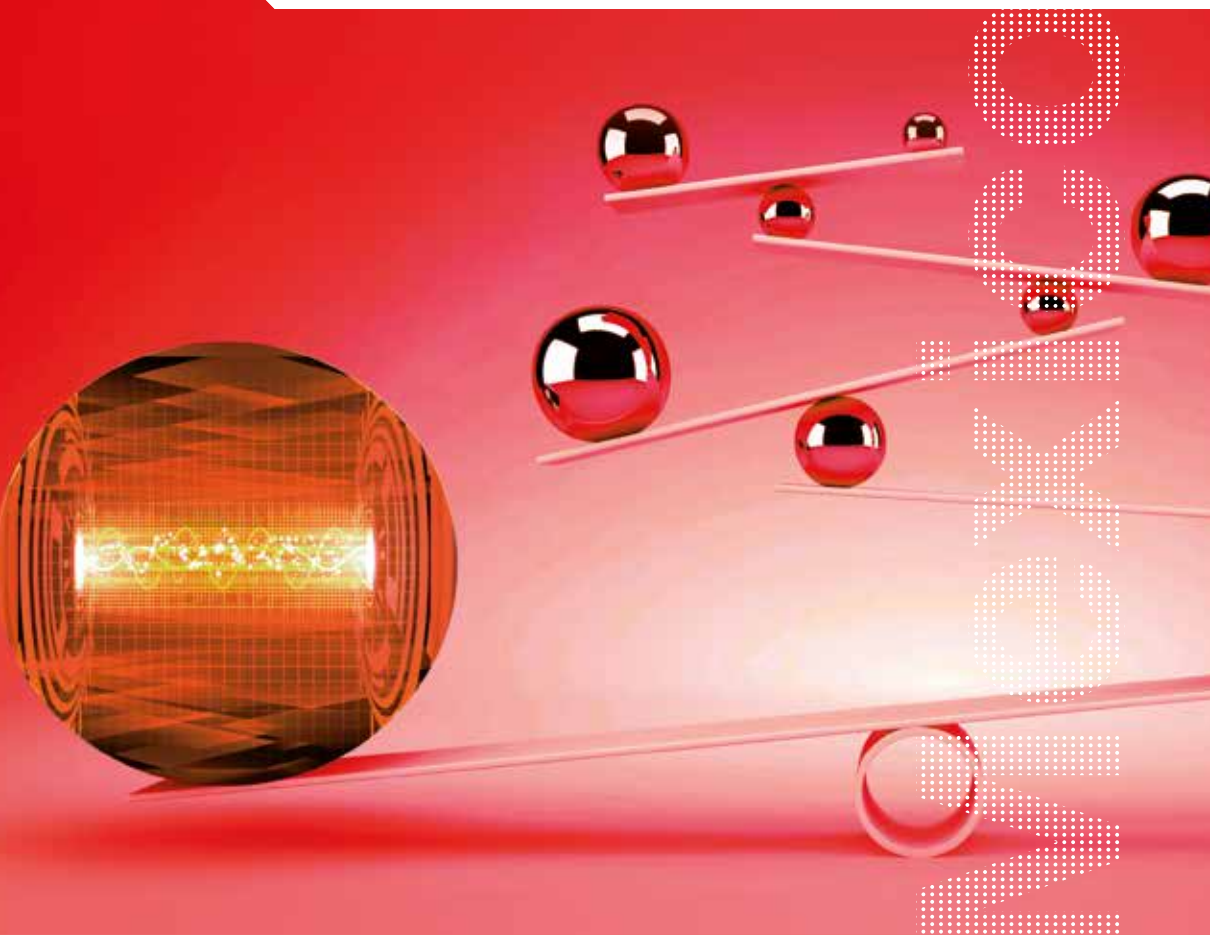
The Governance of Regulators

Driving Performance at Mexico's ASEA, CNH and CRE

KEY RECOMMENDATIONS



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BETTER POLICIES FOR BETTER LIVES

DRIVING PERFORMANCE OF MEXICO'S ENERGY REGULATORS

This brochure presents the key findings and recommendations of the Performance Assessment reviews of the Mexican energy sector's three regulatory agencies (Agency for Safety, Energy and Environment, ASEA; National Hydrocarbons Commission, CNH; and Energy Regulatory Commission, CRE), focusing on the regulators' internal governance. The reviews follow the publication of a report on the external governance of the sector (OECD, 2017a).

The review of external governance noted the need to enhance institutions and processes that, upstream, **strengthen role clarity, co-ordination and planning** in a new and complex institutional context, and, downstream, **instate accountability for agreed objectives and results**.

The parallel reviews of ASEA, CNH and CRE find that it is critical to **enhance internal governance systems** across the three regulators so that they are fully equipped to support the implementation of the energy reform. The reviews put forth a series of recommendations, summarised in this brochure, to activate an integrated system of energy regulators and support organisational change within the three agencies.

Together, the four reviews constitute a comprehensive body of work on the regulatory governance of Mexico's energy sector and propose important recommendations to bolster future work of the regulators at a critical moment in the implementation of the country's 2013 energy reform.

