

# 5 International case studies

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This chapter describes the international cases of water regulators of Australia, Mexico, and United Kingdom on the use of the Regulatory Impact Assessment (RIA). The purpose of the case studies is to provide different perspectives on the use of the RIA tool by economic regulators in these countries, mainly on cases where it is applied, where a waiver exists, and the RIA process that each of them uses.

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## Case Study 1: National Water Commission, Mexico

### **Organisational structure and main functions**

The National Water Commission (CONAGUA) was founded on 1989 as a decentralised body<sup>1</sup> of the Ministry of Agriculture and Water Resources. By 1994, CONAGUA was transferred to the Ministry of Environment and Natural Resources and Fishery which currently is called Ministry of Environment and Natural Resources.

In accordance with the Law of National Waters (LAN, for its Spanish acronym), CONAGUA is the highest body of the Federation that has a technical, normative and consultative character in the management of water resources, including the administration, regulation, control and protection of the hydric public domain. The LAN also states that CONAGUA is an institution with executive, administrative, budgetary, and managerial autonomy for achieving its purposes, the conduction of its functions, and the issuance of authority acts. In the exercise of its functions, CONAGUA is organised according with two modalities:

- National level (functions and activities on operational, executive, managerial, and legislative matters are performed through the Basin Organizations<sup>2</sup>)
- Regional level (hydrologic-administrative, through its Basin Organizations)

The CONAGUA's attributions set forth in the LAN, are summarised below (CONAGUA, n.d.<sub>[11]</sub>):

- To formulate the national hydric policy and to follow it up.
- To act as the authority on water matters and oversee the compliance and application of the Law of National Waters.
- To manage and safekeep the national waters.
- To certify and support the organisation and participation of users to improve water management.
- To encourage the development of a water culture considering it as a vital and scarce resource with high economic, social, and environmental value.
- To issue titles of concession, deeds of transfer, or permits for disposal and keep the Public Registry of Water Rights.
- To execute the fiscal attributions on matters of collection, liquidation, and inspection of contributions and achievements.
- To propose Mexican Official Standards<sup>3</sup> on water matters.
- To build, operate, and provide maintenance of federal hydraulic works.
- To support the development of systems of drinking water and sewage, sanitation, treatment, and recycling of water.
- To support the development of irrigation or drainage systems.
- To lead the National Meteorological Service.
- To support the development of avenue control and flood protection systems.
- To participate in the National System of Civil Protection.

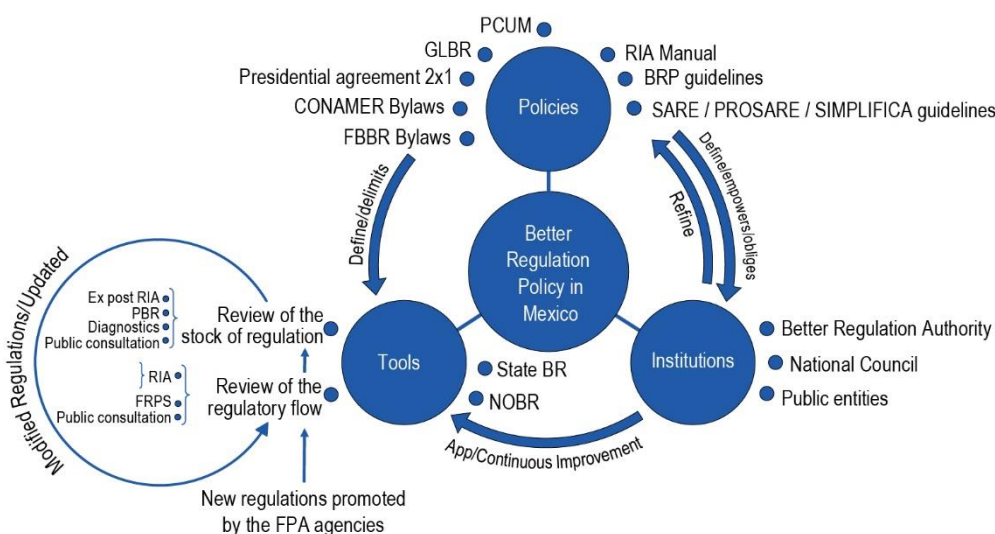
### **Regulatory impact assessment system in Mexico**

The CONAGUA has the obligation to prepare a RIA when it intends to issue a legislative instrument that generates costs for citizens or companies. Because the CONAGUA is hierarchically attached to the Ministry of the Environment and Natural Resources, it must follow the RIA system that is required for the entire federal government of Mexico, and under the charge of the National Commission for Better regulation (CONAMER).<sup>4</sup>

CONAMER (2019<sup>[2]</sup>) acknowledges that the institutionalisation of the regulatory policy in Mexico has its origin in the recommendations established in the review on *Regulatory Reform in Mexico* (OECD, 1999<sup>[3]</sup>). Consequently, the system operating the implementation of the Regulatory Impact Assessment (RIA), as well as the public consultation process in Mexico, which accumulate over 20 years of experience in adopting best practices, have their rationale in this document.

The RIA was formalised in Mexico in 1996 when it was incorporated into the Federal Law of Administrative Procedures (LFPA), and by 1997 its use was mandatory and systematic with the reforms to the Federal Law on Metrology and Standardisation (CONAMER, 2019<sup>[2]</sup>) (OECD, 1999<sup>[3]</sup>). However, in 2000, it was made compulsory the submission of a RIA by all agencies that prepare preliminary drafts of laws, legislative decrees and acts of a general nature. Nowadays the system of the regulatory impact assessment is embodied in several instruments and its implementation involves several institutions constituting the Regulatory Governance in Mexico. Figure 5.1 shows the regulatory governance system in Mexico, and in particular the way in which the RIA is part of the regulatory quality improvement process.

**Figure 5.1. Regulatory governance in Mexico**



Notes: Political Constitution of the United Mexican States (PCUMS), General Law of Better regulation (GLBR), National Commission for Better Regulation (CONAMER), Federal Board for Better regulation (FBBR), Fast Business Opening System (SARE), Recognition and Operation Program SARE (PROSARE), Program for Simplifying Proceedings (SIMPLIFICA), Better regulation (BR), National Observatory for Better Regulation (NOBR), Programs of Better regulation (PBR), Federal Register of Procedures and Services (FRPS).

Source: CONAMER (2019<sup>[4]</sup>).

