): new standards to be proposed, modifications to existing standards, elimination of standards, and the results of the five year review mandated by the Federal Law

on Metrology and Standards (*Ley Federal sobre Metrología y Normalización*). Items not included in the Programme cannot be presented to the national consultative standardisation committees for review or approval, except in the case of emergency standards.

Transparency as dialogue with affected groups: use of public consultation

Consultation in making, modifying or repealing legislation and regulation in Mexico is still weak. There is no legal obligation for undertaking active public consultation for federal regulatory proposals subject to the Third Title of the LFPA, with the exception of technical standards, stipulated by the Federal Metrology and Standards Law. Nevertheless, COFEMER has included a section in the RIA questionnaire concerning public consultation. Institutional bodies are requested to specify if they established some type of public consultation and who was consulted about the proposals. The RIA also requests to list all the proposals that were taking into account for the draft regulation that is being presented.

Even if there is still a gap on general consultation requirements, all draft federal regulations are bound by the LFPA to be publicly available at least thirty working days before they are issued or sent to the President's legal counsel. However, by virtue of the Transparency Law all draft federal regulations must be available for public comment at least twenty working days. This is an important step in opening up the decision-making process for regulations because it imposes minimum disciplines as to how long proposed regulations are available to the public. This rule has contributed to shield COFEMER from political pressures, since its final opinions do not need to be hastily issued and the proposals that are not published for comment on the Internet for at least twenty working days are in violation of the Law. The regulatory agencies can comply with this obligation by making regulatory proposals publicly available through COFEMER's Web site, as COFEMER certifies such compliance after the required twenty days period elapses. Thus, the LFPA and the Transparency Law require that proposals and their RIAs are published and made available to the public on the Internet, and that COFEMER takes all public comments received into consideration, but they do not require ministries to undertake active consultation processes, like fora, sending proposals to certain parties, etc.

Transparency in implementation of regulation: law drafting

COFEMER, through the improvement of the RIA mechanism (see below in section *Understanding regulatory effects: the use of Regulatory Impact Analysis*), has contributed to improving law drafting quality. In practice, and because of this type of legal quality review, COFEMER also serves as an important filter of deficient regulation before it reaches the President's legal counsel (this applies to the most important secondary regulations, including *reglamentos* and laws, and certain *acuerdos*). The RIA includes a section which refers to legal analysis. This section contains several questions regarding legal foundation and the effects of the proposed regulation on the regulatory framework. Therefore, the review of the RIAs operates as a legal quality control; many of the partial or final options of COFEMER are focused on legal issues. This section of RIA allows COFEMER and any other interested party to analyse whether the regulatory agency has legal basis to issue the draft of regulation, whether it is consistent with higher regulations or whether it can be elaborated as another legal instrument.

The President's legal counsel also published in September 2003 guidelines on the preparation of laws in the Official Gazette. Ministries and regulatory agencies must send the drafts of laws and legislative regulations that will be approved by the Congress,

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accompanied by a RIA and the opinions prepared by the Ministry of Interior or by any other agencies related to the subject of the draft. The President's legal counsel, after a final opinion of COFEMER, decides definitively if the draft is submitted to the President's consideration and, if it is the case, for his signature. These guidelines are meant as a tool to enhance the quality of law drafting.

Assessment

The 1999 Review recommended improving regulatory clarity and simplicity through better law drafting. Whenever a formality is registered in the Federal Registry of Formalities and Services (see section *Review and simplification measures: Keeping regulations up-to-date*), COFEMER takes into account the principle of plain language drafting. The result should be reflected in administrative simplification and certainty for citizens. RIA process monitored by COFEMER shows, however, that there is still progress to be made by Ministries and federal agencies.

Transparency in implementation of regulation: communication, compliance and enforcement

Communication

Communication mechanisms have been improved by the LFPA. According to the law no ministry or regulatory agency can publish a regulation in the Official Gazette without COFEMER's final judgment. The LFPA stipulates severe sanctions for public servants that could circumvent LFPA's requirements for publishing regulatory proposals, such as removal from post and one year suspension.

Most proposals and some information on regulations are available on-line from COFEMER on a non-discriminatory basis to national and foreign parties, proving a growing demand from a wide audience. Nevertheless, progress can still be made as some information on regulations, such as public comments, additions and corrections to RIAs, preliminary and final opinions, cannot be found on line. RIA and the Federal Registry of Formalities and Services are good examples of the communication mechanisms used by COFEMER. Due to the establishment of the new RIA electronic system, introduced in October 2001, full texts of most draft proposals and RIAs are available on-line (*www.cofemermir.org*). This system facilitates the access to any interested person or group to the proposals or regulations and RIAs.

Also all technical standards and published drafts of technical standards are available from the Web site of the Ministry of Economy (*www.economia.gob.mx*). Technical standards subject to the five-year review requirement that are intended to be ratified, modified or cancelled are listed in the annual National Programme of Standardisation. This Programme includes also the potential new technical standards or modifications to existing standards that will be issued during the corresponding year. Furthermore, the requirements for publishing technical standards include also those stipulated in the Federal Law on Metrology and Standards. In order to publish the technical standard there is a detailed mechanism that must be complied. In general terms, the requirements for publishing technical standards are: *a)* publication of a draft of the technical for public consultation for sixty days (the draft is subject to LFPA review process prior to its publication); *b)* the Committee in charge of elaborating the technical standard must review all public comments and incorporate pertinent ones; and *c)* publication of the response to all public comments by the ministry responsible of the technical standard at least fifteen days prior to the publication of the technical standard.

Assessment

The OECD recommended improving transparency by extending legal requirements for notice and comment procedures, already required for technical standards, to all ministries and agencies during the development and revision of regulation. Procedures for openness should be standardised for all advisory bodies. COFEMER has promptly followed this recommendation, as all draft federal regulatory proposals are made public from the moment in which they are sent to the Commission, at least 30 working days before they are published or emitted. This was reinforced by the enactment of the Transparency Law in 2002, which enforces to publicise, via Internet, all documents for a period of at least twenty working days. These reforms have allowed Mexican citizens to comment on regulatory issues before final decision, except for fiscal proceedings and those of the Ministries of National Defense and Navy.

Enforcement and compliance

The issue of compliance and enforcement of regulations has received relatively little attention until recent times, when regulators in OECD countries have recognised that a systematic non-compliance is a clear indicator of the need for a major regulatory reform. In that sense, the efficacy of regulations is highly linked to their degree of compliance. Most OECD countries confront the need to set up effective controls on the application of regulation, in order to achieve regulatory goals.