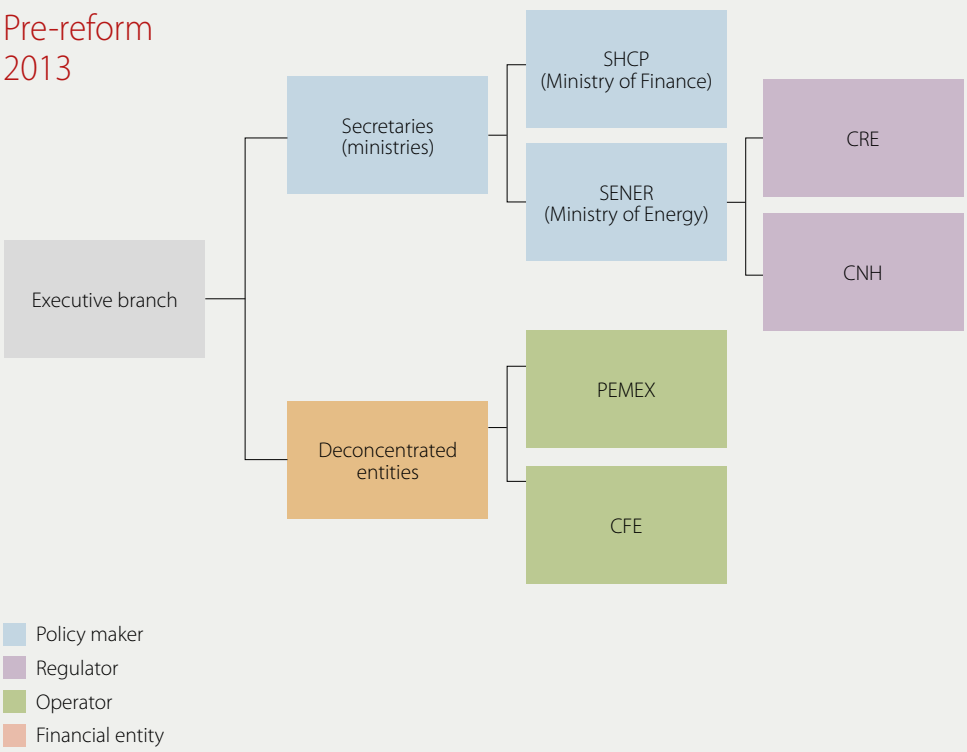
2013 structural reforms in Mexico

The government of Mexico, led by President Enrique Peña Nieto, launched a major structural reform in 2013 to modernise several key areas of the country's economy, including the energy sector. The reform restructured the oil and gas industry and opened access to the country's hydrocarbon resources to national and foreign, public and private entities, and further opened the electricity sector to private participation.

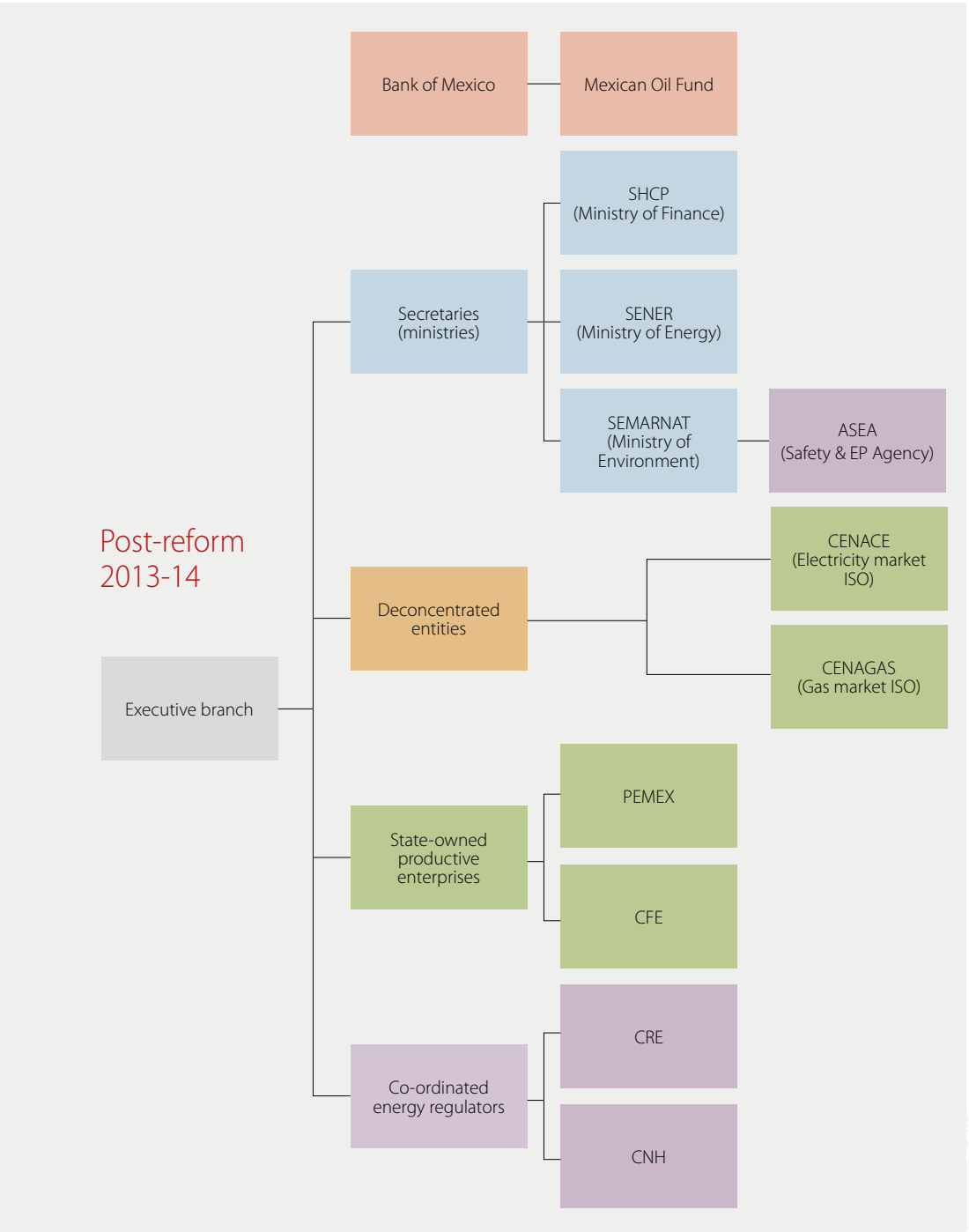
The reform aimed to increase sector investment and government revenue for the benefit of all Mexicans, as well as to make Mexico a global leader on environmental issues by embedding clean energy targets in legislation. In the power sector, it sought to place downward pressure on prices, facilitate the transition to renewable sources of energy and extend electricity coverage.

Far-reaching modifications were made to the institutional framework with regard to sector regulation, with the strengthening of existing regulators and the creation of new ones (see Figure 1).

Figure 1. **Overview of institutional arrangements, pre- and post-reform**



Source: Adapted from CRE.


