

## *Assessment and recommendations*

### **For policies and institutions for regulatory policy in Peru**

*Peru lacks an articulated whole-of-government regulatory policy, despite having many elements that could be part of this policy*

The central Peruvian government has several institutions in place, as well as several public policies, which aim at improving the quality of regulations. For instance, the PCM is in charge of the policy on national modernisation which includes administrative simplification, with several ongoing strategies, such as the establishment of the TUPAs for ministries and agencies of all levels of government. Also, the INDECOPI, via the Commission for the Elimination of Bureaucratic Barriers reviews formalities. The Ministry of Justice has issued a manual of legislative technique which provides ministries and agencies with guidance on how to draft a piece of regulation from a legal quality point of view. Similarly, there is the legal obligation for all ministries and agencies of the central government to perform a cost-benefit analysis for almost all new draft regulation, although no mechanism exist to enforce this obligation. More examples have been found of policies and practices directed at promoting and enhancing the quality of regulation.

However, these efforts are not articulated within a single policy instrument, such as a law or a programme. Neither there are institutions that co-ordinate the different efforts such as a ministry, committee, or dedicated body, which could assess the overall performance, results and benefits of their individual impact. Moreover, the Peruvian government has not issued a specific policy statement recognizing regulatory policy objectives as an element of a broader public governance and competitiveness strategy of the government, which could serve as a guiding axis for all the individual efforts. As a result, the full benefits of an articulated whole-of-government regulatory policy are not being acquired by the Peruvian government.

*All the efforts and strategies on regulatory policies are scattered across ministries and agencies, or across offices within a given ministry. Moreover, the salient feature of these arrangements is the lack of oversight*

Three ministries concentrate most of the functions and activities that pertain to regulatory policy: The MEF, the PCM, and the MINJUS. In the first two cases, the responsibilities on regulatory quality are spread amongst several offices, which include the INDECOPI, the CCV and the Secretariat of Public Management, for the case of the Presidency of the Council of Ministers; and the DGAECYP, the General Directorate for Investment Policy, amongst others, for the case of the MEF. This mosaic of agencies, offices and responsibilities can deter any effort to define and enforce an articulated whole-of-government regulatory policy.

Additionally, within their own responsibilities, these agencies and offices have, in the best of cases, limited capabilities to enforce the obligations on regulatory policy to the ministries and agencies issuing and applying the regulation, and in other cases, they have

no enforcement capabilities whatsoever. For instance, the obligation of preparing *ex ante* cost-benefit analysis for draft regulation is not supervised, and unless the draft regulation goes through the CCV, which applies only in cases of multi sector regulation, the analysis is not done; and even in the cases in which the draft regulation is discussed within the CCV, no proper assessment of the quality of the *ex ante* cost benefit analysis is performed.

The weak oversight of regulatory policy owes its existence to two main reasons: i) inadequate or inexistent legal framework – i.e. no oversight functions have been established; and ii) lack of capacity in terms of human and financial resources. As a result, ministries and other regulating entities have little incentive to comply with their regulatory quality responsibilities.

### ***Key recommendations***

- Peru should consider issuing a policy statement on regulatory policy with clear objectives, and considering including this statement as part of a law or another legal document with binding capabilities. This statement should contain all the specific strategies and tools to manage effectively the whole regulatory governance cycle: *ex ante* evaluation of draft regulation including the promotion of regulation based on evidence; consultation and stakeholder engagement; administrative simplification and review of the stock of regulation, including *ex post* evaluation; policy on inspections and enforcement, and forward planning.
- Peru should aspire at establishing an oversight body which concentrates, if not all, most of the regulatory policy activities and tools currently spread across several ministries, agencies and offices. This oversight body should have the legal capability and the necessary resources to carry out an active enforcement of activities, while overseeing the whole regulatory policy, including the capacity to return draft regulation with a proper assessment through the use of Regulatory Impact Assessment (RIA), when the defined criteria is not met.
- As a first step, Peru could consider establishing a co-ordinating council on regulatory policy in which the Ministry of Economics and Finance, the Presidency of the Council of Ministers, and the Ministry of Justice have permanent seats, and with sufficient capabilities to exercise an effective oversight function. Responsibilities and roles for each of these members would have to be defined clearly for the functioning of this council.
- Ideally the policy statement which the first paragraph refers to should include the creation of the oversight body and its functions and responsibilities, and as a transitory strategy, the creation of the co-ordinating council. The practices presented in this report identify approaches to implement accountability, transparency and co-ordination and help identify some lessons that can help guide how these principles are translated into practice.