In the framework of the work carried out by COFEMER and unlike several other OECD countries, Mexico considers within the RIA the availability of resources – budgetary and administrative – that can back up the regulatory process, as a tool to ensure compliance of the regulatory measure. A step forward in reform has been the inclusion of a specific question that refers to public resources for effective enforcement. The regulatory agency is required to answer what public resources are necessary to ensure compliance of the regulation, if it will be necessary to realise inspection, verification or certification activities and if the available resources for enforcement are sufficient to guarantee the compliance. This innovative compliance-oriented regulatory design requires improvement, integrating new tools for regulatory evaluation and analysis.

The Ministry of Public Administration (former Comptroller General) has also developed some programmes to improve ethics and fight against corruption within the public sector, in order to reduce discretionality of public servants in applying regulations. The Presidential Agenda for Good Governance contains the initiatives proposed by the Executive, which are also supported by the Interministerial Commission for Transparency and Fight against Corruption. In terms of a general administrative procedure, people in firms may appeal specific decisions to the administrative authority that makes them, and then to the hierarchically superior administrative body. If a person believes that an administrative unit has exceeded its authority or has not followed specific administrative procedures, he may also place a complaint and request for review by the Ministry of Public Administration (Comptroller General), and seek disciplinary action in terms of the Federal Law of Public Servants' Administrative Responsibilities (*Ley Federal de Responsabilidades Administrativas de los Servidores Públicos*), published in the Official Gazette in 2002. This law aims at regulating the public service, especially the obligations, responsibilities and administrative sanctions of the public servants. Important elements of the law are the fight against corruption and the increase of transparency and accountability in the public management.

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Compliance and enforcement of regulations are directly linked to the legal system. The political transition in Mexico has exposed the limitations and inefficiencies of the judicial system, which used to serve to political arrangements more than to preserve the rule of the law. Vested interests that still oppose reforms challenge deeper transformations which are required as political openness is reinforced and the society demands a more effective judicial system. Even if there have been some initiatives to promote enforcement and reduce the potential for discretion in decision making, strengthening of independence and autonomy from the political arena is a pending issue for reform in the judicial branch. This situation has affected the enforcement of regulations, whose implementation has sometimes been delegated to lower level officials or not inspected and controlled by authorities in a regular basis.

A more detailed analysis of the *amparo* process will be given in Chapter 4. Nevertheless, it is important to point out that the use of the *juicio de amparo*, the *habeas corpus* petition to the courts when a person deems that his constitutional rights have been violated, plays an important role in the non-compliance of regulations. The *amparo* process, if it is approved by the courts, suspends the implementation of an administrative decision. There is some debate as to the balance of the costs and benefits of the *amparo*, as it has sometimes served as an effective barrier to administrative actions. Often *amparos* are facilitated by poorly designed laws and regulations.

One problem currently observed in Mexico is the universe of rules and regulations that form the administrative legal system. The LFPA does not identify what is called a "general administrative act".[9] The result implies a generalisation of rules and regulations that, in another context, should be hierarchical, in order to identify their functions, features and consequences. This generalisation has a negative impact on the compliance of regulations because it is difficult to identify what kind of controls could be used to verify their enforcement. In the same sense, decentralisation of legal faculties across the administration is aggravated by this lack of systematisation, giving ministries and decentralised bodies a broad room of maneuver in setting up regulations.

Understanding regulatory effects: the use of Regulatory Impact Analysis

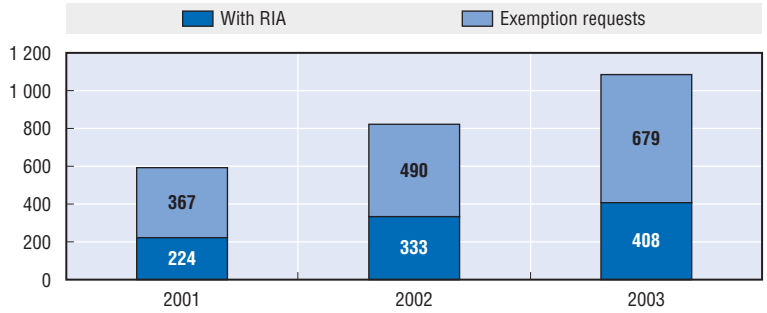
Since the publication of the 1995 Recommendation of the Council of the OECD on *Improving the Quality of Government Regulation*, the OECD has promoted Regulatory Impact Analysis (RIA) in ensuring that the most efficient and effective policy options were chosen. RIA is a tool that has to accompany the development, review and reform of regulations. In OECD countries, the use of RIA has rapidly increased and many states apply it to primary legislation, which has a positive impact on the regulatory quality. Whereas the design of the RIA depends on cultural, political and institutional considerations, it is widely recognised that RIA is a useful tool to improve the cost-effectiveness of regulatory decisions and to reduce the number of low-quality and unnecessary regulations. RIA also helps improving transparency of the decision-making process and enhancing public consultation.

Mexico integrated the use of RIA in the LFPA. One of the COFEMER's main activities is the review of regulatory proposals (legal measures of general application drafted by the Executive branch) that impose compliance costs on private agents and their corresponding RIAs, including a discussion of objectives, obligations to be imposed, alternatives considered, potential costs and benefits, and the result of public consultation. This means that absolutely all types of legal measures of general application that create compliance costs, from formats to major implementing rules, must be submitted to COFEMER, except

for the subjects that the law explicitly excludes, like those of fiscal nature, or acts by sub-federal administrations, states or municipalities. Ministries and regulatory agencies are responsible for elaborating RIAs, while COFEMER is responsible for reviewing them (see Figure 2.1). Asymmetric regulations for dominant market participants, as determined by the Federal Competition Commission (CFC), are also subject to RIA requirements and review by COFEMER.

Figure 2.1. **Draft regulations sent to COFEMER**

2001-03



Source: COFEMER, 2004.