Post-reform
2013-14
Executive branch
Bank of Mexico
Mexican Oil Fund
Secretaries (ministries)
SHCP (Ministry of Finance)
SENER (Ministry of Energy)
SEMARNAT (Ministry of Environment)
ASEA (Safety & EP Agency)
Deconcentrated entities
CENACE (Electricity market ISO)
CENAGAS (Gas market ISO)
State-owned productive enterprises
PEMEX
CFE
Co-ordinated energy regulators
CRE
CNH

MEXICO'S ENERGY REGULATORS

AN INTEGRATED ENERGY REGULATORS' SYSTEM

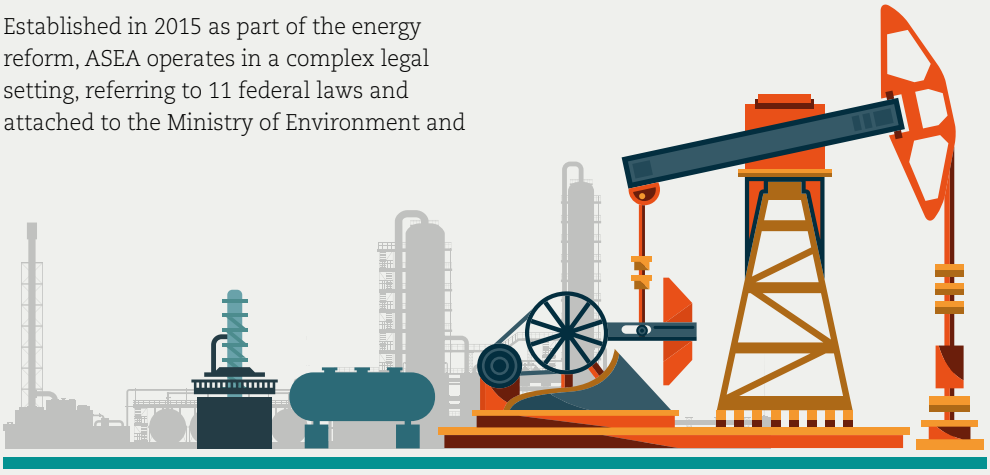
The three regulators should establish an integrated energy regulators' system that can help them overcome shared challenges and design joint solutions. Taking advantage of these available synergies, the reviews propose a number of measures that the regulators could implement together to set up and bolster this integrated system, contributing to the overall effectiveness of the federal government and the delivery of its policy objectives.

AGENCY FOR SAFETY, ENERGY AND ENVIRONMENT (Agencia de Seguridad, Energía y Medio Ambiente, ASEA)

ASEA is a multi-disciplinary regulator. Its mission is to oversee industrial and operational safety and environmental protection. Its responsibilities cover the entire hydrocarbons value chain, from upstream exploration and extraction to midstream and downstream transformation, production and storage, and all the way to distribution and retail at petrol station level.

Established in 2015 as part of the energy reform, ASEA operates in a complex legal setting, referring to 11 federal laws and attached to the Ministry of Environment and Natural Resources (SEMARNAT), relying on the Ministry for financial and administrative management.

ASEA has navigated initial challenges linked to its operationalisation admirably, notably by successfully absorbing functions from a variety of actors, issuing regulations for previously unregulated areas, and defining and implementing robust management processes. The consolidation of these results and processes will be crucial for the successful implementation of the energy reform in the coming years.



NATIONAL HYDROCARBONS COMMISSION (Comisión Nacional de Hidrocarburos, CNH)

CNH regulates the "upstream sector" of hydrocarbons by regulating, monitoring and evaluating the exploration and extraction of hydrocarbons in Mexico.

Established in 2008, the functions, powers and status of CNH were strengthened by the 2013 energy reform. It is now a ministerial-level entity governed by two federal laws, which establish technical, operational, and managerial autonomy for the regulator.

The remit of the CNH was substantially broadened by the energy reform. CNH has successfully traversed the early phases of implementation of the reform and is seen as a professional and trusted regulator. It is urgent to build on this trust and track record to enhance internal processes that can further support the performance of CNH and fully reap the benefits of its formal autonomy.

ENERGY REGULATORY COMMISSION (Comisión Reguladora de Energía, CRE)

CRE regulates the "midstream and downstream" sectors of hydrocarbons, as well as the entire electric power supply chain. It also holds responsibilities linked to the regulation of clean and renewable energies.

Created in 1993, the functions, powers and status of CRE were strengthened by the 2013 energy reform. Like CNH, it is now a ministerial-level entity governed by two streamlined federal laws, which establish technical, operational, and managerial autonomy for the regulator.

Following the reform that substantially increased CRE's responsibilities, CRE has been able to swiftly realign its organisation and processes to focus on implementing key aspects of the reform. Moving forward, it is paramount that CRE also place more emphasis on internal processes such as planning, resources and performance management in order to ensure its effective working over the long-term.

ROLE AND OBJECTIVES – FINDINGS AND RECOMMENDATIONS

INTEGRATED ENERGY REGULATORS' SYSTEM

- **Set up the Energy Regulators' Group (ERG) – a collegial body that brings together the three energy regulators for the purpose of implementing joint work, co-ordination and information sharing in the area of governance of the agencies.** The ERG would be created and its agenda would be set by the three regulatory agencies. Its work would be supported by working groups as necessary (e.g. a working group to set up a shared human resource policy and mechanisms, to align sector Key Performance Indicators (KPIs), or to align and simplify licensing procedures), which could be dissolved once the assigned task is delivered. The presidency of the ERG could rotate between the three agencies, with each regulator responsible for ensuring the secretariat of the committee during their "mandate". This mechanism, under the ownership of the regulators, would be an essential tool for the correct functioning of the integrated energy regulators' system.

Does the regulator have clearly identified objectives and targets?

Are the objectives aligned with the regulator's functions and powers?

- **Ensure that the three agencies have in place three to five-year operational plans, including budget and resources, to achieve their long-term strategic objectives.** The plans should consider sequencing and phasing activities in line with formal obligations, and include milestones and budget information. This plan should be developed internally and shared with other federal entities through the Co-ordination Council for the Energy Sector (Consejo de Coordinación del Sector Energético, CCSE).

- **Conduct a mid-term review of the operational plans based on the experience of the first years of implementation.** These reviews could be conducted by the regulatory agencies with external support as necessary and be used to identify any necessary modifications to the current operational plan. The reviews can also assess the relevance and alignment of the agencies' mandated roles and objectives.

AGENCY FOR SAFETY, ENERGY AND ENVIRONMENT (ASEA)

ASEA is a deconcentrated agency of the Ministry of Environment and Natural Resources *(Secretaría de Medio Ambiente y Recursos Naturales, SEMARNAT)*, which sets it apart significantly from the other two energy regulators, CNH and CRE, which have ministry level autonomy. As such, ASEA is subject to SEMARNAT processes which can be burdensome, and the agency intervenes in a sector where its parent ministry has limited technical experience.

ASEA objectives are clearly defined in law. However, it operates in a more complex legal framework than its peers, due to the transfer of powers and functions from a variety of federal and state actors following its creation in 2015. Pursuant to its multidisciplinary mandate, ASEA is called upon to co-ordinate with a wide variety of stakeholders. These characteristics make it essential for ASEA to be a fully-fledged member of the integrated energy regulators' system.

ASEA has made considerable advances in defining its strategic objectives and the accompanying performance assessment system in its first years of operations. A more broad and medium- to long-term vision would strengthen this framework.