### **For *ex ante* assessment of regulation and public consultation in Peru**

*Although some of the building blocks have been set, Peru lacks a full-fledged system for ex ante evaluation of draft regulation and of regulations that are subject to modifications, in order to assess whether they provide a net positive benefit to society, and whether they are coherent with other government policies.*

When preparing draft regulations, or draft modifications to existing ones, ministries and agencies have the legal obligation to prepare a cost-benefit analysis as an *ex ante* evaluation, to demonstrate the net benefit of the proposal. Similarly, there are legal obligations to publish the draft regulatory projects before they come into force, although no provisions are established to consider the public’s feedback and modify the drafts if applicable. There is also the Manual on Legislative Technique issued by the MINJUS which provides ministries and agencies with guidance on how to draft a piece of regulation from a legal quality point of view. However, these practices are not always enforced properly, and as a result there is no systematic review of whether regulations are “fit-for-purpose” and provide a net positive benefit to society before they are implemented.

The MINJUS has as one of its objectives to assess the constitutionality and legality of norms that go through the CCV or need approval of the Council of Ministers or the President. When the cost-benefits of draft regulation are prepared, the MEF has so far taken a leading role in evaluating them. This role has more prominence in the case of draft regulations that goes through the CCV, although in other cases of sectoral regulation, the MEF also issues an opinion. Similarly, the Ministry of Economy and Finance regularly assesses policies and draft regulations using comparative analysis and benchmarking of good international practices. This specialisation has led to the generation and accumulation of a critical mass of capacities and expertise which should be exploited when implementing and adopting a full-fledged regulatory policy in Peru.

Across OECD countries, it is commonplace that ministries with the portfolio of finance, economy, or the promotion of business competitiveness concentrate the role of “gate keepers” to ensure quality of new rules. In fact, in 13 OECD countries, the oversight of the process of *ex ante* assessment of draft regulation falls on ministries of finance, ministries of economy or treasuries (OECD, 2015a). This institutional setting may reflect the need to have a ministry that can exert “soft power” to ensure the compliance of regulatory policy by other government agencies.

*The Vice-ministerial Coordinating Council (CCV) is a mechanism to assess the quality of draft regulations or its modifications, but only multi sector regulation goes through this process*

In practice, the treatment of multi sector regulations differs greatly from regulations which involve only one sector. Multi-sector regulation goes through a more rigorous process of *ex ante* evaluation. In principle, all sorts of draft regulation should have a proper *ex ante* assessment of impact. The drafting process for new regulations that involve only one sector is carried out exclusively by the regulatory agency sponsoring the regulation and, most of the times, is not overseen at any stage of the process by any other institution; as a result it is not clear whether those regulations actually comply with legislative drafting guidelines issued by the MINJUS, with the cost-benefit analysis that some of the regulations must include, or the general pre-publication obligations. As a consequence, this type of regulations can be issued without considering the input of stakeholders, and without an assessment of the potential impacts they could impose on society.

Multi sector draft regulations on the other hand have to be discussed before their adoption and implementation by the Vice-ministerial Coordinating Council (CCV), which plays to some extent a role of an oversight body – without having a mandate in this sense – as any of its members (thirty five vice-ministers) is allowed to raise substance or quality

issues. Thus, the CCV plays an important role in promoting policy coherence across policy portfolios and consistency with overarching public policy objectives. Nevertheless, the fact that proposed draft regulation will not be adopted until all issues have been cleared provides a de facto veto role to each of the vice-ministries participating in the CCV. As a result, there is the risk that the CCV may create bottlenecks in the policy process, or bargaining strategies with negative trade-offs amongst vice-ministries may appear.