Given the importance of RIA in the management of regulation and the pursuit of regulatory quality in Mexico, it is worth providing some details about how it is prepared and used. The Commission reviews both the draft and the RIA and has ten working days to ask for corrections or addition information to the RIA, in case it lacks of substantial information regarding market conditions, legal issues, unjustified obligations, potential effects to the proposal, formalities, etc. The regulatory agency has to present again the RIA, which must include the corrections or additional information requested by COFEMER. Furthermore, if COFEMER considers that the proposal has important deficiencies (legal deficiencies, unnecessary potential negative effects, unnecessary high costs for private agents, etc.) it will issue a preliminary opinion expressing all deficiencies found in the regulatory proposal. The ministry has to answer all COFEMER's observations contained in the preliminary opinion, and it has to make the necessary changes to the draft. COFEMER cannot veto regulations; in case the ministry or regulatory agency does not consider COFEMER's observations pertinent, it must clearly justify the disagreements to those observations. There is no legal period for answering COFEMER's partial judgments. After the ministry has responded to a preliminary opinion, it may request a final judgment, which must then be given by COFEMER in five working days. COFEMER has then thirty days from the receipt of the regulation, or of the corrections or additional information requested of the RIA, to emit a preliminary or final opinion. According to the LFPA all drafts of federal regulations must be publicly available at least thirty working days before they are issued or sent to the President's legal counsel.

The main purpose of the RIA is to offer a clear justification of the regulation proposed. In that sense, the RIA process establishes a set of standard criteria to determine if the regulation is clearly justified: an explanation of the situation and why the government needs to be involved; a demonstration of legal foundation; a justification of the specific obligations imposed on private agents; an analysis of the potential effects of the regulations; the identification of formalities created, modified or eliminated by the

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regulation; the analysis of no viable lower costs alternatives; and the assessment that no unnecessary obstacles to trade, competition or consumer protection will be created. Most of the elements mentioned before are part of a detailed manual that COFEMER distributes to institutions for the elaboration and submission of RIA. The manual is also available on COFEMER's Web site.

Cost-benefit analysis is an important part of the questions presented in RIA. Benefits and costs are separated into quantifiable and non-quantifiable categories due to the lack of proper data, a problem that many institutions are facing. Risk assessment is also strongly encouraged in the case of health, environment, safety and consumer protection regulation, but there have been very few cases where this issue has been incorporated by regulatory agencies. This seems to be a common problem among OECD countries, where the methods such as benefit-cost analysis provoke discussion and need to be revised to increase the quality of the analysis. COFEMER keeps track of the quality of all RIAs that it receives, by grading them according to compliance with minimum standards in each of the important section of the RIA.

Assessment

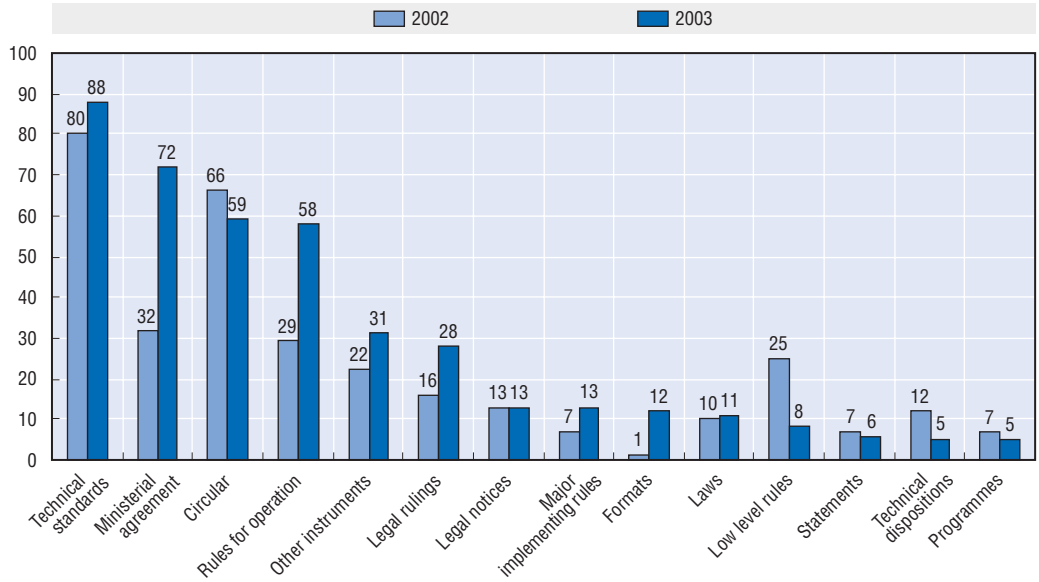
Strengthen disciplines on regulatory quality by refining tools for RIA was recommended in 1999. It was also suggested that RIAs be systematically published during the notice and comment process for each regulation and train public sector employees in how to conduct RIA. Since 1997 the use of RIAs has been an essential part of draft regulations reviewing process. It is a standard practice to evaluate, analyse and justify draft regulations. Since October 2001, new guidelines for development of RIAs and for the development of review process are available on-line, making compulsory to the agencies to use this new electronic system since October 2002. The system has simplified the process and clarifies COFEMER's review criteria. It is also possible to consult full texts of draft proposals, RIAs and COFEMER's opinions. Since May 2000, over 1 300 regulatory proposals have been reviewed.

Training seminars on the new system is a permanent task. From October 2001 to now, COFEMER has given 33 seminars for more than 740 public employees. The objectives of the courses are to teach public servants how to use on-line system for development of RIA and how to elaborate a RIA, to improve communication and relationship between COFEMER and public servants in charge of the proposals, to develop skills in quantify effects of regulation and regulatory and non-regulatory alternatives, to spread widely knowledge about the RIA and to clarify COFEMER's review criteria.

According to a diagnosis elaborated by COFEMER on the quality of RIA, much remains to be done to improve the level of quantification and data analysis. Another problem is the fact that 70% of the RIAs presented to COFEMER are elaborated by medium level officials (directors or below),[10] which reduces the quality of the product, since they have not been trained or lack of experience and information.

The normative instruments and interpretation of legal documents that accompany the RIA are basically used in a discretionary way by officials. The documents most often presented with the RIA are technical standards and ministerial agreements. For the first, the signature of an Undersecretary or even a Director General is sufficient, whereas for the latter the Minister has to sign. The hierarchical levels of norms and the way regulations can be submitted in different legal documents may affect the quality of RIAs (see Figure 2.2), having also important implications regarding the complexity of the regulatory framework.

Figure 2.2. **Regulatory proposals received by COFEMER with RIA by type of legal instrument**



Source: COFEMER.

Choice of policy instruments: regulation and alternatives

One important element considered in the content of the RIA refers to the possibility of alternative policy instruments, both regulatory and non-regulatory. There is a specific question in the RIA that refers to this issue: "What other alternatives to the draft regulation were considered during its elaboration? Do you consider other alternatives which can achieve the same objectives without creating new obligations to private agents such as incentive programmes, information to consumers or enterprises programmes, a voluntary standard, or just a programme aimed at improving compliance with existing regulations?" Theoretically, the RIA is prepared prior to the final process of the proposal; therefore, the analysis regarding alternatives must be done during the process of elaborating the regulation.