Is progress towards achieving the objectives reviewed regularly?

- Function as a fully-fledged member of the integrated energy regulators' system (the Energy Regulators Group, ERG and the Co ordination Council for the Energy Sector, CCSE) and actively propose areas of work and co-ordination relevant to ASEA to the ERG and the CCSE.
- Foster a culture of independence within ASEA to offset the Agency's lesser legal autonomy.
- Finalise the ASEA *reglamento unificado* to clarify mandate and functions and socialise the new text and its implications with stakeholders.
- Review and fine-tune the strategic framework to include medium and long term and high-level policy objectives.

Are there operational plans to achieve objectives and targets?

NATIONAL HYDROCARBONS COMMISSION (CNH)

Entrusted with the responsibility of running a novel process for Mexico – the auctioning of the access to oil resources – CNH has successfully managed the launch of the first round of auctions. The professionalism in running this process, a conscious effort to be transparent and the development very early on of a code of ethics against undue influence from industry and government have created a capital of credibility that needs to now be invested into building internal processes supporting performance over time. This should start with the development of a comprehensive strategy to steer CNH's activities.

CNH has started a vision/planning exercise that has led to the identification of six core strategic objectives, stemming from the CNH's enabling legislation, as well as general, specific and operational actions to be implemented over a one-year horizon. However, there isn't yet a medium-term operational plan to set priorities for the achievement of the core strategic objectives. Administrative and operational demands related to CNH's new tasks and responsibilities have been particularly intense for staff, leaving limited space to consolidate and focus on more analytical and strategic tasks like deciding which oil fields are to be auctioned, or monitoring exploration and extraction entitlements and contracts.

Can the objectives be used to develop performance indicators?

- Broaden the planning horizon of the operational plan, for example by aligning it to key CNH deliverables (e.g. five-year auction plan, management of potential future contracts and entitlements).
- Set short to medium-term priorities by weighting sector and organisational risks so that actions can be streamlined and priorities can be communicated internally to align CNH workforce around the same vision and goals.
- Set up internal mechanisms for developing and overseeing the implementation of the strategy, its medium-term objectives as well as annual operational plans.

Are operational plans adjusted to reflect progress towards meeting objectives and targets?

ENERGY REGULATORY COMMISSION (CRE)

The 2013 energy reform created additional regulatory responsibilities for CRE in the hydrocarbons and electricity sectors. The reform also provided CRE with a new status as a co-ordinated energy regulator with technical, operational and managerial autonomy and the ability to generate income to carry out its regulatory responsibilities.

Fully occupied with implementing the reform, CRE has not yet developed a strategic plan. Greater emphasis will be required on setting and implementing strategic objectives, while pursuing the implementation of the reform. This is particularly important given the recent decision to bring forward the liberalisation of the downstream gasoline and diesel markets, which will continue CRE's heavy workload in implementing the energy reform. The delivery of this policy objective is also dependent on co-ordination among CRE, the Ministry of Finance and Public Credit (SCHP), the Federal Economic Competition Commission (COFECE) and the Federal Consumer Protection Agency (PROFECO).

How are overlaps with other actors minimised?

- Develop annual plans that set out the activities that CRE intends to undertake in that year in order to implement the medium and long-term goals set out in its operational plan. CRE should also put into place arrangements to ensure that the work plans of its units are aligned with these annual plans and revise internal planning processes so that they reflect all of the activities needed to deliver CRE's annual plan.

- Communicate CRE's progress in delivering its annual plan by providing regular updates to stakeholders through the Advisory Council.

- Establish a formal co-ordination mechanism between SHCP, COFECE, CRE and PROFECO to support the successful implementation of the liberalisation of Mexico's downstream gasoline and diesel markets. This would facilitate the timely transfer of information between the agencies, for example where price information collected by CRE indicates that there is market conduct that needs to be investigated.

Are co-ordination mechanisms used effectively?

INPUT – FINDINGS AND RECOMMENDATIONS

INTEGRATED ENERGY REGULATORS' SYSTEM

- **Conduct a co-ordinated collective review of financial sources and needs beyond 2019.** An integrated energy regulators' system can provide unique opportunities to identify overall funding needs over the medium to long-term. The objective should be to link missions and activities, related costs and revenue sources, based on a cost recovery mechanism. The three regulators should assess current and future sources of funding in a co-ordinated fashion to identify needs over the long term, cumulative costs for the regulated entities and a streamlined Trust Fund management system.

- **Establish an integrated energy regulators' career service (ERCS), in a progressive manner.** There are significant opportunities to develop an integrated ERCS common to the three regulators, which can be greater than the sum of its parts. The ERCS would provide opportunities to attract and retain talent more easily, and create economies of scale for the establishment of common systems, while each regulator would retain control on recruitment decisions, performance assessment and the identification of specific competencies and skills. The ERCS could include:
  - Common mechanisms/procedures for advertising positions;
  - A common set of regulatory skills to be identified jointly by the three regulators (in addition to those specific to each agency);
  - Opportunities for joint induction programmes for new recruits (for example on regulatory skills);
  - A common graduate recruitment system with exchanges across regulators;
  - Common gender and diversity policy across the regulators;
  - Comparable career systems to facilitate movement across the three agencies;
  - Common salary scales.

- **Ensure that the recruitment strategy emphasises diversity.** If the regulators do not proactively tap into all talent pools, they are not likely to attract a diverse, vibrant and competitive workforce.

- **Mutualise digital resources and develop data analytical capability.** Digitalisation provides significant opportunities to deliver on priorities and actions, but its development and management require internal capabilities. There are opportunities to mutualise capabilities of the three regulators by developing common solutions, sharing a group of IT specialists and relying on off-the-shelf solutions. IT expertise should be complemented by capacity for using digitalisation to read and manage data in order to facilitate the delivery of core activities (and truly make digitalisation a means to an end).

AGENCY FOR SAFETY, ENERGY AND ENVIRONMENT (ASEA)

By law, ASEA is funded by the federal budget and its own income. In reality, the agency does not yet receive funds from regulated entities and has not yet set up the trust fund that would receive these resources. It is intended that the Agency will gradually reach financial autonomy.

As a deconcentrated agency of SEMARNAT, ASEA is governed by SEMARNAT rules and procedures for managing financial and human resources and for procurement. These processes can carry a high transaction cost and are seen to undermine effective and autonomous operations.