### ***Key recommendations***

- Peru should introduce a system of *ex ante* impact assessment, i.e. a Regulatory Impact Assessment, for draft regulations and regulations that are subject to modification, as part of its administrative processes. The RIA system would require all regulators to prepare a RIA in order to help them in the development of new regulations. Threshold criteria could be employed to define the depth of the assessment efforts in regulations with the largest impact.
- The oversight body suggested before should have a clear mandate to oversee the process of development of new regulations, and in particular to supervise the quality of both RIAs and draft regulations. As a first step and until this oversight body is created, and taking advantage of its capacities and specialisation, the MEF should be given the authority within the Coordinating Council on Regulatory Policy to review all RIAs, including the capacity to ask regulators for their improvement. This would involve giving MEF the required human and technical resources, as well as the legal attributions, to perform this task, and implement a pilot program as a training mechanism for both MEF and regulatory agencies. RIA manuals and technical guidelines (for instance for developing the cost-benefit analysis) should also be developed by MEF.
- As part of this oversight function by the Coordinating Council on Regulatory Policy, the MINJUS should be given the mandate to assess the constitutionality and legality of the draft regulation, enforce the application of the legislative drafting guidelines and overseeing the legal quality of all draft regulations. On the other hand, the PCM through the Secretariat of Public Administration should be given within the Coordinating Council on Regulatory Policy the mandate to oversee that all draft regulations reflect co-ordination and coherence with public policies at the national level, that they follow the guidelines on administrative simplification, and that they abide to principles on the structure and functioning of the government.
- A number of elements should also be considered as part of the adoption of RIA:
  - ❖ All draft regulations and RIAs should be made available for consultation by the public at large for a minimum of 30 days.
  - ❖ Consultation should be systematic at the early stages when policy options are being defined and impact assessment is being developed, and once a draft regulation and a draft RIA have been produced.
  - ❖ Public comments should also be made available and regulatory agencies should be held accountable for their treatment.
  - ❖ A system of forward planning should be created in order to make the development of new regulations more transparent and predictable.

- ❖ As part of the RIA process, evidence on the problem that is faced, objectives and options should be properly addressed, while evaluating all relevant impacts, including those on competition, trade, and SMEs.
- ❖ Promotion of the use of risk-based approaches to regulations and compliance. Peru should also consider issuing guidelines in order to establish clear boundaries as to the extent of comments from attending officials to the CCV, who should constrain their comments according to the legal competences of the office they represent. Alternative forms of governance arrangements should be considered for the CCV, in order to avoid the power of veto that each member of the CCV currently has.
- Once the Coordinating Council on Regulatory Policy or the oversight body are introduced, and a RIA system is introduced even in pilot phase, the RIA should be part of the assessment from the CCV. The analysis that has to be carried out by the MEF, the PCM and the MINJUS should be done before the draft regulation goes to the CCV, with adequate period to carry out the analysis. The opinion issued by the Coordinating Council on Regulatory Policy or the oversight body on the draft regulation and the RIA should be considered as part of the assessment of the CCV.

### For the management of the stock of regulation and administrative simplification policies in Peru

*Inventories of laws, regulations and formalities are of difficult access, and there is not a single concentrated registry of them, which can create uncertainty to citizens and businesses as to the legal obligations required of them*

Citizens can find on the website of the Peruvian congress an updated list of primary laws in force. However, in the case of other legal instruments, such as supreme decrees – which are issued by the executive power – as well as other subordinate regulations, there is a repository but it is not of free access. The MINJUS has the website Peruvian System of Legal Information, which offers a basic service of free access with a compilation of the most relevant legal instruments, but access to the complete database requires payment of a fee.

