

Chapter 2

Policies and institutions for regulatory policy in Peru

Peru has a centralised system of government which comprises the executive, legislative and judiciary powers. Peru does not have a legal or policy statement for the application of a whole-of-government regulatory policy. Instead, it has specific elements that pursue regulatory quality embedded in numerous legal documents. Mirroring the scattered elements of regulatory quality included across legal and policy instruments, the institutional landscape of Peru also offers a view in which legal attributions, practices, and efforts on regulatory policy are dispersed across several agencies, without articulated efforts for co-ordination, with some specific exceptions. 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. Peru should also aspire at establishing an oversight body which concentrates regulatory policy activities and tools currently spread across several ministries, agencies and offices.

The objective of regulatory policy is to ensure that regulations and regulatory frameworks are in the public interest. For regulatory policy to be effective, it must have political commitment of the highest level, follow a whole-of-government approach, and have an array of institutions to make this policy work, including oversight bodies. This chapter discusses the current legal and institutional arrangement of Peru to pursue a regulatory policy, including any policy statements and programmes that help implement the policy of regulatory quality.

Main government structure and organisation in Peru

In this section, a brief description of the main structure and organisation of the government of Peru is presented. It also includes short explanations of the most relevant ministries, agencies, as well as the Congress and subnational governments. The objective is to present a broad picture of the way the Peruvian government is organised.

General organisation

Peru has a centralised system of government which comprises the executive, legislative and judiciary powers. At the central level, there are some public bodies with varying degrees of independence that goes from decentralised to autonomous entities in charge of specific portfolios. As an example, within the executive branch there are economic and social regulators. Economic regulators have as a main feature administrative autonomy but they are still ascribed to the Presidency of the Council of Ministers (PCM). In contrast, social regulators comprise traditional and modern regulators, their degree of autonomy varies but in general is lower compared to economic regulators, and focus on highly specialised topics such as competition, commerce, consumer protection, such as National Institute for the Defence of competition and Protection of Intellectual Property (INDECOPI), Environmental Evaluation and Enforcement Agency (OEFA), SUNAFIL, amongst others.

Figure 2.1 shows the structure of the Peruvian government and how disaggregated it is at the legislative, judicial and executive level, as well as for autonomous bodies and at the regional and local levels of governments. Figure 2.2 further expands the ministries belonging to the executive power and the regulatory agencies ascribed to the Presidency of Council of Ministers.

Presidency of Council of Ministers

The Council of Ministers is a body which gathers the heads of each of the ministries in the executive branch. The Council is headed by a President (see Box 2.1). Its main functions include: the co-ordination and evaluation of the general policy of the government (which includes national, sectorial and multi-sectorial); decision making in public interest affairs; the promotion of development; and the welfare of the population.¹

The PCM has a strong empowerment within the Peruvian Government. It co-ordinates the relationships with the legislative and the judiciary powers, as well as with constitutional autonomous bodies (e.g. Central Bank) and with the regional and local governments.²

Box 2.1. Functions and powers of the Council of Ministers

According to Article 125 of Peruvian Constitution and to Article of the 16 Organic Law of the Executive Branch No. 29158 (LOPE, *Ley Orgánica del Poder Ejecutivo*), the Council of Ministers has powers to:

- Approve the law projects that the Peruvian President submits to Congress;
- Approve the legislative and the urgent decrees ordered by the Peruvian President;
- Discuss and implement matters of public interest;
- Co-ordinate and evaluate the general policy of the government, as well as the national, sectorial and multi-sectorial policies; and
- Promote the development and wellbeing of the population.