Regulators are faced with the challenge of attracting and retaining qualified staff, a task that will grow more difficult as oil prices recover and the development of the industry in Mexico picks up speed. ASEA has explored and implemented strategies to attract and retain staff in a challenging context due to competition from the private sector and lack of flexibility within the federal system. These efforts are worth pursuing in collaboration with CNH and CRE.

Are the regulator's funding and staffing aligned with its objectives and targets?

- Explore and strongly advocate for solutions that will increase the institutional agility and autonomy of ASEA, including advocating for a multi-annual budget settlement.
- Prioritise the operationalisation of the ASEA trust fund and move towards less dependence on the federal budget, reviewing and defining methodologies for setting fees and levies, in collaboration with the Ministry of Finance and Public Credit.
- Establish an internal Resource Management Committee to regularly assess and re-allocate resources, roles and processes, prioritising high risk activities and taking into account the stabilisation of activities following the Agency's start-up phase.
- Continue to explore and propose solutions making ASEA a more attractive employer, from flexibility within the federal salary scale to non-financial rewards.

Is there a transparent and accountable process to allocate financial resources to the regulator?

NATIONAL HYDROCARBONS COMMISSION (CNH)

The CNH is funded through the federal budget and fees, taxes and duties. CNH's own income has come from the most part from selling information for exploration and extraction to the regulated sector. The energy reform foresees that by 2019 CNH should be fully funded through fees, taxes and duties from the regulated sector.

Fees, taxes and duties are paid into a trust fund. The CNH cannot make use of the trust fund until the third month of the year and needs government approval in order to do so. These processes represent a high transaction cost and undermine effective and autonomous operations. The lack of a medium to long-term strategic plan and performance evaluation also hinders CNH's capacity to prioritise activities in the most efficient manner.

There is currently no established recruiting mechanism to fill in vacancies and little has been done to put in place such a career service. This can create a perception of unfairness and undermine the capacity of CNH to attract and retain talent over time. The CNH also needs more autonomy and flexibility to attract and retain talent, given the competition with the regulated sector on talent and the constraint of the federal salary scale.

Can the regulator attract and retain the necessary talent to meet its objectives and targets?

Can the regulator manage resources autonomously?

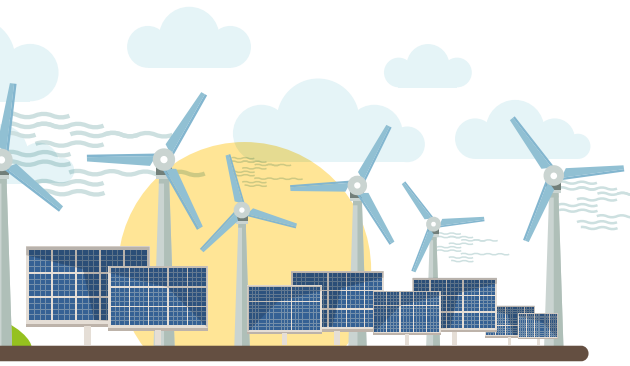
- Develop robust internal financial management mechanisms to identify spending needs linked to priority actions and consider a multi annual budget settlement in Congress, providing financial stability and facilitate long-term planning.
- Strengthen the recruitment process and incentives to retain personnel, including through a competitive recruitment process able to attract and retain staff, building on the recommended regulatory career service.
- Consider having an annual training and skills development programme to stay up-to-date with new and innovating methods.

ENERGY REGULATORY COMMISSION (CRE)

CRE's financial and human resources have increased substantially over a short period of time due to significant expansion in its regulatory mandate due to the energy reform. While its headcount has risen by 163% between 2012 and 2016, CRE has not yet established job descriptions setting out the specific professional and technical requirements for each position within CRE.

At the same time, CRE faces competition for its staff from the private and public sector. While CRE seeks to provide competitive salaries within the confines of the federal salary scales, there appear to be opportunities for CRE to improve staff retention by providing further non-salary incentives. This may assist them to recruit and retail staff with specific skills, such as expertise in tariff setting.

Does the regulator have sufficient data analysis resources to harness the challenges of fast evolving markets and sectors?



- Strengthen the recruitment process by making it competitive and create incentives to retain personnel, building on the recommended regulatory service career system.
- Align internal processes, such as budgeting and staff evaluation and development with the operational and annual plan. Linking these internal processes to the operational and annual plan would align CRE's resources to the delivery of the objectives in these plans and to the CRE's strategic objectives.
- Conduct strategic workforce planning. Strategic workforce planning involves identifying the needs of the organisation in terms of numbers and skills in the medium-term consistent with the objectives that are sought to be achieved in the operational plan. This strategic workforce planning would then inform the discussions with SHCP about future resourcing needs, and could avoid bunching human resources together in a manner which poses a challenge for the organisation to absorb.
- Consider additional non-salary incentives to attract and retain staff and build internal capacity. CRE could consider staff exchanges with other economic regulators to share expertise, continuing to pursue partnerships with universities and other institutions to provide opportunities for staff to further increase their expertise, and flexible working arrangements to enable staff to balance work with their personal responsibilities.

PROCESS – FINDINGS AND RECOMMENDATIONS

INTEGRATED ENERGY REGULATORS' SYSTEM

- **Consider the creation of a joint risk management strategy that enables the agencies to share information and create a platform that allows synergies between them.** The strategy may consider elements such as setting clear governance and responsibilities on the management of the strategy, having a score to address the most imperative issues, measures and ways to address the aforementioned risks and specific guidance to elaborate the risk matrix. The topics could be discussed in the Energy Regulators' Group (ERG).

- **Assess the digitalisation needs of each regulator.** Evaluate where ICT processes can be shared in order to reduce costs and to exchange knowledge (i.e. service platforms for data analytics and talent management). Particular focus should be given to the automation of internal management processes.

- **Seek to have an aligned process within the integrated energy regulators' system to improve regulatory quality.** The agencies should harmonise their rule-making process including stakeholder engagement mechanisms (apart from the compulsory consultation with the Federal Commission for Regulatory Improvement, COFEMER) based on the forthcoming OECD Best Practice Principles on Stakeholder Engagement, disseminating calendars of upcoming regulation to the regulated sector, and conducting *ex post* evaluations to verify that the intended objectives of issued regulation are being met. The synergies would enhance the benefits of a harmonised process while decreasing transaction costs involved in designing and implementing these mechanisms separately.

- **Assess and review the internal governance arrangements in light of changes to agency objectives and activities brought about by the reform.** Particular attention should be given to assessing roles and responsibilities for decision-making and day-to-day management of the agencies, as well as to the necessary continuity and stability of these functions.

Who is the regulator accountable to?