The ministries and agencies of all levels of governments – central, regional and local – have the obligation to supply standardised information in printed form and on their websites of the formalities required by law for business and citizens. The Single Texts of Administrative Procedures (TUPAs) are often found in ministries' websites, and most of the times in hard copies in government offices which offer front line services. However, so far a single registry of TUPAs has not been developed yet, although a Legislative Decree ordering the construction of the Unique System of Formalities (SUT) has recently been issued and it is under implementation.

Moreover, the Secretariat of Public Management, part of the PCM, has acknowledged that it lacks the financial and human resources to perform an effective oversight of the TUPAs and oblige ministries to follow the guidelines set for their development and publication. As a result, the quality and type of the information of the TUPAs across ministries and agencies varies.

The lack of a single registry with information of quality for laws and regulatory instruments can be a source of uncertainty for businesses and citizens alike. This uncertainty can be exploited by public officials to their advantage, in detriment to entrepreneurial and business activity, and can affect negatively the experience and perception of citizens in the use of front line government services.

*Although a strategy for administrative simplification is in place, there is not an effective oversight of its implementation. These efforts are further diminished because the Peruvian government lacks a baseline of administrative burdens emanating from formalities and information obligations for business and citizens, which can make difficult to target resources and communicate results. Additionally, strategies for digitalisation of formalities and e-government services are still incipient and at early stages of development.*

The Secretariat of Public Management has issued a methodology on administrative simplification and procedures for the National Government, Regional Governments and Local Governments, which offers instructions to ministries and agencies of the three levels of government to eliminate information requirement, reduce response times, and other strategies aimed at reducing burdens from formalities and information obligations for citizens and businesses. This has been coupled with the release of a national strategy on modernisation of the public administration, a national plan on administrative simplification, and an implementation strategy. However the implementation strategies, and the evaluation of results and impacts of simplification, have not been enforced. The Secretariat of Public Management does not seem to have the financial and human resources to carry out these activities, and also lacks the regulatory framework to carry out an effective oversight function. The need to address these shortcomings becomes more pressing in the face of the publication of the legislative decree that creates that SUT.

Additionally, no measurement of administrative burdens for business and citizens coming from formalities has been carried out, so a baseline measurement is not available. This limits the capacity of the Peruvian government to target scarce public resources on the most burdensome formalities, and on its ability to assess the benefits of alternative strategies that can be as effective at reducing burdens, such as applying citizen language, increasing the quality of template and submission forms, as well as digitalisation and other e-government strategies. It also reduces the capacity of the government to communicate more effectively the results of the simplification strategies, which can ensure continuous support for this type of initiatives and contribute to eliminate the resistance of ministries and agencies.

Finally, an agenda to make available on line formalities or public services for citizens as part of an e-government strategy has not been implemented.

*The contribution of the Commission for the Elimination of Bureaucratic Barriers to reduce administrative burdens from formalities and provide legal certainty can be enhanced*

The Commission for the Elimination of Bureaucratic Barriers, part of INDECOPI, has the legal capacity to assess the regulatory framework of Peru, which includes the mandate to attend the public's complaints on formalities and information obligations that go beyond the legal framework, or which are not "justified". In case the complaint is valid, the Commission can request the ministry or agency sponsoring the formality to stop



requiring specific information or stop demanding the formality altogether. After an administrative and legal procedure, this request can become legally binding. The commission can also start investigations of the same nature on its own. The Commission can perform these tasks for formalities required by the three levels of government.

However, these capacities are bound by the fact that the Commission does not have legal mandate to carry out a systematised evaluation of formalities or a baseline measurement to develop a specific strategy for burden reduction, as part of a larger policy on administrative simplification and *ex post* analysis of the regulation, nor does seem to have the resources to carry such a programme. The baseline could include first a definition of which rules can be considered a bureaucratic barrier first, and then an assessment of their legality, rationality and proportionality.

Additionally, the commission's capacity for evaluation and of "pointing fingers" can be restrained by the fact that it is an office within an agency (INDECOPI) in which the independence of its decisions can be undermined by political objectives.