In the federal setting, CONAMER is the institution assigned by LGMR to decide on legislative proposals and the regulatory impact analyses issued by the Federal Public Administration institutions. In Box 5.1 the main functions of CONAMER are outlined, pursuant to the LGMR. Analyzing the legislative proposals and regulatory impact assessments created by the subjects obliged by LGMR are included among these functions.

### Box 5.1. National Commission for Better regulation

The National Commission for Better regulation (CONAMER) is an administrative and decentralised body of the Ministry of Economy with technical and operational autonomy. CONAMER's objectives incorporate the improvement of regulations and the simplification of administrative proceedings and services, as well as the transparency of their preparation and implementation.

CONAMER has different powers at national and federal level. At the national level, it encourages the regulatory policy. At the federal level, CONAMER is the body promoting and overseeing regulatory topics. CONAMER as the supervisory body at federal level has the following powers:

- Examine the federal regulatory framework, diagnose its application and, where applicable, prepare preliminary drafts of legislative and administrative provisions for better regulation.
- Analyse legislative proposals and the corresponding regulatory impact assessments.
- Propose, co-ordinate, publish, monitor, and assess Better regulation Programs written by the bodies of the Federal Public Administration and issue binding guidelines for the Federal Public Administration.
- Create, develop, propose, and promote specific programs of regulatory simplification and improvement.
- Propose reviewing the regulatory stock, procedures, and services.
- Estimate the economic cost of procedures and services, according with the information provided by the bodies of the Federal Public Administration.
- Oversee that the bodies of the Federal Public Administration have updated their corresponding part of the catalogue of regulations, formalities, and services.<sup>1</sup>
- Write, publish, and submit the annual performance report to the Congress of the bodies on better regulation matters.

<sup>1</sup> National Catalogue of Regulations, Procedures and Services (article 3, section III, article 38 and 39 of the General Law on Better Regulation).

Source: (Congreso de la Unión, 2018<sup>[5]</sup>) *General Law of Better regulation*, [http://www.diputados.gob.mx/LeyesBiblio/ref/lgmr/LGMR\\_orig\\_18may18.pdf](http://www.diputados.gob.mx/LeyesBiblio/ref/lgmr/LGMR_orig_18may18.pdf).

### *Regulatory impact assessment*

The General Law of Better regulation (LGMR) sets forth that the RIA is a tool aimed to ensure that benefits of regulations are higher than their costs and that these represent the best alternative to manage a specific problem. Moreover, it states that the purpose of the RIA is to warrant that regulations safekeep the general interest, by considering the impacts or risks of the activity to be regulated, as well as the institutional conditions of the obliged subjects. The use of this tool is mandatory for all Federal Public Administration institutions when they intend to issue any regulation, including CONAGUA. In accordance with the LGMR, a regulation is any rule of general character whose denomination can be an Agreement, Memo, Code, Criterion, Decree, Directive, Provision of general character, Technical provision, Statute, Format, Instruction, Law, Guideline, Manual, Methodology, Mexican Official Standard, Regulations, or any other denomination of analogue nature issued by any obliged subject. Thus, CONAGUA, by being a decentralised body of the Federal Public Administration and adhered to the Ministry of Environment and Natural Resources is an obliged body that must comply with the RIA process and public consultation.

The Regulatory impact assessment (RIA) identifies several modalities, according with the level of impact of the regulation or the emergency that could arise. These modalities were implemented since 2010, using a calculator which measures the level of impact (CONAMER, 2019<sup>[21]</sup>). In other words, the institutions that make regulations need to use the calculator to know the impact they generate. The modalities of RIA are as follows (see Table 5.1 for types of RIA with compliance costs and (COFEMER, 2010<sup>[6]</sup>) for a formal definition):

- **High-impact RIA.** It is used when the potential impact of a regulation is high for the economy and population, based on the processes, activities, stages of the business cycle, consumers, and economic sectors affected by the draft bill.

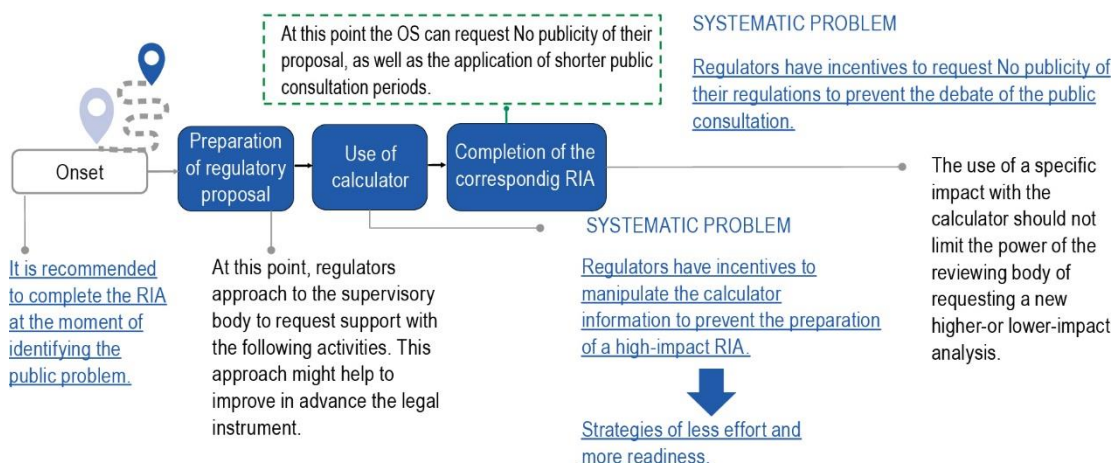
- **Moderate-impact RIA.** It is used when the potential impact of the regulation is medium for the economy and population, based on the processes, activities, stages of the business cycle, consumers, and economic sectors affected by the draft bill.
- **RIA for Periodic update.** It occurs when the draft bill must modify provisions which by their nature have to be updated periodically, but without imposing additional obligations to those already existing.
- **Emergency RIA.** It occurs when the draft bill complies with the criteria for the issuance of the emergency regulation, which are the following:
  - If it has a validity of not more than six months;
  - If the purpose is to prevent, mitigate or eliminate an existing damage to the health and welfare of the population, the environment, and natural resources.
  - If emergency treatment with equivalent content has not been previously requested.