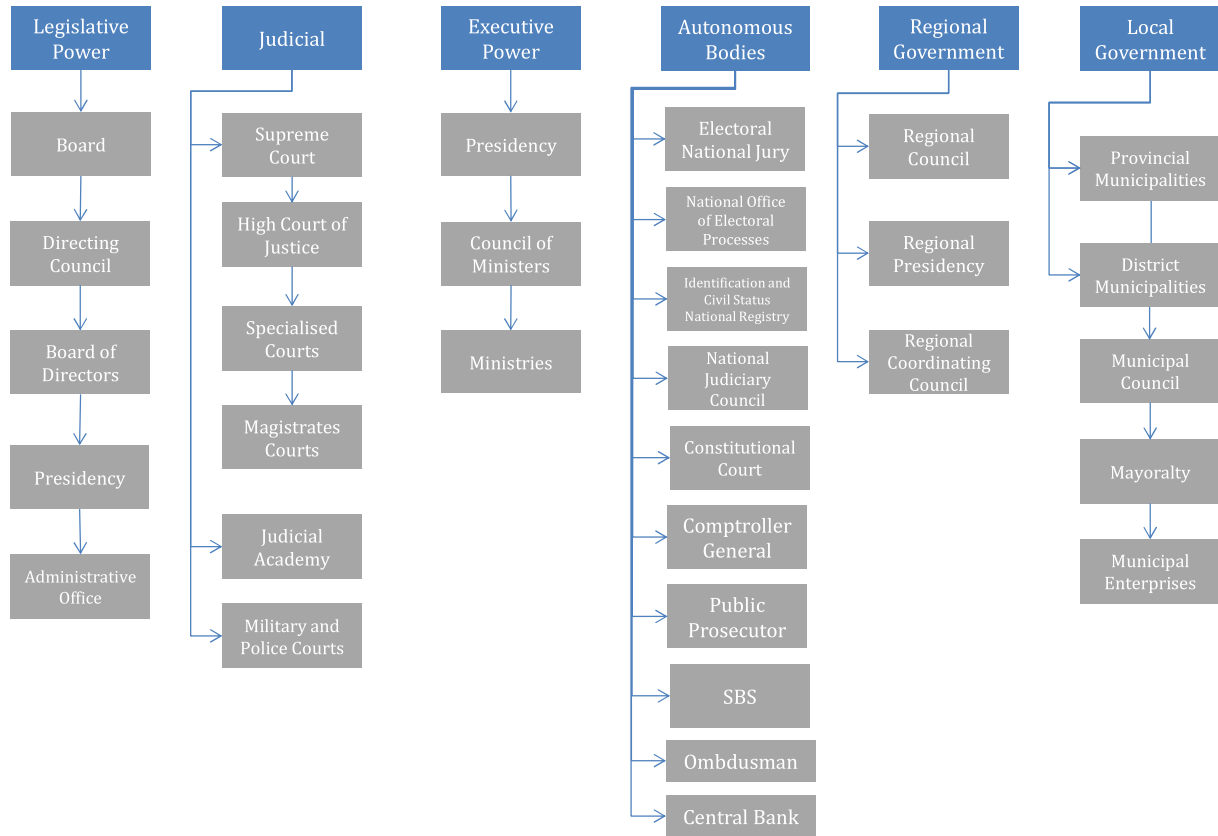
The Council of Ministers is chaired by the President of the Council. However, the Council is to be chaired by the President when he convenes the Council or attends the sessions (Art. 15, Political Constitution of Peru). It is within the powers of the President of the Council to: i) be the official spokesman of the government in the absence of the President; ii) co-ordinate the functions of the other ministers; iii) endorse the legislative and urgent decrees approved by the Council of Ministers (Art. 123, Political Constitution of Peru); iv) promote government objectives; v) co-ordinate the multi-sectorial policies, especially those that involve the economic and social development of the nation; vi) supervise the actions of the bodies related to the Presidency of the Council of Ministers (Art. 18 LOPE); amongst others.

The Presidency of the Council of Ministers is the ministry in charge of the co-ordination of the national and sectorial policies of the executive branch. It co-ordinates the relation with the other government branches, the constitutional agencies, regional and local governments, and the civil society (Art. 17, LOPE).

According to the Political Constitution of Peru, every Council agreement requires the approving vote of the majority of its members (Art. 125), thus, any act implemented by the Peruvian President that does not include the countersign of the Council is considered null (Art. 120). The members of the Council of Ministers are also allowed to assist and participate in Congress sessions, although, without the right to vote. The attendance to the sessions is to be done periodically by at least one member of the Council (Art. 129).