*No evidence was found that Peru carries out ex post evaluation of laws or regulations in force*

From a regulatory governance perspective, in which regulations follow a "life-cycle" approach which includes the stages of *ex ante* assessment and compliance and enforcement, the *ex post* evaluation of whether regulations in force effectively and efficiently address the policy problem represent a building block for an effective regulatory policy. It is only after implementation that the effects and impacts of regulations can be fully assessed, including direct and indirect incidence and unintended consequences.

During the interviews and after reviewing the supporting documents provided by Peruvian officials, no evidence was found that Peru carries out *ex post* evaluations of laws or regulations in force. The only exception identified was the investigations carried out by the Commission for the Elimination of Bureaucratic Barriers, but they focus only on assessing the legal validity or "reasonable justification" of existing formalities or of data requirements demands as part of formalities, rather than evaluating whole pieces of legislation, regulatory instruments, or regulation affecting specific economic sectors.

**Key recommendations**

- Create a central online and free access registry of laws, and other regulatory instruments, which is complete and up to date. Establish a similar central and online registry of TUPAs in which the quality and amount of information is ensured and up to date. The recent publication of the Legislative Decree which creates the Single System of Formalities (SUT) goes in this direction and should be implemented fully. Ministries and agencies of the three levels of government should be obliged to feed the system with the supervision of the oversight body to keep the registries up to date, including the addition of new formalities, as a result of new regulations. The new formalities and regulation should go through the RIA process, in which administrative simplification criteria have to be applied to the new formalities.
- Ensure the full implementation of the policies of administrative simplification, which should include evaluation of the impacts. Appropriate resources to carry out these tasks should be contemplated. In the framework of the Coordinating

Council on Regulatory Policy, the implementation of these policies should be followed up, assessed and improved.

- Carry out a measurement of administrative burdens of formalities and information obligations. As an alternative to a full baseline, the formalities for the most relevant economic process or the formalities for priority sectors can be measured first, and a strategy in stages can be developed further on. Based on these results, the efforts on administrative simplification can be targeted and focused in order to ensure the achievement of defined goals.
- Consider granting the Commission for the Elimination of Bureaucratic Barriers more independence, including a scheme for a more independent decision making process and governing body, so it can discharge its functions more effectively. This should be coupled with the establishment of proper arrangements for accountability and transparency.
- The resolutions of the Commission of Bureaucratic Barriers should be investigated further by the Coordinating Council on Regulatory Policy, in order to assess whether this council should take further action to promote the modification or elimination of the source regulation that created the citizen complaint in the first place.
- As part of Peru's regulatory policy, consider establishing a programme on *ex post* evaluation of regulation. The program should define specific criteria for the selection of laws or regulation to assess, the periodicity of evaluation, guidelines of evaluation, and should set the necessary provisions for the Coordinating Council on Regulatory Policy to promote modifications on the regulatory framework as part of this assessment.

### For compliance and enforcement of regulation in Peru

*There is no general policy on regulatory compliance and enforcement across government agencies. Moreover inspections are not seen as an essential part of regulatory policy*

There is an important distinction on the approach taken by line ministries and independent agencies with regard to inspections—which is a key component to improve compliance and enforcement. Line ministries consider not only inspections as sector specific, but it is common that inside a Ministry, different administrative units in charge of inspections coexist without any co-ordination, exchange of information or experiences among them.

There is little evidence that regulatory institutions conduct inspections based on risk assessment. In general, inspection activity has to be differentiated between economic and social regulators and ministry agencies. For instance, there are regulators which inspect all regulated entities and others inspect a sample of them.

A notion in which inspections are regarded as a key tool to achieve policy and regulatory outcomes has not been developed across ministries and agencies. Very often compliance and enforcement are just seen as part of the day-to-day work, despite the fact that they represent a key element in regulatory policy to attain higher policy objectives. This in turn can be reflected in a narrow vision that gives precedence to outputs over policy outcomes.