For determining the compliance costs, the calculator currently used by CONAMER considers several elements (COFEMER, 2010<sup>[6]</sup>):

- Economic process(es) related with the regulation;
- The number of consumers, users, products, services, or population affected directly or indirectly by the regulation;
- The frequency with which a product or service is consumed;
- The number of units subject to regulation;
- The frequency with which the regulated subjects must comply with the regulation;
- The economic activity affected by the regulation;
- The type of costs assumed by the regulation;
- The type of legal ordering;
- The type of impacts on the competition and free concurrency;
- The impact on specific sectors;
- The incidence over some activities which might be considered anti-competitive or affecting the consumption decisions;
- The objective of the regulation of attention, prevention, or mitigation of a risk;
- The impact on economic activities;
- The impact on the issues related to the consumers' rights.

The Figure 5.2 shows the process that a regulation follows to identify the costs of regulation and the type of RIA that should enter CONAMER, according to the cost calculator. In the same figure, it can be observed that CONAMER has identified challenges for the correct implementation of the cost calculator and RIA.

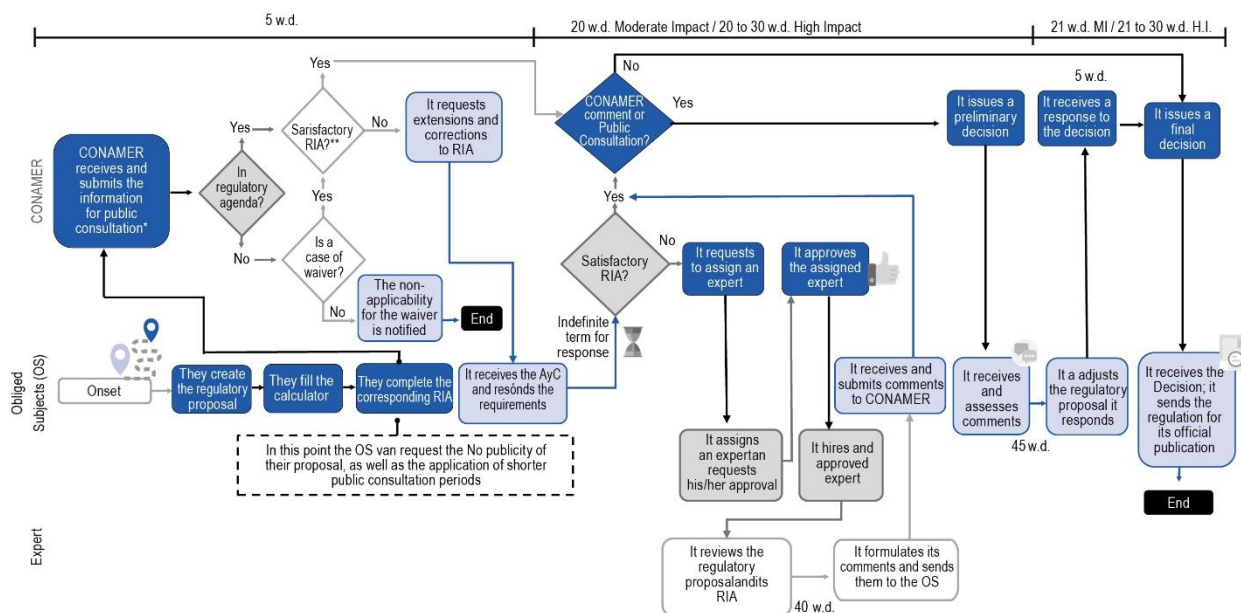
Figure 5.2. Identification of regulation costs



Source: CONAMER (2019<sub>[4]</sub>).

The process implemented to strengthen regulatory quality through regulatory impact assessment and public consultation in Mexico follows the flow described in Figure 5.3. In this figure the actors and their activities related during the RIA process are observed. In the case of CONAGUA, the steps that its legislative proposals should follow are observed in the row indicated for *obliged subjects*.

Figure 5.3. Better regulation procedure in Mexico



Note: wd.-Working days, H.I.-High impact, OS-Obligated Subjects.  
Source: CONAMER (2019<sub>[4]</sub>).

In Mexico, the LGMR states the RIA must consist of six constitutive elements which are helpful to identify and warrant the establishment of new obligations or proceedings:

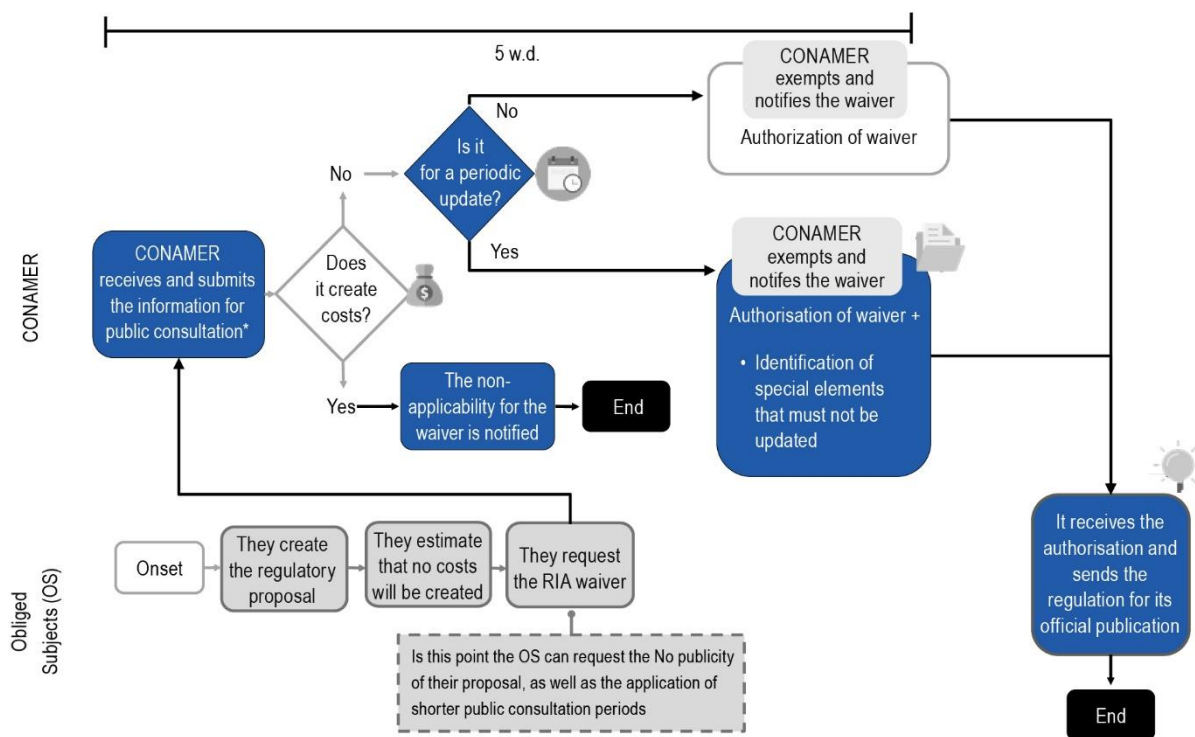
- Definition of the problem and general objectives of the regulation (which identifies and measures the problem, and helps to determine if it is necessary to update the regulatory framework)
- Assessment of regulatory alternatives (it identifies the potential solution mechanisms, assesses costs and benefits of alternatives, as well as the technical and legal feasibility)