How are conflicts of interest addressed?

AGENCY FOR SAFETY, ENERGY AND ENVIRONMENT (ASEA)

The Executive Director (ED) of ASEA is nominated by the Minister of SEMARNAT and appointed by the President of the Republic. Most decisions linked to the technical work and management of the Agency are made by the ED.

Like all federal entities, ASEA is accountable to Congress but presents its annual reports to the Technical Council led by the Minister. ASEA can be called to appear in Congress, but hearings do not happen systematically.

ASEA has set safeguards to avoid conflict of interest through a code of conduct that strictly regulates interaction with regulated entities. Unlike CNH and CRE, ASEA's code does not instate a supervisory mechanism. Moreover, the Agency is audited as any subsidiary or deconcentrated entity of the ministry and is supervised by SEMARNAT's Internal Audit Office (*Órgano interno de control, OIC*) which does not reflect its critical role in the implementation of the energy reform.

ASEA follows federal requirements for stakeholder engagement and has also set up early-stage consultation mechanisms. It is expected that the *reglamento unificado* will improve the overall quality of ASEA's regulatory activities.

What evidence and data support regulatory decisions of the Board /Head of Agency?

- Enhance and include a transparency dimension in all ASEA activities to build trust in the regulator and boost its culture of independence. This could include pro-actively publishing information relative to inspections, meetings of ASEA governing and advisory bodies, and stakeholder engagement.
- Advocate for the creation of an ASEA-specific Internal Audit Office.
- Review the Agency's current governance model and explore options for more continuity in decision-making and focused oversight of strategic planning.
- Ensure that the *reglamento unificado* reflects good regulatory practices such as administrative simplification.

Which processes support the quality of regulatory activities?

NATIONAL HYDROCARBONS COMMISSION (CNH)

CNH is headed by a governing council made up of seven Commissioners of whom one serves as the President Commissioner. The President of the Republic presents a shortlist of three candidates for each Commissioner position and the Senate chooses following a hearing.

The President Commissioner acts both as chairman of the governing council and as the chief executive officer. There is no designated person acting as operational Co-ordinator. Cumulating these functions without such a co-ordination role burdens the agenda of the President Commissioner with operational matters, leaving a narrow margin for strategic thinking and representation.

As all federal entities, the CNH is accountable to Congress and Audit Institutions. However, there is no regular reporting and interaction with relevant bodies in Congress.

The CNH has set safeguards to avoid conflict of interest such as an internal Code of Conduct and the issuance of a yearly declaration of conflict of interest from Commissioners, Heads of Unit and General Directors.

The regulatory process builds on internal and external quality control mechanisms, including stakeholder engagement and regulatory impact assessment. However, some of the internal mechanisms are either ad hoc or still in the early stages of development.

How does the regulator manage and evaluate risks?

- Allow the governing council to be more focused on strategic decision-making by enhancing the role of a Chief Operating Officer.
- Create an internal Regulatory Committee to oversee the rule making process and embed regulatory management tools.
- Consider having diverse ways of engaging with stakeholders that are not the "usual ones" and facilitate the involvement of new small companies in the business.

How does the regulator engage with stakeholders?

ENERGY REGULATORY COMMISSION (CRE)

CRE's decision-making body is its Governing Council, which is composed of seven Commissioners, one of whom serves as the President Commissioner. All meetings of the Governing Council are publicly broadcast. Meetings between Commissioners and industry are held at CRE's premises with at least two Commissioners present, and are recorded.

Commissioners also participate in the development of regulation in Commissioner working groups, which were established to distribute the workload associated with implementing the 2013 reform. Separate working groups were established on electricity, natural gas and petroleum. Commissioners also work directly with staff in the development of specific regulation.

The regulation that CRE develops is subject to the COFEMER process, which requires CRE to prepare regulatory impact assessments and submit regulation to a public consultation process. While CRE has a Regulatory Performance Evaluation Committee that is tasked with reviewing its regulation, it has not yet developed processes for the *ex post* review of regulation. However, CRE does review its regulatory approach, and is currently in the process of revising its approach to tariff regulation and making it consistent across hydrocarbon markets.

Have responsibilities and capacity for the day-to-day management of the regulator been clearly identified and assigned?

- Put in place arrangements to allow the Governing Council to focus on CRE's strategy and the delivery of the long-term goals in CRE's operational plan. This would involve looking at steps to empower staff to deliver projects more independently, and providing additional time for the Governing Council to review, challenge and focus on the strategic implications of its work programme.
- Consider whether tariff-setting processes should be opened to public consultation, and whether sufficient consultation is taking place for other regulatory processes.
- Link the current review of hydrocarbon tariff setting methodologies with the process of formalising electricity tariff setting arrangements. This review could draw on tariff setting approaches and practices in other jurisdictions, including looking at linking tariffs to the outputs that consumers demand (for example, reliability and quality).

Have digitalisation needs been assessed and addressed?

OUTPUT AND OUTCOME – FINDINGS AND RECOMMENDATIONS

INTEGRATED ENERGY REGULATORS' SYSTEM

Is the performance of the regulated industry assessed systematically?

- **Set organisational performance indicators to measure and track the agencies' effectiveness of implementing the strategic goals and activities in the operational plan.** The indicators should:
  - **measure** the organisations' inputs and processes through critical dimensions such as quality, efficiency and timeliness;
  - **assess the impact** of delivery of outputs (for example, permits granted, open seasons, inspections) on outcomes (for example, new entry in markets, market concentration ratios for each of the hydrocarbon markets, and compliance with regulatory obligations).

- **Consider the data and information that will be needed to measure performance for each of the indicators.** Where possible, indicators would be tracked with information that the agencies already collect from regulated industry and elsewhere.

- **Overall energy sector outcomes should be used as an indicator of the impact of a regulator's delivery, recognising that a diversity of factors can affect the performance of the sector.** Overall indicators could be used to serve as a "watchtower" for assessing the overall performance of the sector, and the regulator's own performance in delivering its operational plan. This information should be communicated to senior staff within the regulators on a regular basis to serve as a dashboard of progress and current trends in the energy sector.

- **Establish a common platform for providing information to stakeholders about the performance of the energy sector.** The indicators that the regulators use as a watchtower for assessing the performance of the sector should be made available externally, in order to enable all stakeholders to track the performance of the energy sector, using a single source of information. This could be developed through the ERG.