*Step-by-step manuals and guidelines to conduct inspections to achieve policy objectives with transparency and integrity is not a standard practice in Peruvian institutions*

Each institution conducts inspections according to its own regulatory framework, but in several cases inspections processes are not further developed in written guidelines. Additionally, no evidence was found that in these framework and guidelines, a prominent place is given to establish the inspection practices as a tool designed to prevent corruption, regulatory capture and promote transparency.

*The governance arrangements on inspections between central and local government can hamper the effectiveness of inspection to reach policy objectives*

The central government has delegated responsibilities and surveillance functions to subnational governments which can affect the inspection process, the capacity to inspect and the expected policy results from this task.

For instance, workplace inspection's responsibilities have split horizontally between central and subnational governments in some sectors. Workplace inspections for medium and large enterprises are responsibility of central government, leaving to subnational governments the responsibility to inspect smaller business (less than 10 employees).

Considering that institutional capacity and adequate personnel for inspections are weaker at subnational level, and that the quantity of business in the small and micro category is much larger, the risk of having an ineffective inspection policy for the workplace is much larger for subnational governments. The situation can be aggravated when considering that small business are more prone to not complying with regulation given their larger likelihood to be part of the informal sector.

**Key recommendations**

- Peru should include the policy of inspections and enforcement of regulations as an integral part of its regulatory policy. The Peruvian government should include and emphasise the importance of compliance and enforcement as part of its broader policy statement to achieve its general objectives of sector regulation.
- This would include addressing the governance of inspection authorities through a cross-cutting policy. This would imply reducing the fragmentation of inspection authorities, improving co-ordination and communication, sharing of information and best practices (including at different levels of government), and reforming the administrative units in charge of inspections within line ministries in order to provide them with more independence from other regulating areas.
- The cross-cutting policy mentioned before should include general guidelines relating to horizontal objectives such as ethical behaviour and corruption prevention, organisation and planning of inspections, and transparency towards the subjects of inspections. It should also include guidelines to implement a risk based approach for inspections, information integration and sharing, and widespread use of third parties to carry out inspections.
- In order to ensure the effectiveness and efficiency of regulatory enforcement and inspections adequate human, technological and financial resources should also be available to agencies.

## For multi-level regulatory governance in Peru

*Peru has not developed a regulatory policy for subnational governments, and as a result there is limited co-ordination between central and subnational government to achieve a coherent national regulatory framework, and to promote good regulatory practices and tools*

Because Peru is a unitary country, at the central level it has the capability to issue laws and other legal instruments, which are mandatory for all levels of government. However, subnational governments still have significant regulatory powers. They can issue their own regulatory instruments, called “*ordenanzas*”, and must implement several national laws by issuing further secondary regulation. Therefore co-ordination across levels of government is needed for an effective regulatory policy. The central has created mechanism to seek co-ordination with subnational governments on matter of public policy, but not specialised on regulatory policy. Additionally, it offers fiscal incentives and money transfers to subnational governments to encourage the application of administrative simplification policies. The tasks performed by the Commission for the Elimination of Bureaucratic Barriers in reviewing formalities at all levels of government also contributes to improve the quality of regulation at regional and local level in Peru.

Despite these efforts, there is not a co-ordinated regulatory policy across levels of government in Peru, which can lead to the existence of duplications and loopholes in the regulatory framework. From the information collected from the cases of the municipalities of Arequipa and Trujillo, it was found that there is not an office or contact point to which subnational government can resort to when it comes to settle doubts or request guidance on how to issue regulation to implement central laws or other legal instruments. At the central level, line ministries and other regulatory agencies also complain that subnational governments exceed their regulatory powers by issuing regulation that either overlaps with the national framework, or establish contradictory terms.