Specific, detailed guidance on regulatory alternatives, such as taxes and subsidies, voluntary agreements, information programmes such as eco labelling, self regulation, permit trading schemes, and performance-based regulation, has not yet been developed, although it is an important element in the discussions during the RIA training courses offered by COFEMER.

Assessment

To promote the adoption of alternatives to traditional regulation was also suggested by the OECD in 1999. The consideration of alternatives is a tool that can support the quality of the regulations. The OECD has found that "the choice of policy instruments tend to be based more on habit and institutional culture than on a rational analysis of the suitability of different tools to addressing the identified policy problem".[11] In the case of Mexico, the cultural change experienced with the introduction of a regulatory programme is bearing positive fruits. The use of alternatives involves always a risk, which can have serious consequences for the regulator, not used to deal with this approach. COFEMER has recognised that there is a gap to close concerning the adoption of alternatives to traditional

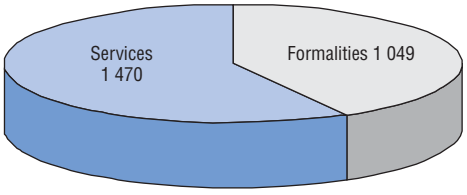
regulation, *e.g.* non-regulatory alternatives that can increase policy effectiveness and lower cost. Including the issue in the RIA will certainly provide a consideration to experiment and policy makers will learn that new tools are now available. This might be particularly fruitful in the field of environmental regulations (see OECD, 2003c).

Review and simplification measures: Keeping regulations up-to-date

A systematic up-dating of regulations is a core element for effective regulation. The revision of the stocks of regulation and administrative formalities that countries accumulate over years has been recognised by the OECD as a major task for national administrations. Besides the economic, social and technological changes that may influence and change the effectiveness of regulations, their impact on the costs of doing businesses may impose a continuous problem.

A major activity of COFEMER is the establishment and up-date of the Federal Registry of Formalities and Services (RFTS), reinforced by the amendments to the LFPA. In 2001, a presidential decree led to the elimination or streamlining of an additional 20% of business and citizens formalities, and to the design of measures to streamline highest impact formalities in each agency. All formalities and services required by ministries and decentralised organisms must be included in the RFTS. It requires that all formalities be presented on-line in a standard format that details requirements, documents needed, service prices, maximum response times, duration of validity of authorisation, locations for presentation of information, etc. Formalities that are not listed in the RFTS cannot be applied except in a limited number of cases (formalities that last less than 60 days, formalities related to public procurement, or services deemed to be of benefit to users), and they must be applied exactly as they appear in the RFTS. Registration of all formalities and services was completed in May 2003, in compliance with the time frame specified by the LFPA (see Figure 2.3).

Figure 2.3. **Composition of the Federal Registry of Formalities and Services**



Source: COFEMER.

An additional exercise for streamlining formalities has been established. In the first semester of 2003 the private sector presented a list of twenty high impact business formalities to the federal government to be simplified. The COFEMER, the Ministry of Public Administration and several regulatory agencies worked jointly with the private sector to review the proposals. Following this exercise, another two lists of regulatory improvement actions for forty-eight high impact formalities were presented. Participants defined specific actions and dated commitments in order to improve them. After careful review, sixty-three formalities were improved.

President Fox invited the private sector to continue identifying high impact formalities in order to improve the regulation that has the greatest effect on business competitiveness. Furthermore, the Ministry of Public Administration and COFEMER are prioritising and

co-ordinating a solution to 240 high impact formalities for citizens identified by the government. Federal authorities will be working on the proposals of the private sector and on continuing the implementation of the regulatory improvement process on its own.

The purpose of these efforts is to promote investment and enterprise expansion. The federal government is constructing a dual strategy for regulatory reordering. On the one hand, the government is halting the emission of regulations that affect the economy through the moratorium (Box 2.1) and, on the other, it tries to improve or eliminate formalities that unnecessarily inhibit economic activity.

Administrative simplification. In terms of internal administrative simplification the Ministry of Public Administration, through its Regulatory Simplification Unit, co-ordinates the implementation of the "Tools for Regulatory Simplification". These initiatives do not bind public servants to comply with administrative simplification, but signal a commitment to introduce more transparent rules to the internal administration:

- *Normateca,* a portal to register, disseminate and up-date all legal, regulatory and administrative disposals that regulate the operation and functioning of dependencies and entities of the federal public administration, as well as to commit all public servants to administrative simplification, as information is filtered before being entered into the portal. The number of federal regulations went from an initial inventory of 426 mandatory regulations for administration and operations in 2001 to 333 by mid-2003 (22% elimination in the regulatory burden for institutions).
- *Internal Normateca* for each institution integrated in the Tools provided by the Ministry, in order to have an internal portal to publish the regulatory framework issued for internal use. 24 institutions have already completed the implementation of this tool.
- Creation of *Committees for Internal Regulatory Improvement*. The Committees, 25 in full operation up to now, are composed by officials subject to regulations and official issuing those regulations. They have been the link for promoting productivity in institutions with regulatory systems and complement the roles played by the legal and controllers' offices, which serve as advisors to these committees.
- Set-up of *Regulatory Simplification Roundtables*, composed by high-level officials from various agencies. Their main goal is to analyse, discuss and propose improvements to the framework of standards and regulations used by the agencies that deal with all sectors and to generate proposals from the Executive to the Legislative.

The Ministry of Public Administration launched the System of Electronic Governmental Formalities (TRAMITANET) in 2002, a portal (*www.tramitanet.gob.mx*) designed to service the citizens, providing information regarding public and private formalities that might be done through the Internet. It gives access to all governmental formalities that concern citizens and businesses at the federal, state and municipal level. It is based on the information compiled and up-dated through the RFTS. The aim of this tool is to provide public opinion with a portal where all formalities and related information (time tables, requirements, addresses of one-shops, etc.) are registered. It also gives citizens and businesses the possibility to complete these formalities electronically and to complain or report any corruption act. Since its creation, 8 million users have had access to TRAMITANET and more than 3 million formalities have been solved.

Assessment

In 1999 the OECD recommended to speed up effective reform by adopting a systematic and comprehensive approach to the review of existing laws and regulations. The COFEMER has the faculty to review the federal regulatory framework, to diagnose its application and to present administrative or legislative proposals to improve the regulation in activities or specific economic sectors directly to the President.