- **The agencies should report regularly to the CCSE, the ordinary Energy Committees of the two chambers of Congress and the Special Commission of the Co-ordinated Energy Regulators, tailoring the content of the reporting to the body's mandate.**

AGENCY FOR SAFETY, ENERGY AND ENVIRONMENT (ASEA)

ASEA has recognised the importance of assessing its own performance and the Agency's leadership team has engaged in an exercise to set strategic objectives as well as indicators to monitor their implementation since 2015. To consolidate these advances, the framework should be reviewed to present an appropriate balance between input and process (internal functioning) and output and outcome (sector performance) indicators, so as to give medium/long-term visibility to the Agency.

A wealth of data will be provided by the industry as of 2018, pursuant to SEMS regulation. ASEA needs to ensure that it has adequate skills and resources to process and analyse the data that will be sent by regulated entities to adequately report on sector performance.

Is the performance of the regulator and impact of its activities assessed systematically?

How is information from performance and impact assessments used?

- Build skills and internal capacity to analyse the data that will be sent to ASEA by the industry and ensure that this is in place for late 2018 when SEMS data will begin to be submitted.
- Explore and implement more engaging and accessible ways to communicate on the activities and results of the Agency, beyond the publication of its institutional annual report on the website.
- Develop a methodology for engaging with the industry on their performance, based on the analysis of the data submitted. This would include the compilation of an annual report and its socialisation to the wider public.
- Review and fine-tune the performance indicators to allow for the monitoring of medium and long term and high-level policy objectives.

NATIONAL HYDROCARBONS COMMISSION (CNH)

The CNH hosts the National Centre for Hydrocarbon Information (*Centro Nacional de Información de Hidrocarburos, CNIH*) that receives all data provided by the regulated sector, including PEMEX. The CNIH has developed a dedicated platform where information regarding the exploration and extraction of hydrocarbons can be accessed *(portal.cnih.cnh.gob.mx)*.

In 2016, the CNH carried out a process to define their vision and set high-level objectives that would allow monitoring its performance. However, the planning exercise did not produce granularity on timelines, milestones or budget requirements to attain the regulator's six core objectives.

Have data needs been assessed and addressed?

- Develop a comprehensive set of indicators that track not only actions and inputs but also outputs from CNH's regulatory activities as well as direct and wider outcomes.
- Advocate for a formal engagement mechanism for the CNIH that can help the management and development of data.
- Evaluate information needs and aim at collecting fit-for-purpose data that will be useful to support the performance of the hydrocarbon sector (especially on measurement of production/extraction).
- Assess internal information needs and develop the mechanisms to produce, share and use information.
- Develop a dashboard – with regular updates and information for the leadership team and the governing council – on tracking progress of the objectives and activities of CNH.

ENERGY REGULATORY COMMISSION (CRE)

CRE collects a large amount of data from the regulated industry in order to carry out its regulatory responsibilities, some of which include making information available to the public (such as information on gasoline and diesel prices). This data could be useful for assessing how CRE performs.

Has the regulator developed internal capabilities to develop and monitor performance indicators?

In the absence of an operational plan and strategic objectives, CRE does not yet have a framework for measuring its performance. CRE is accountable to Congress, and does prepare an annual report, but it does not have a regular obligation to report on its performance aside from reporting of indicators to SHCP.

Regulators, performance and the delivery of public services

Will my light switch work? Will the train run on time? Can I fill the tank of my car? Is there clean water in the tap?

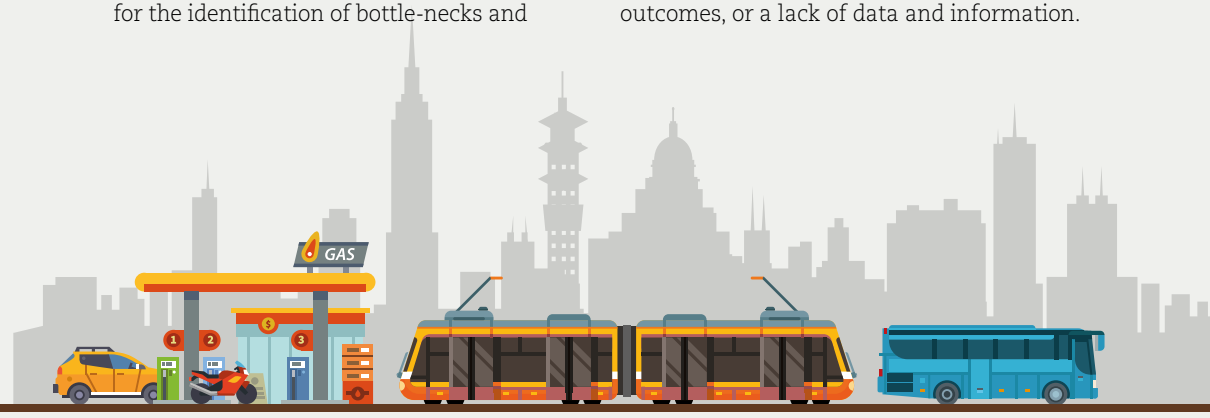
As "market referees", regulators contribute to the delivery of essential public utilities. Regulatory agencies are at the forefront of making sure citizens and industry have access to fundamental essential services that create enjoyable, prosperous and safe places to live, work and do business.

To be successful, regulators need to be constantly alert, informed by live data, checking sectoral trends and assessing the impact of their decisions. The performance of regulators is also largely determined by their internal governance (their organisational structures, behaviour, accountability, business processes, reporting and performance management) and external governance (roles, relationships and distribution of powers and responsibilities with other government and non-government stakeholders).

Measuring regulatory performance allows for the identification of bottle-necks and opportunities, better targeting of scarce resources and overall, for improving the performance of regulatory policies and regulatory agencies. To help regulators in this quest, the OECD has developed an innovative framework that looks at the internal and external institutions, processes and practices that can enhance regulators' performance and bolster their performance measurement efforts.

PERFORMANCE ASSESSMENT FRAMEWORK FOR ECONOMIC REGULATORS (PAFER) REVIEW PROCESS

The analytical framework that informs this review draws on OECD work on measuring regulatory performance and the governance of economic regulators. Measuring regulatory performance can prove challenging, starting with knowing what to measure, a number of confounding factors that can also affect outcomes, or a lack of data and information.



To overcome some of these difficulties, the framework breaks down the regulatory process into a sequence of discrete steps in an input-process-output-outcome logic that can be tailored to economic regulators.

The OECD Best Practice Principles on the Governance of Regulators recognise the importance of assessing how a regulator is directed, controlled, resourced and held to account, to improve the overall effectiveness of regulators and promote growth and investment, including by supporting competition. Using the seven principles (Figure 1), the PAFER review identifies the drivers of performance and studies the environment and context where regulators operate (external governance) and how regulators work internally (internal governance).