- Regulation impact (it identifies the net benefit of the regulation)
- Implementation and observance (identification of mechanisms by which the regulation is intended to achieve its objective)
- Mechanisms of assessment and follow-up (those elements allowing to measure the progress of the compliance are identified)
- Prior public consultation (exercises of public involvement carried out in the processes for designing and applying regulations).

The LGMR also considers that in the assumption that an obliged subject considers that its regulatory proposal does not imply compliance costs, the CONAMER as better regulation authority in the federal setting in Mexico might authorise the waiver of this requirement in a period of not more than five working days, in accordance with the Operational Manual of Regulatory Impact Assessment. In Figure 5.4 the process that a legislative proposal requesting the waiver for the RIA follows is shown. Therefore, under the assumption that CONAGUA will request the waiver of the RIA, the institution should follow the flow set forth as *obliged subject*. Specifically, the criteria for determining the regulations imposing compliance costs are the following (CONAMER, 2020<sup>[7]</sup>):

- It creates new obligations for individuals or makes more stringent the current obligations;
- It creates or amends proceedings (except when the amendment simplifies and facilitates the compliance of the individual);
- It reduces or limits the rights or payments for individuals; or,
- It establishes definitions, classifications, characterisations or any other term of reference, which together with another provision in force or with a future provision, affect or may affect the rights, obligations, benefits or procedures of individuals.

**Figure 5.4. Discrimination of regulatory impact**



Source: CONAMER (2019<sup>[4]</sup>).

In Mexico, the RIA incorporates several approaches aimed to distinguish specific impacts such as competition, foreign trade, or impact on consumers. During the preparation of the RIA, the regulated subject is asked to explicitly indicate whether the legislative proposals have any impact on these issues. Consequently, since draft bills can create several levels of impacts on the population and economy on terms of costs and benefits, CONAMER has designed 12 different types of RIA (CONAMER, 2016<sup>[8]</sup>). See Table 5.1.

**Table 5.1. Types of RIA for regulations with compliance costs**

Type of RIA	Moderate impact with analysis	High impact with analysis:
Ordinary	Standard Impacting the competition Impacting foreign trade Impacting consumers Their combinations	Standard Of risks Impacting the competition Impacting foreign trade Impacting consumers Their combinations
Emergencies		
Periodical updates		
<i>Ex post</i>		

Source: CONAMER (2019<sup>[4]</sup>).

The forms that must be filled out by each of the different RIA are published in the section of annexes of the “AGREEMENT by which the Sole Annex is amended, Manual for the Regulatory Impact Statement of the article by which the deadlines are fixed for the resolution of the Federal Commission for Better regulation on draft bills and the Manual of the Regulatory Impact Statement is made known to the public published on July 26, 2010”. (CONAMER, 2016<sup>[8]</sup>).

### **Public consultation in Mexico**

Public consultation in Mexico has been part of the RIA process since 2000, first as a self-imposed practice, later incorporated into the Federal Law of Administrative Procedures (LFPA), and finally in the LGMR since 2018.

According to the LGMR, all the legislative projects must include an impact assessment and be subject to a minimum of 20 days in a public consultation process led by the authority for better regulation, which at federal level is the CONAMER, except those that apply for the waiver (Congreso de la Unión, 2018<sup>[5]</sup>).<sup>5</sup> CONAGUA must continue this procedure. Once a federal public institution, such as CONAGUA, submits a legislative proposal for the RIA process through the digital platform managed by CONAMER <http://187.191.71.192/>, it is automatically published for consultation.

The objective of the public consultation process is to gather information and opinions from stakeholders. Therefore, the platform collects and publishes all the comments to the legislative proposal. CONAMER is obliged by the LGMR to provide a response to all comments received during the consultation process to issue a formal decision of the legislative proposal. Consequently, the regulatory body should reply to the CONAMER’s opinion to clarify the process.

Furthermore, the LGMR states that the RIA format must include a description of all the efforts regarding the public consultations undertaken to support the proposal, as well as the opinions gathered during the draft of the regulatory agenda to be developed by all regulated bodies.



### ***Experience in Mexico on RIA in autonomous bodies***

In order to enrich the presentation of international cases of RIA practices, this section explains the case of the Federal Telecommunications Institute (IFT, for its Spanish acronym), which is not subject to the RIA system supervised by CONAMER.

Mexico's 2013 telecommunications reform created the IFT as the body in charge of the regulation and competition in the sector. The constitutional reform provided autonomy to the IFT, which is why it is not sectorised to any Ministry of State or public institution, under any scheme of hierarchical subordination. The Telecommunications and Broadcasting Law establishes the powers of both the IFT and the Ministry of Communications and Transport (SCT, for its Spanish acronym), the former market regulator.

The IFT is presided by seven commissioners who form the plenary (board of directors or management) and who are chosen through an open and public competition, based on the experience of the candidates and their knowledge of the sector, as well as of competition, economic regulation and engineering aspects of telecommunications.