*With the exception of the policy on administrative simplification, the practices that are applied at the central level, even at their current stage of intermittent application are not promoted by the central government to subnational governments. This includes ex ante analysis of regulation, promotion of legal quality, and pre-publication. As a result they have not been adopted at the regional and local level*

The fiscal incentives and money transfers to subnational governments to encourage the application of administrative simplification policies, and the tasks performed by the Commission for the Elimination of Bureaucratic Barriers in reviewing formalities at subnational level, contribute to reduce the burdens for citizens and businesses from formalities at regional and local level. As in the case of the central government, subnational governments are obliged to follow the preparation and publication of the TUPAs) and apply all the strategies and programmes on administrative simplification issued by the PCM. However, the challenge for the PCM to effectively supervise these policies at subnational level remains.

However, for the case of the other regulatory tools applied at central level, which include the preparation of a cost-benefit analysis for draft regulation, the obligation to publish the draft regulation, and the obligation to follow the Guide on Legislative Technique are not actively promoted by the central government to be adopted by

subnational ones. From the information collected from the cases of the municipalities of Arequipa and Trujillo, it was found that they do not follow these practices, or they did not know about the available guidelines to improve the quality of their regulation.

### ***Key recommendations***

- When issuing the statement on regulatory policy, Peru should include formal measures to establish co-ordination with subnational governments to promote a coherent national regulatory framework, and promote actively the adoption of regulatory tools, such as *ex ante* analysis of draft regulation, consultation and stakeholder engagement, amongst others. Formal venues for the co-ordination, such as conferences or help desks, should be considered. Guidelines and compendiums of good practices should also be enhanced and promoted across subnational governments.
- As part of this policy, a more active strategy on fiscal incentives and money transfers could be established, which could cover regional governments as well, not only municipalities, to incentivise the adoption of all tools. As a complementary measure, a policy of evaluation and assessment in the progress of the adoption of these tools by subnational governments could also be pursued, as a way to create league tables and further promote the implementation of the tools.
- The policy should also include the delivery of capacity building training to regional and local officials to aid the implementation of regulatory policy at subnational level.

## **For the governance of regulators in Peru**

*Economic regulators in Peru have a large degree of independence to exert budget and decision making. Nevertheless, as decentralised bodies, they still have links to the executive power*

According to the own regulators and public agencies such as the Presidency of the Council of Ministries and the Ministry of Economy and Finance, Regulators enjoy full decision making independence and they fund their operation through the regulated businesses. Depending of the approval of PCM, regulators can collect a maximum of 1% of income from regulated entities after sales taxes—in fact this is the unique funding resource for regulators. This scheme represents a strength that contributes to the independence of the regulators.

Regulators still have formal dependence from the Presidency of the Council of Ministers. For instance, similar to the entities of the central administration, any reorganisation or institutional change needs to be approved by the Ministers' Council, as well as their regulation of organisation and functions. It is not clear whether these links affect the capacity of regulators to discharge their function on an independent and effective way.

*Regulator's practices on transparency and accountability are more advanced compared to the central government. However, as long as regulators exert independence, these practices should be enhanced*

Regulators, as decentralised institutions of the central government, must follow transparency obligations set by the legal framework for the Peruvian government. These obligations, however, should be enhanced whenever institutions have an independence status. This will contribute to avoiding regulatory capture and boost confidence and trust from the public, central government and regulated entities.

A similar situation applies in the case of accountability obligations for economic regulators. Currently, these regulators are accountable to the MEF in matters of budget execution, and to the PCM on strategic plans, performance indicators, amongst others. These obligations, however, should be extended to other institutions such as Congress and other stakeholders, for instance the *Council of Users*. Regulators have no obligation to submit annual performance reports to Congress, or to stand before Congress to present a report. Regulators indicate that they send report to Congress or other public institutions whenever it is required. Nevertheless, accountability practices should be systematised.

*Economic regulators regularly publish draft regulation and collect comments from the public, but there are available opportunities to improve stakeholder engagement practices. There is also publicity of meetings with regulated entities in the regulators' websites, but actions to avoid regulatory capture could be boosted*

Although some of the regulators publish the draft regulation and allow stakeholders to provide comments, further steps can be taken to ensure a systematised practice. For example; OSIPTEL in the case of draft regulations related for fixing tariffs or interconnection charges notifies mainly the parties which it considers will be affected, and OSINERGMIN decides to conduct consultation depending on the complexity of the draft regulation. Best OECD practices suggest that consultation should be carried out for all types of regulation and whenever exceptions arise, proper justification should be provided, accompanied with an *ex post* assessment once the regulation has been enacted.