Figure 1. **OECD Best Practice Principles on the Governance of Regulators**

Source: OECD (2014). *OECD Best Practice Principles for Regulatory Policy, The Governance of Regulators*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264209015-en

PERFORMANCE INDICATORS

For regulators, performance indicators need to fit the purpose of performance assessment, which is a systematic, analytical evaluation of the regulator's activities in order to evaluate the reliability and usability of the regulator's activities. Accordingly, indicators need to assess the efficient and effective use of a regulator's input, the quality of the regulatory processes and identify outputs and some direct outcomes that can be attributed to the regulator's interventions. Wider outcomes should serve as a "watchtower", which provides the information the regulator can use to identify problem areas, orient decisions and identify priorities (Figure 2).

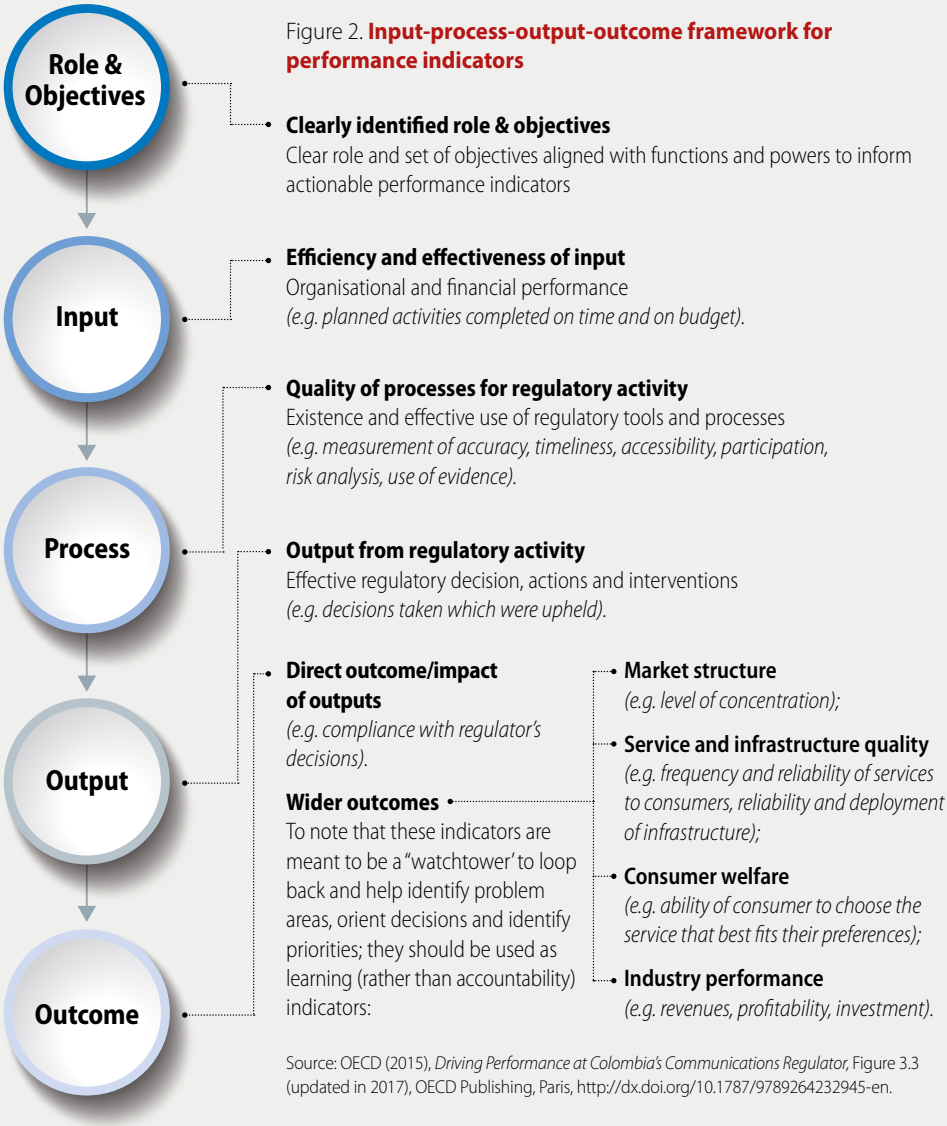


Figure 2. **Input-process-output-outcome framework for performance indicators**

Source: OECD (2015), *Driving Performance at Colombia's Communications Regulator*, Figure 3.3 (updated in 2017), OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264232945-en.

NETWORK OF ECONOMIC REGULATORS (NER)

What makes a "world-class regulator"? The OECD Network of Economic Regulators (NER) has been addressing this question through objective data, rigorous analysis and dialogue. A subsidiary body of the OECD Regulatory Policy Committee, the **NER** is an open and unique forum that promotes dialogue across regulators operating in different sectors and countries from across the world. It brings together regulators with responsibilities for communications, energy, transport and water, in addition to other economic, competition, consumer, environment and safety issues. Members share their experiences, discuss challenges, identify innovative solutions, and balance the competing priorities that frame the features of a "world class regulator".

The reports presented in this brochure were discussed in the OECD Network of Economic Regulators (NER) in April 2017 and peer reviewed by senior officials from the National Energy Board (Canada), the National Energy Commission (Chile), the Petroleum Safety Authority (Norway), the National Commission for Markets and Competition (Spain), the Office of Gas and Electricity Markets and the Water Industry Commission for Scotland (United Kingdom). Data informing the analysis in the reports was collected through desk research, questionnaires completed by Mexico's energy regulators and meetings with senior management and staff of the regulators.

REFERENCES

OECD (2017a), *Driving Performance of Mexico's Energy Regulators,* OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264267848-en

OECD (2017b), *Driving Performance at Mexico's Agency for Safety, Energy and Environment,* OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264267848-en

OECD (2017c), *Driving Performance at Mexico's National Hydrocarbons Commission,* OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264280748-en

OECD (2017d), *Driving Performance at Mexico's Energy Regulatory Commission,* OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264280830-en

OECD
BETTER POLICIES FOR BETTER LIVES

OECD work on regulatory policy
www.oecd.org/gov/regulatory-policy

OECD Network of Economic Regulators (NER)
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Agency for Safety, Energy and Environment (ASEA)
www.gob.mx/asea

National Commission for Hydrocarbons (CNH)
www.gob.mx/cnh

Energy Regulatory Commission (CRE)
www.gob.mx/cre

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