COFEMER has carried out a detailed revision and diagnosis when a specific economic sector is subject to a significant reform. Examples of this revision are the following initiatives: agreement for proceedings and procedures related to validity and recognition for bachelor degree studies; reforms to the Articles 27 and 28 of the Mexican constitution; statutory Law of National Centre for Energy Control; Energy Regulatory Commission Act; reforms to the Public Service of Electrical Energy Act; initiative of reforms to the Federal Consumer's Protection Act; major regulation of Social Insurance in the matter of Affiliation, Classification of Companies, Collection and Control Law; regulations of Private Security; regulations of Preventive Medicine in Transport.

Periodically, COFEMER, by its own initiative, makes a diagnosis of regulatory framework quality, in order to identify legal areas or problems that can be corrected or adapted. These diagnoses can turn into concrete proposals for legislative or administrative reforms. Some examples are: agreement that establishes the Rapid Business Start-up System (SARE); methodology to elaborate an Index of Competitiveness of the Cities; administrative *habeas corpus* study; major regulation of Federal Transparency and Access to the Public Information Law; comparative analysis on radio and television legislation; health products regulation study and diagnosis on the regulatory framework in oil and natural gas.

The OECD also recommended to review laws and regulations to improve concession processes. This recommendation was taken partially by COFEMER because the regulatory framework of concessions is related to the concept of public service governed by the Constitution. COFEMER has reviewed some concession cases which are included in secondary federal rules, such as the Mines Law, the major implementing regulations on natural gas and L.P. gas, the resolutions and conditions for granting radio spectrum and public telecommunications networks concessions, etc. COFEMER reviews the general conditions by which concessions are designed and that are contained in sector-specific laws. Individual titles of concession, however, are not reviewed, as there is no legislative mandate to do so.

Conclusions

Mexico has made significant progress in the implementation of its regulatory programme since the publication of the 1999 Report. As discussed in the previous sections, Mexico followed most of the recommendations made by the OECD. During the implementation of the regulatory programme, new gaps have been identified, produced mainly by the dynamic of the process and the political and institutional environment of the country. This final section intends to give an overview of the strengths of the regulatory programme in Mexico, as well as to show the gaps to close, considered in the *Policy options* section.

Strengths of the current programme

The regulatory policy, understood as part of the public policy of a government, is highly influenced by the institutional, legal and political arrangements. The Mexican government has been able to combine different elements to reach clear goals that give continuity to the project and produce tangible positive results. These achievements can be an example for other countries.

The regulatory oversight body in Mexico: COFEMER

COFEMER has become a very successful oversight body. The Commission has been able to develop a highly qualified programme of regulatory reform and, most important, to put it into practice successfully in a relatively short period of time. Which are the conditions that allowed this development in Mexico?

As a "deconcentrated body"[12] (see specific description in Chapter 4 on regulatory authorities), COFEMER is part of a trend that is reforming public institutions in Mexico, especially in the way of managing public issues, the structure and organisation of the public administration and the exercise of administrative duties. It is a body created by the Executive through the enactment of a law. The COFEMER has been delegated with important functions, and has considerable technical, operational, financial, but not organic autonomy.

The degree of autonomy has contributed to its achievements. The strong presidential system in Mexico is an important element to consider. Even if the COFEMER is not at centre of government, the fact that the Director General is appointed directly by the President gives the Commission a strong political support at the highest level and assures a leadership in the process, at least for the six-year presidential period. The Director General is in charge of the conception, orientation and decision of the regulatory policy, managed by a highly qualified professional team.

The work of COFEMER is guided by the Federal Improvement Regulatory Council, a political advisory body. As the membership of the Council has been increased, including the presence of the consumer protection agency (PROFECO) and the competition authority (COFECO), and businessmen have been able to express there their interests and concerns, the Council has become a driving force for the reform, sorting out the different demands and making clear recommendations on the way to follow.

Access to information: the IFAI and the transparency law

The IFAI appears as a cornerstone to foster transparency in government acts. Even if the classification of information as "confidential" could be seen as discretionary by different parties and certainly will be source of discrepancies on very sensitive political issues, giving access to most of the government information to the citizens is a step forward in increasing transparency. The benefits of this decision are many, going from increasing accountability of the public servants and fighting corruption to improving decision making in society and consolidating democracy.

It is also worth noting that for the first time a regulatory agency in Mexico has a legal mandate to make institutions comply with regulation. Moreover, the appeal process represents an improvement because it only concerns citizens; institutions cannot appeal IFAI's decisions, as is the case of other regulatory agencies. The appeal process slows the regulatory process and imposes excessive costs.

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Regulatory quality and the use of ICT

COFEMER has been able to establish, in a short period of time and with relatively limited resources, mechanisms and tools that are among the best developed in OECD countries. The Federal Registry of Formalities and Services (RFTS) was a pioneer among regulatory registers. The success of this initiative has lead to similar approaches at state and municipality level in Mexico. Private sector has also developed compendia of laws and regulation. This means a clear recognition of the expected commercial value of this information for regulated companies. Moreover, it has contributed to provide accuracy and legal security to citizens.

The development of an Advance Indicator of the Biennial Programmes (IABP) which measures the improvements that each entity has done is a major step to evaluate its performance. The indicator evaluates each institution from 0 to 10, considering three main points: *i)* the goals expressed in the Biennial Programme; *ii)* the formalities that were not reported during the elaboration of the Programme and become gaps; and *iii)* the late submission of the Programme to the COFEMER. The final aggregated indicator is elaborated monthly and it also looks at measures that could stagnate or hinder the regulatory process. The goals of the IABP are not only to record the achievements of each institution, but to keep track of the evolution of the regulatory policy and make it comparable in time and with other bodies. Even if the IABP is not accompanied by a qualitative assessment of the performance, the general public and institutions have access to the information, influencing the need for a better performance.

The use of the Internet as a tool to promote regulatory policy with quality has been a major achievement. COFEMER has developed on-line systems for most of its programmes, including the submission of RIAs, which has been crucial for dissemination of information and make public the goals, features and results of the Regulatory Improvement Programme. In 1996 COMPRANET, an innovative process of government procurement through Internet was introduced, improving transparency of overall procedures and increasing communication between government and citizens. In the framework of the National System e-Mexico, put in place by the current administration in order to integrate the use of technologies to reduce the digital gap, the portal "e-Mexico Economy" tends to provide a complete overview of the digital economy that can be used by businesses, in order to foster economic growth and competitiveness.