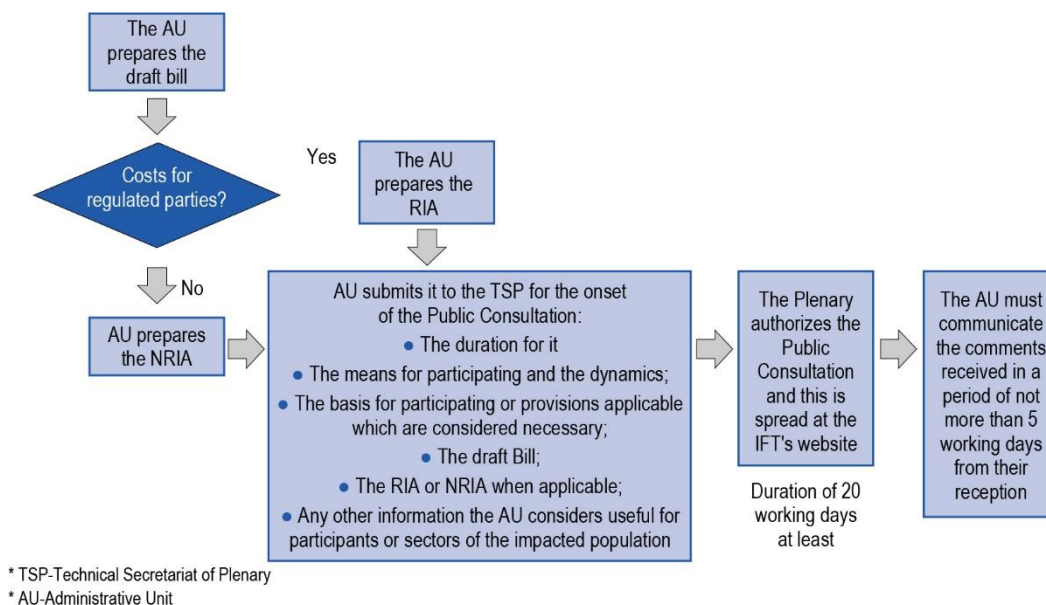
The IFT is an autonomous public body, independent in its decisions and functioning, with its own legal personality and assets, whose purpose is to regulate and promote competition and the efficient development of telecommunications and broadcasting.

The IFT is responsible for regulating, promoting, and overseeing the use, exploitation of the radioelectric spectrum, orbital resources, public telecommunication networks, and the concession of broadcasting and telecommunications. It also regulates the access to active and passive infrastructure and other essential inputs. The IFT is responsible for technical guidelines regarding infrastructure and equipment that are connected to the telecommunications network, as well as being the competition authority for the telecommunications market. The tasks of the SCT are aimed at promoting the market. This includes activities such as planning policies to ensure universal coverage, collaboration in international telecommunications agreements, acquisition of infrastructure, among others.

As regards to the regulatory quality process through the RIA, the Federal Telecommunications and Broadcasting Law (LFTR) states that “For the issuance and amendment of rules, guidelines, or administrative provisions of general character, as well as in any case determined by the Plenary, the Institute must perform public consultations under the principles of transparency and public involvement, under the terms set forth by the Plenary, except for those cases that publicity might compromise the effects intended to be solved or prevented in an emergency”. And it continues stating that “Prior to the issuance of rules, guidelines, or administrative provisions of general character, the Institute must perform and make public a regulatory impact assessment or, where applicable, request the support of the Federal Commission for Better regulation.”

Additionally, the Organic Statute of the IFT states that the General Coordination of Better Regulation will be in charge of the better regulation program of the institute. And, for such purpose, it will prepare and propose to the Plenary the guidelines for public consultations and the Regulatory Impact Analyses of drafts of regulations, rules, guidelines, or administrative provisions prepared by the administrative units of IFT. Moreover, the General Coordination will issue a non-binding opinion on the regulatory impact assessment or on the null regulatory impact assessment of such drafts, prior to their submission, and, where applicable, the approval of the Plenary (IFT, 2020<sup>[9]</sup>). The public consultation process in the IFT is presented in Figure 5.5.

**Figure 5.5. Public consultation process of a draft bill in the Federal Telecommunications Institute**



Note: AU – Administrative Unit, TSP-Technical Secretariat of Plenary, NRIA-Null Regulatory Impact Assessment.

Source: (IFT, 2019<sub>[10]</sub>).

The IFT is an autonomous body that promotes and oversees its own regulatory quality process, which includes public consultation on its regulations and the RIA. For this reason, this represents a relevant example of a national authority that, internally, an Administrative Unit proposes a legislative proposal (together with the corresponding RIA), which must be dictated by the General Coordination of Better Regulation of the IFT itself. As it might be identified, one of the main challenges in this model is the autonomy of the General Coordination to decide correctly and without the influence of the IFT on the RIA. In the Guideline for integrating Regulatory Impact Assessment (IFT, 2019<sub>[10]</sub>) the approach of the IFT on the implementation of the public consultation and the RIA can be referred.

### ***CONAGUA's experience on the elaboration of regulatory impact assessment***

CONAGUA is an obliged body of the LGMR, for this reason, when it intends to publish any regulation in accordance with its functions, it must follow the procedures indicated in the law. In CONAGUA there is no structure or personnel that transversally facilitate the preparation of RIA for the whole institution, instead, each administrative unit uses its own human resources to prepare its legislative proposal, as well as follows the regulatory quality process defined by the LGMR.

As of June 2020, CONAGUA has submitted 40 regulatory proposals to CONAMER, from which 7 have been waivers of RIA, 1 format for operational rules, 3 RIA of moderate impact, 2 RIA of moderate impact impacting competition, 14 operational rules, and 13 applications for waivers of RIA. Of these, three are currently in the process of analysis, one was discharged, and the rest are already managed (see Table 5.2). CONAGUA, since it does not have a unit or person responsible for the internal process of developing RIA, does not have statistics on the total number of regulations that enter CONAMER. The statistics are focused on each administrative unit.

**Table 5.2. CONAGUA's files at CONAMER from 2012 to the date**

Concept	Number	Percentage
Waiver of Regulatory Impact Assessment	7	18%
Format for operational rules	1	3%
Moderate Regulatory Impact Assessment	3	8%
Moderate Regulatory Impact Assessment impacting competition	2	5%
Operational Rules	14	35%
Application of Waivers of Regulatory Impact Assessment	13	33%
<b>Total</b>	<b>40</b>	

Source: Elaborated by OECD with information of CONAMER.

Some examples of CONAGUA's files at CONAMER can be found in Table 5.3. The links give access to the complete file of the regulatory proposal or changes in CONAGUA regulations, according to the type of request.