Economic Regulators in Peru have a variety of forms to engage with stakeholders, but practices differ across the type of stakeholders. For instance, there is an established *Council of Users* which is consulted regularly, but for other stakeholders consultations are on demand and in an isolated manner. To avoid opportunities for regulatory capture, consultations practices have to be formalised and systematised.

With the inputs from consultation, regulators prepare a matrix of comments, and make it public. The information provided by users can be exploited further to increase the quality of regulation. They can help to define the problem that needs to be addressed more precisely, suggest alternatives to regulations, and uncover potential costs of the regulation not considered before.

*The funding scheme of the water regulator could be enhanced further*

For the case of the water regulator SUNASS, the current arrangement of receiving income from the regulated entities is not enough to discharge its functions. SUNASS' supervised entities are small public agencies with low business income. In fact, SUNASS has indicated that the annual budget is not adequate to conduct inspections properly.

*There is room to improve the tools used by the economic regulators to assess the degree to which they are accomplishing their policy objectives. Indicators are essential to determine whether policies are moving in the right direction*

Economic regulators report several indicators focusing on quality of the services, effectiveness in budget execution, efficiency and results of programmes, amongst others. Impact indicators, however, which should focus on how the activities of the regulators achieve the general and specific policy objectives, have not been developed.

These indicators should be an important element of the *Strategic Plan* of the regulators. Currently, this plan includes the regulator's policy objectives, and provisions to measure progress in achieving these goals should also be added. It is important to distinguish in the *Strategic Plan* how different types of indicators contribute to the objectives: from strategic indicators measuring general objectives, to detailed indicators measuring progress in specific activities.

*The quality of the cost-benefit analysis that regulators prepare as part of the ex ante analysis of draft regulation could be improved*

In general, the evidence suggests that regulators prepare cost-benefit analysis of draft regulation as part of *ex ante* assessment with more regularity and with better quality than other public agencies of the central Peruvian government. Nevertheless, the analysis and the use of standard criteria to prepare the assessment could be improved. In general, regulators do not follow guidelines when preparing cost-benefit analysis.

**Key recommendations**

Peru should consider strengthening the governance of economic regulators by:

- Review the funding scheme of SUNASS so as to ensure the necessary funding that allows it to discharge its functions and reach its policy objectives effectively, while maintaining its independence.
- Reviewing the legal links of economic regulators with central government in order to enhance decision making by regulators. This should include, but not be limited to, administrative decisions and tasks, such as internal organisation.
- Upgrading current policies to make regulators more accountable to the central government, to Congress and to the general public. This should include periodic performance reports, as well as the publication of operational policies. To this aim, relevant indicators should be developed to help assess the achievement policy results from the regulatory interventions.
- Carrying out on a regular basis formal engagement processes with stakeholders. This should include guidelines and procedures for consultation on draft regulation and other forms of engagement with regulated entities. Rules on transparency for the treatment of comments by the public should be set.
- Introducing a system of *ex ante* impact assessment, i.e. a Regulatory Impact Assessment, for draft regulations and regulations that are subject to modifications, which should be independent from the RIA system of the central government of Peru. Measures should be taken to target resources and apply a deeper analysis to regulations with the most significant impact. As part of the consultation process of draft regulations, RIAs should be also made available to the public. RIA manuals and guidelines should be issued, and capacity building training for public officials should be provided. Regulators should establish their own provisions to ensure and assess the quality of their own RIAs, which should be independent from the oversight on RIA for the central government of Peru, to be carried out by the co-ordinating council on regulatory policy recommended in this report.



**From:**

## **Regulatory Policy in Peru** Assembling the Framework for Regulatory Quality

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