Remaining challenges

Despite the regulatory efforts and achievements, remaining challenges require special attention. The refinement and improvement of regulatory quality can lead to longer term and more concrete results that would contribute to the national development. In the last six years, the Mexican economy has been stable, being more diversified and highly integrated in the NAFTA area, mainly to the United States. However, the economic growth performance has been unsatisfactory: GDP growth is likely to be below 2% in 2003,[13] not much above population growth (1.8%). Low levels of human capital, gaps in adequate physical infrastructure, scarcity of additional fiscal resources to finance development projects, strong disparities between social groups and economic regions and acute poverty are constraining the potential growth. Mexico still faces a widespread informal sector, whose attractiveness relies substantially on poor incentives to enhance the formal economy.

Productive investment has to be stepped up and domestic conditions for FDI need to be improved. A major barrier to conditions leading to higher domestic and foreign investment in the past has been the regulatory and legal framework. The regulatory programme now contributes to a friendlier climate for business, providing a more transparent and effective legal system, which can reduce costs for entrepreneurs. Some pending issues that should be considered for revision are the following:

Policy options

1. To revise the exemptions of the LFPA, especially on fiscal issues.

According to the LFPA, the set up, revision or diagnosis of fiscal regulations is exempted from the law. The LFPA describes fiscal issues as "the contributions and accessories that directly derive from them".

Contributions and accessories refer mainly to taxes. The tax system in Mexico is ruled by the *Sistema Nacional de Coordinación Fiscal*, which allocates most of the taxes: income taxes, excise taxes and the VAT are exclusively federal; the main source of state revenue is the payroll tax; and municipalities have the property tax (*predial*) and some fees, such as the one for water, as their main source of revenues. Fiscal regulations are mainly imposed by the federal government through the Administrative Tax System (*Sistema de Administración Tributario* – SAT), created in 1997 as a deconcentrated body of the Ministry of Finance (*Secretaría de Hacienda y Crédito Público*). The Ministry of Finance, thus, remains the depositary of charging taxes, but also of regulating the collection of taxes.

The fiscal regulations are exempted by law from the current programme. This feature could be reconsidered in the future, searching ways in which fiscal regulations could be made subject to some form of simplification and review. Numerous changes are introduced to the system from one year to the next, often reflecting short-term considerations product of compromises acquired during the tax law discussions. Some of the administrative problems facing private agents, who are willing to comply, are: a complex system that creates incentives for non-compliance; duplication of tax declarations; a complex tax code, whose application is inconsistent across taxpayers and used in a discretionary way by bureaucrats in the tax administration; poor co-ordination between collectors' agencies; inefficient system to disseminate and compare information; etc.

Tax administration is a determinant to increase tax revenue, a core problem for the country.[14] Enforcement should be a target for the present administration. The informal sector contributes marginally to fiscal revenues and weak law enforcement motivates possible evaders. Reducing evasion is crucial to improve the transparency of the system. More efforts to stop evasion are needed, such as increasing audits, revise and apply sanctions, training staff, etc. Finally, better consideration of regulatory impacts of fiscal measures is needed if alternatives to direct regulation are to be adopted more systematically across the federal administration. Progress on the larger issue of reducing the informal sector also involves improving the quality of and access to public services that contribute to economic and social development.

There are two alternatives of policy option for Mexico in this area. One approach might be to revise the SAT and strengthen the set up of another semi-independent regulatory quality unit linked to the Ministry of Finance. This unit would request the SAT to reduce the costs of tax collection and of tax compliance, improving the measures already taken, in order to modernise the tax administration and make it more efficient. But this option would make the Ministry of Finance responsible for controlling the quality of its own

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regulations. An alternative could be to revise the LFPA and eliminate the exemption on fiscal issues, specifically on regulations related to the collection of taxes. Then, COFEMER would exercise oversight of fiscal regulations, as it does for other matters.

2. To broaden the scope of the regulatory improvement programme to lower levels of government.

In most OECD countries, and particularly in those with federal structures, the regulatory agenda has been broadened to sub-national levels of government. It has been widely recognised that a regulatory programme that only covers the federal administration cannot succeed in a long-term. The multi-level perspective of regulatory policy has become a policy issue. Mexico has developed its own tools and institutional arrangements, in order to make states and municipalities to take part in the design of the regulatory policy.

SARE has proved to be a successful tool to expand regulatory policy at all levels of government. Nevertheless, innovation, resources and co-ordination need to be increased to complement the system and make it truly viable for many cities in Mexico. More resources – human, technical and financial – should be allocated to the SARE because training of officials, the use of new technologies and the set up of SARE's front desks for all government levels are fundamental for the continuity of the system. To increase the number of participants in the SARE should be a permanent goal of COFEMER through constant promotion.

SARE is an instrument aimed to reduce the red-tape for low risk activities, but it might be the cornerstone for establishing a similar mechanism for high risk activities. In terms of benefits, evidence shows that micro, small and medium enterprises have profited from the system. SARE could be co-ordinated with other institutions or programmes, like *Centros de vinculación empresarial*[15] or the *Fondo Pyme*, in the framework of the *Programa de Desarollo Empresarial 2001-2006*.

3. To promote a better legal framework for regulations with a clear hierarchy of rules.

The legal framework for regulations presents important gaps in design and structure, which influence the revision process of COFEMER. Two main problems arise in this context. First, as a result of a growing number of norms and regulations, the legal system is rather complex and difficult to manage, based on legal documents which are hardly classified in a coherent framework.[16] The LFPA describes as "administrative acts"[17] broad range of legal documents: presidential rulings (*reglamentos*), decrees, agreements, NOMs, circulars and formats, but also guidelines, criteria, methodologies, instructions, directions, rules or whatever disposal that establishes specific obligations by ministries or decentralised organisms, which have to be published in the Official Gazette, lacking any systematisation of the normative framework. There are also an important number of general norms that are not published, but impact the administrative legal order. Secondly, the large number of administrative bodies that have regulatory faculties, as well as their internal structure, make it difficult to establish a common hierarchy for administrative procedure laws and regulations. In most the cases, regulations are issued by secondary bodies which have the competency through delegation, which increases "the fragmentation of the regulatory faculty".[18]

In the same way, the incorporation of international treaties to the national legal order provides a new source of regulations. The national administration has to respond to these requirements, but COFEMER has only a limited participation in an *ex ante* evaluation that could contribute to clarify their implementation and the harmonisation with the national legal system.