**Table 5.3. Examples of regulatory impact assessment in CONAGUA**

Concept	Name	Access
Waiver of Regulatory Impact Assessment	Agreement by which the suspension of terms and periods of procedures carried out by the National Water Commission, foreseen in the Agreements published in the Federal Official Gazette on March 26 and 28, 2019 were postponed for prevailing the causes of Act of God caused by the fire dated on March 23, 2019.	<a href="http://187.191.71.192/expedientes/23052">http://187.191.71.192/expedientes/23052</a>
Format for Operational Rules	Operational rules for the program to support the hydro-agricultural infrastructure under the National Water Commission, applicable from 2020.	<a href="http://187.191.71.192/portales/resumen/49004#">http://187.191.71.192/portales/resumen/49004#</a>
Moderate Regulatory Impact Assessment	Agreement by which the agreement is reformed to establish the procedures that will be presented, attended and resolved through the conagu@-digital system, the electronic notification in the water inbox, the non-exigence of requirements, or the way in which they will be considered met and for notifying to the public the days that will be considered as non-working for purposes of proceedings managed by the National Water Commission	<a href="http://187.191.71.192/portales/resumen/47385">http://187.191.71.192/portales/resumen/47385</a>
Moderate Regulatory Impact Assessment impacting the competition	General rules establishing the requirements to be complied by the verification units to obtain and keep the approval of the National Water Commission for the assessment of Conformity in terms of that set forth in the Mexican standard "NMX-AA-179-SCFI-2018, Measurement of National Water Volume Used, Exploited, or Harnessed"	<a href="http://187.191.71.192/portales/resumen/49695#">http://187.191.71.192/portales/resumen/49695#</a>
Operational Rules	Agreement by which the several provisions of the operational rules for the program of drinking water, drainage, and treatment in charge of the National Water Commission are added, applicable from 2020	<a href="http://187.191.71.192/portales/resumen/48760#">http://187.191.71.192/portales/resumen/48760#</a>
Waiver Applications of Regulatory Impact Assessment	Agreement amending the articles, published in the Federal Official Gazette on February 10, 2011 and June 6, 2012, amended on March 6, 2014 referring to proceedings of the National Water Commission	<a href="http://187.191.71.192/portales/resumen/45903#">http://187.191.71.192/portales/resumen/45903#</a>

Source: Preparation of the OECD with information of CONAMER.

## Case Study 2: Regulatory Authority of Water Services, United Kingdom

### Regulatory context

The Department for Environment, Food and Rural Affairs (Defra) is the institution outlining the regulatory framework of the industry of water and sewage in England and Wales. Defra is in charge of defining standards, preparing laws, and creating special permits among other things. On the other hand, the body responsible for the economic regulation of the sector is the Department for Environment, Food and Rural Affairs (Ofwat) in the United Kingdom. Ofwat is a non-ministerial body created in 1989 from the privatisation

of the water and sewage industry in England and Wales. By being a non-ministerial body, the Ofwat has some features such as operational independence and control on the policies it issues, in addition to having a highly technical component (Cabinet Office, 2016<sup>[11]</sup>). The Authority has the following objectives (The United Kingdom, 1991<sup>[12]</sup>):

- Protecting the consumers' interests
- Ensuring that service provider companies comply with their obligations
- Ensuring that the service provider companies can finance their operations
- Warranting that licensees comply with their obligations

Although Defra is the sector department (or ministry) linked to the Ofwat, the HM Treasury is the agency in charge of supervising the finances of the regulator, and the latter must be accountable directly to the Parliament, allowing for a very close relationship between the regulator and the ministry (Department for Environment, 2020<sup>[13]</sup>). This is why the Water Industry Act (1991) states that Ofwat must conduct its functions with technical independency and competence, impartiality, and transparency (The United Kingdom, 1991<sup>[12]</sup>).

### *Regulatory policy in the United Kingdom*

In the United Kingdom, the regulatory policy, and specifically, the RIA system, is mainly determined by three institutions which complement each other (Department for Business, 2020<sup>[14]</sup>):

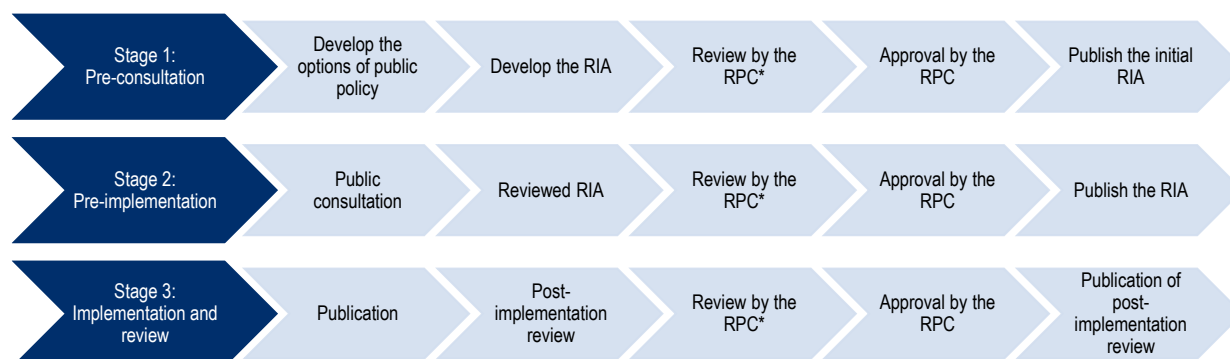
- Better Regulation Unit (BRU) is the office at the interior of each department or ministry supervising and advising on the compliance of the requirements on matters of better regulation.
- Better Regulation Executive (BRE) is in charge of leading the Better Regulation Policy throughout the government. Additionally, it is also responsible for adopting better regulation on the development of public policies.
- Regulatory Policy Committee (RPC) is an independent body supervising the evidence and analysis warranting any regulatory amendment.

The Small Business Enterprise and Employment Act (2015), outlines the goals and guidelines to be followed on matters of regulatory policy, as well as the attributions of the several bodies involved in the regulatory process in the United Kingdom. In particular, it sets the business impact target (BIT), which represents an objective for the government under the terms of economic impact on the business activity of the regulatory provisions introduced or derogated in a specific period.

Under the guidelines established in the Companies Act (2016), the RIAs<sup>6</sup> produced by regulators, including Ofwat, must have the validation of the RPC.<sup>7</sup> The RPC opinion is mandatory if the proposal generates costs higher than 5 million (GBP) annually for companies. For regulatory amendments underneath this threshold, the regulator must perform a proportional analysis in order to notify its decisions (Department for Business, 2018<sup>[15]</sup>).

Moreover, the Better Regulation framework promotes the development of evidence-based quality regulations through three main elements: public consultation, impact assessment, and post-implementation review (Department for Business, 2018<sup>[15]</sup>). Each of these elements is reflected in the stages that constitute the regulatory cycle in Figure 5.6.

**Figure 5.6. Framework for Preparing Regulations, BRE**



\* The review by the RPC is optional in the pre-consultation stage and is not mandatory for those legislative proposals with an impact lower than  $\pm 5$  million (GBP) in direct annual cost to companies.