As discussed in previous sections, the lack of a hierarchical order of regulations may have a negative impact on the work carried out by COFEMER, as discretionary use of legal documents and regulations are to detriment of transparency and the compliance efforts are reduced by ineffective enforcement mechanisms. Legislation that lacks clarity may constrain the range of alternative policy tools, affecting the potential of RIA. In this sense, Mexico should consider:

To reinforce the analysis of the legal documents that accompany the RIA

COFEMER has been able to identify the kind of legal documents used by officials to introduce, modify or eliminate a regulation. As was indicated, the RIA process in Mexico confronts an unsystematic framework. A more coherent legal design could reduce the scope for low level officials to approve legal norms that can be costly to the system. It would be advisable to find ways to harmonise the use of legal instruments which might have an impact on the quality of RIA. COFEMER should maximise the political commitment to RIA and seek ways to improve the hierarchy of normative instruments.

4. To modernise the framework for regulatory authorities.

This recommendation was part of the set published in the 1999 Report. More details will be found in Chapter 4 on regulatory authorities in the present report. It is worth noting at this stage that a very wide range of regulatory bodies with regulatory functions exists in Mexico. In the course of setting up this kind of institutions, the governance arrangements are fundamental for their good performance, as the establishment of the process of the IFAI has showed. Some elements to consider during the creation of these bodies are: the degree of autonomy within the Executive branch, the role of the President and the Legislative branch to designate senior officials and boards, technical organic laws that describe in detail procedures and institutional arrangements, etc.

Strengthening co-ordination and decision making among different Ministries and institutions in Mexico, in order to establish bodies that are competent and strong enough to provide good results, is fundamental for the establishment of independent regulators. COFEMER can provide a strong technical and analytical feedback as oversight body for regulatory reform.

5. To strengthen the efforts on quality regulation through the refinement of some regulatory tools.

Tools to increase transparency, a key pillar of effective regulation, include:

Qualitative assessment of the Advance Indicator of the Biennial Programmes (IABP)

This could help the COFEMER to integrate a more comprehensive analysis of the compliance of the Biennial Programmes presented by entities of the federal public administration, identifying what kind of problems are faced by different institutions.

To reinforce public consultation mechanisms

Public consultation is important to regulatory quality. Its benefits cover a wide range of aspects, especially because it helps governments to have more analytically based models of decision making which are fundamental in determining practicability and designing compliance and enforcement strategies.

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The LFPA does not prescribe a compulsory mechanism to establish public consultation in the elaboration, modification or elimination of regulations by the Mexican government. However, the COFEMER makes publicly available all draft federal regulations and has encouraged institutions to put consultative mechanisms into place. The legal gap still poses limitations to transparency because government officials preserve discretionary powers on how to organise consultation mechanisms. The risk of capture by vested interest groups increases as well, since the legal framework is weak in this respect.

To encourage plain language drafting

Even if COFEMER is trying to promote plain language drafting in the use of RIA and the Federal Register of Formalities and Services, the lack of comprehensibility of regulatory text remains an important regulatory quality problem. Regulatory goals, strategies and requirements must be clearly articulated to the public. Legal texts have to be read and comprehended by non-experts, which will help to increase public confidence in the regulatory programme.

To fully exploit the use of Internet to increase transparency and make information available to the public

Even if a new electronic system for submitting RIAs has been elaborated and texts of draft proposals and its corresponding RIAs, as well as some COFEMER´s opinions are available on-line, there is still much to do in promoting the Internet site. Since not all proposals and information on regulations, such as public comments, additions and corrections to RIAs, and preliminary and final opinions, are available, COFEMER should try to expand the use of ICT to increase transparency and provide more information to policy makers.

To undertake technical assistance towards regulatory quality for the legislative branch

Up to now, the regulatory programme in Mexico has been implemented to the Executive branch. According to the LFPA, it covers dependencies and entities that integrate the federal public administration, with some exemptions of regulations already mentioned. In the Mexican case, however, the legislative branch is acquiring an important role in law initiation, due to the redefinition of duties in the framework of the division of powers between branches of government. The law making process in the Legislative is obviously beyond the oversight of COFEMER, but parliamentarians and their staffs could be provided with technical assistance, *i.e.* training courses, to incorporate regulatory tools in the design of laws and regulations that might have an impact on economic activities and delay regulatory improvement.

6. To strengthen compliance and enforcement mechanisms.

One major problem in Mexico directly linked to compliance is the large informal sector of the economy. This situation might improve if the Mexican economy grew more rapidly, but its growth is partly handicapped by regulatory fiscal barriers: many small firms know that the compliance costs can be disproportionately higher. This trend also leads in many cases to corruption, which is cheaper than the cost of compliance. Economic incentives have been used to integrate businesses into the formal sector, like the ones put in place by local governments in the framework of the SARE.

Even if the problem is broad and there are economic, cultural and social considerations, important steps should be taken to reinforce compliance, and to build confidence and trust in government actions. A first approach could be to reinforce

communication mechanisms, as mentioned above with public consultation, in order to make Mexicans understand the nature of the process and advantages to implement it. The simplification of legal requirements, in order to reduce complex and unclear regulation, as well as the improvement of judicial interpretation to enforce regulations has to be strengthened. The improvement of public services and stronger supervision mechanisms, which can only be gradual and continual, should further attract businesses to participate in the formal economy.

7. To consider regulatory quality as a tool for economic and social development.

In the report *Regulatory Policies in OECD Countries: From Interventionism to Regulatory Governance*, the OECD pointed out the importance of regulatory policy as a dynamic process. Regulation is considered an integral part of good governance; that is, "the tasks involved in exercising regulatory functions go beyond the design and implementation of instruments, or their co-ordination, and also embrace wider issues that are integral to democratic governance, such as transparency, accountability, efficiency, adaptability and coherence".[19]

In order to translate high quality regulatory design into welfare for people, regulatory implementation needs to be as effective as possible. Regulatory policies, institutions and tools have to be part of a coherent project that has clear and defined goals. Mexico has been able to achieve positive records on macroeconomic stability, after decades of recurrent crisis. But sustainable economic growth and social welfare are pending issues that challenge these results. The state retreated from its large interventionism in the economy in the course of market liberalisation and privatisation. However, these processes also have to be accompanied by a proper regulatory framework that fosters equity, efficiency and makes sure that economic gains are shared across society. Today the importance of regulation has been recognised at the highest political level: regulatory policy is integrated in the government action. What other role can the regulatory programme play in order to foster economic growth and translate into social gains for citizens?