Source: Department for Business, Energy & Industrial Strategy (2020<sub>[16]</sub>), *Better Regulation Framework, Interim guidance*, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/872342/better-regulation-guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/872342/better-regulation-guidance.pdf).

### **RIA system**

As mentioned before, the Companies Act (2016) sets forth that Ofwat must comply with the RIA process for all those regulatory provisions with an annual net impact on companies of  $\pm 5$  million (GBP). For events where the impact is lower than  $\pm 5$  million GBP, a proportional analysis of costs and benefits should be carried out to warrant the decision-making, as well as showing that the net impact is lower than that amount (Department for Business, 2020<sub>[16]</sub>). That is, for those regulations creating a net impact lower than  $\pm 5$  million GBP, a proportional assessment should be done only, in contrast to a complete impact assessment when it exceeds  $\pm 5$  million GBP. When it is lower than  $\pm 5$  million GBP, the agency itself approves the proportional impact assessment and should not be included in the Impact Business Target (IBT). All regulations should undertake the pre-consultation process since it is the step prior to determining the net impact of the regulation.

Additionally, regulators must consider the guidelines established in the Regulator's Code. The Code sets forth the principles of flexible and proportional regulation focused in promoting the growth without generating excessive burdens for regulated agents (Department for Business, 2014<sub>[17]</sub>). For more details on the Regulator's Code see Box 5.2.

#### **Box 5.2. Regulator's Code**

The Regulator's Code establishes a series of principles focused on the flexible regulation and based on the Regulatory Compliance Best Practices. The Code presents six criteria or principles that regulators should follow when developing public policies, in order to guarantee the achievement of the policy objectives, as well as to reduce administrative burdens and promote regulatory compliance. The six principles contemplated in the Code are:

1. Regulators must carry out their activities in a way that promotes regulatory compliance and helps the growth of the regulated parties.
2. Regulators must provide simple and direct ways for having relationships with their regulated parties and to listen their points of view.
3. Regulators must base their regulatory activities on risk.
4. Regulators must share and interchange information on the regulatory compliance and risk.

5. Regulators must ensure the availability of clear information, guidelines, and recommendations to help regulated parties to comply with their regulatory responsibilities.
6. Regulators must ensure their approach to regulatory activities is transparent.

Source: Department for Business, Energy & Industrial Strategy (2014[38]), Regulator's Code, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/300126/14-705-regulators-code.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf).

### *RIA obligations*

Ofwat conducts RIAs when its regulatory proposals generate significant modifications to existing policies or represent changes to the way the agency conducts its business. The agency is governed by the principles of transparency, accountability, proportionality, consistency and targeting of regulatory interventions (Ofwat, 2011<sub>[18]</sub>). Therefore, the Ofwat involves stakeholders from the early stages, consults its RIAs, and includes plans for the development of Post-implementation Reviews (PIR) before publishing the legislation<sup>1</sup> (Ofwat, 2017<sub>[19]</sub>).

Ofwat proposes regulations based on its attributions and objectives established in its strategy (Ofwat, 2019<sub>[20]</sub>). That is, the agency performs a RIA when its proposal implies (Ofwat, 2011<sub>[18]</sub>):

- A significant impact on clients (in general terms or specific clients) of water or sewage service
- A significant impact on the environment
- A significant impact on the structure of the water and sewage sector
- Impact on the companies of the sector or licensees (in general terms or specific types of companies or punctual companies)

The RIA obligation applies for those proposals with an annual impact on companies over five million (GBP). However, Ofwat (and other institutions) must conduct a proportional assessment of the impact of its regulations for those outside the parameters mentioned above.

The RIA is based on the ROAMEF system, which considers the following elements: rationale, objectives, analysis, monitoring, assessment, feedback which will be described thoroughly in the following section (Department for Business, 2020<sub>[16]</sub>).

### *RIA supervision*

RPC reviews and issues formal and informal (not publicly) opinions about the Regulatory Impact Assessment prepared by the regulatory agencies. The main objective of these reviews is to ensure that public policy decisions are made based on adequate evidence. The types of opinions and recommendations issued by the RPC vary according to the stage of the regulatory cycle; a description of these is presented below:

- RIA prepared for the pre-consultation stage: RPC issues recommendations on the elements to be considered in the RIA during the stage of consultation and which to be considered in the final stage. Typically, these recommendations are informal and are not available to the public; however, it is also possible that RIA for public consultation follow a formal verification process by the RPC.
- RIAs prepared for the pre-implementation stage: In this type of RIA, RPC focuses more on estimating the costs and benefits of the regulatory proposal. The RPC may issue three criteria based on the information and analysis proposed in the RIA:
  - Initial review notice (IRN): RPC issues the IRN when the quality of the RIA proposed does not comply with the requirements established by the committee. The review includes an informal recommendation, which is not public. If the Department responsible for preparing the RIA does

not comply with recommendations of the RPC, this may cause a red rating, which is formal and is available to the public.

- Red-rating: This is the second step in case the regulatory agency fails to make the necessary corrections outlined in the IRN. Red-ratings are published at the time of publication of the RIA.
- *Green-rating*: If the RPC considers that the RIA complies with the necessary quality, it issues a green-rating. This does not mean that the RIA is perfect, but it reflects that the committee does not have significant concerns or considers that the elements to be improved are minor.

Additionally, the RIAs are assessed by taking into consideration the impact of the legislative proposal on the companies. The RPC assesses the estimation of the annual net impact of the regulation on the companies, if the evidence provided is adequate, the estimation is endorsed by the committee.

Once the RPC receives the RIA, it is evaluated by a technical team, which issues an opinion. The criteria considered by the RPC include:

- The proposal does not assume that the regulation is the solution of the public policy problem
- All the regulatory and non-regulatory alternatives are considered
- The RIA has the sufficient evidence
- The estimations of costs and benefits are reliable
- Non-monetary impacts were assessed thoroughly
- The outcomes are clearly explained and presented
- The regulatory costs of companies are adequately reflected

The opinion is peer reviewed within the RPC with the purpose of ensuring the quality of the same. The RPC should issue a formal opinion within 30 days, however, for particularly complicated cases, the process may take a little longer.

### ***Content of RIA***

The Office of Better regulation has made available to the relevant bodies a predetermined format for RIAs. The same is found on the website gov.uk, specifically in this [link](#).

#### *Sections included in the RIA*

- Description of the public policy problem
- Objectives of the action or intervention and its expected effects
- The alternatives that were considered, including non-regulatory alternatives. Additionally, the preferred alternative must be specified as well as a plan of implementation
- Monetised and non-monetised costs and benefits of each one of the alternatives considered
- Direct costs and benefits to businesses and companies
- Risks and assumptions considered in their analysis
- Impact on SMEs
- Proposal for monitoring and assessment

#### *Public consultation*

The participation of stakeholders is a particularly important element for Ofwat. The agency not only performs consultations, workshops, and meetings to know the opinion of the regulated companies and final users, but also establishes the principles that the regulated companies must follow by the time of engaging with their clients. The principles on Figure 5.6 are the seven identified principles of best practices

for the relationship with users. It is important to mention that Ofwat includes the regulated parties and final clients throughout the regulatory process, which allows it to perform adjustments and modifications to the legislative proposals based on the information collected by public consultations. An example of how the agency includes the relevant stakeholders is the process for reviewing water and sewage tariffs (*Price reviews*, PR), explained below.

Ofwat performs a review of the tariffs that service provider companies of water and sewage supply can charge in England and Wales every five years. This process implies balancing the interests of final users of the service with the financial health of the licensees, for which it is vital to consider the points of view and interests of all the stakeholders. Although the agency publishes the tariffs to be followed for a couple of months before their entry into force, their development is a process that takes some years and involves the stakeholders from the beginning.

The comments and observations that Ofwat receives are published and incorporated (whenever considered adequate) in the legislative proposals. For example, the review process of tariffs for the period 2020-25 included the publication and consultation of numerous discussion documents, methodologies, and proposals for estimating water and sewage tariffs before submitting the final document.

### **RIA administration**

For the implementation of the RIA, the Office of Better Regulation, the HM Treasury, and Ofwat have issued guides and guidelines to facilitate the preparation of the analysis, as well as to ensure its quality. Among the documents to note, the following are found:

- [Better Regulation Framework](#): This document presents the guidelines that govern the better regulation system in the United Kingdom. This guide includes all the steps that must be followed by the regulatory entities to comply with the principles of better regulation. Additionally, it includes references to specific guidelines and manuals according to the requirements that must be met by the institutions according to the type of regulation intended to be implemented or assessed (Department for Business, 2020<sup>[16]</sup>).
- *The Green Book*: The Green Book is a document prepared by the HM Treasury, which details a series of methodologies, assumptions, and considerations to carry out the analysis and quantification of the legislative proposal impacts (United Kingdom HM Treasury, 2018<sup>[21]</sup>).
- Ofwat's policy on impact assessment: This document provides the basic guidelines for assessing regulatory impacts, as well as the characteristics that the legislative proposals of the agency must have (Ofwat, 2011<sup>[18]</sup>).

In addition to various guides and guidelines for the development of the RIA, RPC and BRE offer help and support to regulatory agencies, including Ofwat. For instance, RPC has a document specifying the interaction areas with regulatory bodies (Regulatory Policy Committee, 2019<sup>[22]</sup>).

### **Example of the RIA**

In 2016, Ofwat published the [RIA](#) of the tariffs regulations for new connections to the water and sewage service network (Ofwat, 2016<sup>[23]</sup>). The document specifies the public policy problem under scope, as well as the reasons for which the intervention of the government is necessary. In addition of specifying the objectives of public policy, the RIA must understand the effects expected of the same. It is important to note that among the regulatory alternatives, the option of maintaining the *status quo* and not performing a legislative intervention is found.



Each of the regulatory alternatives is analysed to determine its costs and benefits. In this example the following regulatory options are analysed: i) deregulation with a minimum number of rules, ii) introduction of a regulatory framework based on the principles set forth in the Water Act (Water Act, 2014), iii) establishment of prescriptive and standardised rules, iv) not performing changes to the regulation in force.

In addition, the final RIA incorporates the comments received to the first version of the RIA, which was submitted to public consultation for one month. The public consultation allows stakeholders to comment on the regulatory alternatives and the assumptions considered in calculating the costs and benefits of each one.

Finally, the RIA includes a section explaining the regulation impact on companies and SMEs, in addition to incorporating the measurement of greenhouse effects of the regulatory provision.

## Notes

<sup>1</sup> Article 17 of the Organic Law of the Federal Public Administration States that the decentralised bodies are hierarchically subordinated to state secretariats (equivalent to the Ministry) and that they will have specific powers to make decisions on the matters and within the territorial setting determined for each case.

<sup>2</sup> Basin Organizations are autonomous units with technical, administrative, and legal capacity attached to the head of the Conagua; they have as main powers formulating and proposing the regional hydric policy, managing regional hydric programs, as well as operating, studying, regulating the policy, and managing infrastructure projects and resources.

<sup>3</sup> The Mexican Official Standards (NOM, for its Spanish acronym) are technical regulations of mandatory observance whose essential purpose is to increase the quality for the economic development and the protection of legitimate objectives of public interest foreseen in this regulation, by establishing rules, denominations, specifications or characteristics applicable for goods, products, processes, or services, as well as those related to terminology, branding or labelling, and of information, according to article 4 of the Quality Infrastructure Law.

<sup>4</sup> In contrast, the Federal Telecommunications Institute (IFT, for its Spanish acronym) is entitled to a level of independence as an economic regulator body very similar to SUNASS. Because of this independence, IFT has established a RIA system independent of the rest of the Mexican federal government. The case of the IFT is outlined later.

<sup>5</sup> Where the regulated entity considers that publicity could compromise the intended effects of the proposed regulation, it may request the Better Regulation Authority to determine this situation. In the event that the Better Regulation Authority determines that publicity would indeed compromise the results, other authorities will not be consulted, nor will the information be made public until such time as the regulation is published in the dissemination media (See Art 74 of the General Law on Better Regulation).

<sup>6</sup> RIA (Regulatory Impact Assessment, often shortened to IA –Impact Assessment).

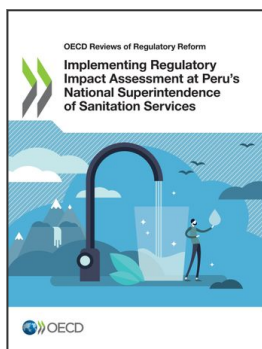
<sup>7</sup> The RPC is an independent body not adhered to any department or agency in the United Kingdom. Thus, it is sought that the RPC opinions are free from undue influence of the government and external agents. For more information about the operation of the RPC, check (OECD, 2018<sup>[24]</sup>), *Case Studies of*

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