The relationship between the state, the economy and society in Mexico, as in many other OECD countries, is in transition. Regulatory policy should be seen as a tool to regulate, in a more transparent, accountable and responsible way. It is not a question of increasing the number of regulations, but to regulate with quality. In this sense, most of the regulatory programme's objectives are long term, even if some positive results have been already reached, proving the need to support and expand the regulatory policy. Regulatory policy needs to be seen as a "whole of government" project, not isolated. A broad range of policy areas can be identified to set more ambitious goals that have an impact on economic growth and welfare. COFEMER could play a role in this task. Besides the fact that there are gaps to close in the design of the current regulatory programme, COFEMER could explore new policy issues where its work could have a strong impact, such as labour and social regulations.

Notes

1. According to Article 26 of the Mexican Constitution the federal government must prepare a national development plan. The Law of Planning (*Ley de Planeación*) establishes that the Plan has to define the national objectives, the strategy and priorities for integral and sustainable development of the country for a period of six years (the corresponding presidential term). It sets the global and regional political guidelines and it is elaborated through public consultation with different social groups.
2. Arellano G. David/Guerrero, Juan P. (2000), *Stalled Administrative Reforms of the Mexican State*, Documento de Trabajo, No. 88, CIDE, Mexico.

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3. Some initiatives to include a career civil service in the Mexican administration were discussed in the past. In 2003 a new Law of Professional Civil Service in the Public Administration was issued by Congress, integrating a career civil service for the core public administration which will be introduced in different stages by the ministries.
4. Mexican Presidency (2004), *How are we doing halfway down the road…?*, Mexico.
5. The 1997 OECD Report on Regulatory Reform, based on the 1995 OECD Council Recommendation on Improving the Quality of Government Regulation, recommends that countries "adopt at the political level broad programmes of regulatory reform that establish clear objectives and frameworks for implementation". Both recommendations are currently subject to an up-dating exercise, but their thrust is expected to remain unchanged.
6. Centro de Estudios Económicos del Sector Privado (2003), *Calidad del marco regulatorio en las entidades federativas mexicanas. Estudio comparativo 2002*, CCE, Mexico.
7. Legally, the COFEMER is a "deconcentrated administrative body" from the Ministry of Economy. This legal figure has been recurrently used by the Mexican government since the enactment of the Organic Law of the Federal Public Administration in 1976. The main goal was to create regulators that even if have been provided with decision powers, are not completely independent. The hierarchical link with a supreme body does not disappear, but the deconcentrated bodies are able to take decisions, implement their law-mandate and manage their own budget.
8. Cámara de Diputados (2000), *Diario de los Debates*, Mexico, 23rd March.
9. Cortés Campos, Josefina; Cossío Díaz, José Ramón; Mejía Garza, Raúl; Roldán Xopa, José (2002), "Orden jurídico administrativo federal y mejora regulatoria", in *Este País*, No. 140, Noviembre, Mexico.
10. COFEMER (2003), *Costos y dinámica de la regulación en México*, June.
11. OECD (2000), *Regulatory Policies in OECD Countries: From Interventionism to Regulatory Governance*, Paris, p. 52.
12. There are more than 70 deconcentrated bodies in the Mexican federal administration. Not all of them have the same organic and functional structure.
13. OECD (2004), *OECD Economic Survey, Mexico*, Volume 2003, Supplement No. 1 – January 2004, Paris, p. 10.
14. The tax/GDP ratio in Mexico is the lowest among OECD countries and one of the lowest in Latin America: including social security contributions and all payments by PEMEX to the government, tax revenue amounts to 18.5% of GDP (excluding oil-related revenue the ratio drops to 15%).
15. The *Centros de Vinculación Empresarial* are part of a network for SMEs services. They are a tool to integrate competitiveness to business culture through assistance and consultancy. They are set up by collaboration agreements signed between the Ministry of Economy and businesses associations mainly at state level. Training courses are offered in a very broad range of issues and are provided by businesses with leading edge technology.
16. A study requested by COFEMER pointed out that the administrative legal system presents important deficiencies. All general norms emitted by the President or any body of the federal public administration, from 1994 to 2002 and classified according to issuer and recipient, legal basis, regulated subject and normative hierarchy, were included in the analysis. They provided a final conclusion: "existe una diversidad de instrumentos normativos emitidos por una pluralidad de órganos cuyo rasgo común es la inconsistencia normativa, lo que dificulta la ubicación de cada una de ellas en algún lugar cierto del edificio normativo. Por la pluralidad de órganos que las emiten, sus contenidos normativos y las variaciones en su fuerza de innovación, muestran un ordenamiento de difícil conocimiento, racionalización, manejo y operación, panorama con el que tiene que trabajar la organización administrativa, expresarse la política publica y ser instrumentada". Cortés/Cossío *et al.* (2002), *op. cit.*, p. 4.
17. *Ley Federal de Procedimiento Administrativo*, Article 4, México, 23 March 2000.
18. Cortés; Cossío *et al.* (2002), *op. cit.*, p. 27.
19. OECD (2002), *op. cit.*, p. 16.

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Glossaire

CEMT Conférence européenne des ministres des Transports
DfES Ministère de l'Éducation et des Qualifications (*Department for Education and Skills*)
DIRD Dépenses intérieures brutes de R-D
DIRDE Dépenses *intra-muros* de R-D du secteur des entreprises
DPI Droits de propriété intellectuelle
DTI Ministère du Commerce et de l'Industrie (*Department of Trade and Industry*)
ECI Enquête communautaire sur l'innovation
G7 Groupe de sept pays (Allemagne, Canada, États-Unis, France, Italie, Japon, Royaume-Uni)
GCSE General Certificate of Secondary Education
HEIF Higher Education Initiative Fund
IPC Indice des prix à la consommation
km^2 Kilomètre carré
MPC Comité de politique monétaire (*Monetary Policy Committee*)
NHS *National Health Service*
OFT *Office of Fair Trading*
ONS *Office for National Statistics*
PPA Parité de pouvoir d'achat
PIB Produit intérieur brut
PME Petites et moyennes entreprises
R-D Recherche et développement
SIT Sciences, ingénierie et technologie
TI Technologies de l'information
TIC Technologies de l'information et des télécommunications
UE Union européenne
UE15 Les 15 premiers États de l'Union européenne
UMTS Téléphonie mobile de troisième génération (*universal mobile telephone communications systems*)

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