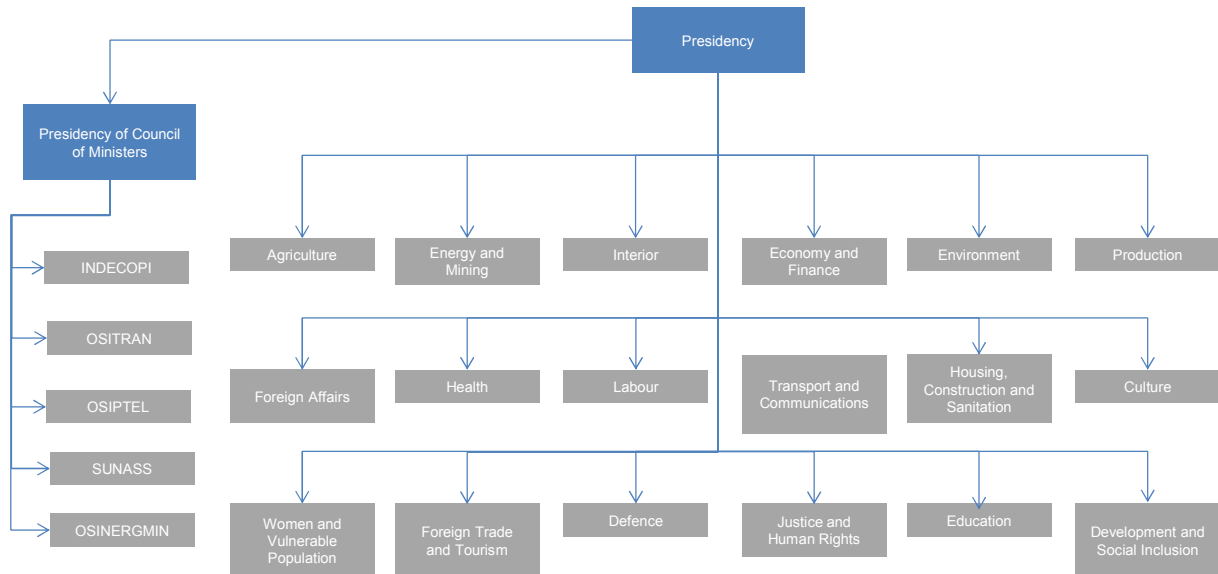
Source: Organic Law of the Executive Branch No. 29158 (*Ley Orgánica del Poder Ejecutivo*).

Figure 2.1. Structure of the Peruvian government



Source: Prepared by the OECD from information published by the Public Management Secretary, [http://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/92f5739e20dfd56105257bff00577d02/\\$file/estado.pdf](http://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/92f5739e20dfd56105257bff00577d02/$file/estado.pdf)

Figure 2.2. Structure of the executive branch of the Peruvian government



Source: Prepared by the OECD from information published by the Public Management Secretary, [http://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/92F5739E20DFD56105257BFF00577D02/\\$FILE/estado.pdf](http://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/92F5739E20DFD56105257BFF00577D02/$FILE/estado.pdf)

Ministry of Economy and Finance

The Ministry of Economy and Finance (MEF, *Ministerio de Economía y Finanzas*) is in charge of planning, leading, and controlling all matters related to policy on tax, customs, financial system, indebtedness, foreign trade public budget, finance and accountability, as well as overseeing the national economy. The MEF also evaluates and ratifies all measures that restrict national and international trade of goods and services.

Together with the PCM and the Ministry of Justice and Human Rights (MINJUS, *Ministerio de Justicia y Derechos Humanos*), the MEF has a central role on regulatory quality efforts. Some of the MEF activities on regulatory policy include: administrative simplification, international regulatory co-operation and intergovernmental co-ordination, performance-based regulation, *ex ante* impact assessments of regulation, governmental transparency and consultation (see Section *Institutions for regulatory quality in Peru*). It is this capacity to assess draft policies with potential impact on commerce, along with other cross-cutting legal attribution, that allows the MEF to review draft regulation.

Ministry of Justice and Human Rights

The Ministry of Justice and Human Rights (MINJUS) acts as a legal advisory body for the executive branch. Together with the PCM and the MEF is one of the most influential ministries in the executive branch, as it has a horizontal perspective on government issues. In broad terms, the MINJUS has tasks on improving the quality of the rule of law. It has to assure that the executive branch performs its duties inside the Political Constitution of Peru, this is mainly performed by giving legal advisory through opinions on the regulatory projects. It is also the agency within the executive branch responsible to co-ordinate with the judicial power, the Public Prosecutor and every other instance linked to the administration of the judicial system.

Economic regulators

A keystone in modern institutional design of public entities in Peru was set with the creation of four economic regulators: the National Superintendence of Sanitation Services (*SUNASS*), the Supervisory Agency for Private Investment in Telecommunications (*OSIPTEL*), the Supervisory Agency for Investment in Energy and Mining (*OSINERGMIN*) and the Supervisory Agency for Investment in Public Transport Infrastructure (*OSITRAN*). The defining features of these entities derives from their institutional design as administrative independent bodies from the central government, their funding scheme through industry earnings, and the collegiate decision making body.

These regulators are defined as Specialized Technical Agencies³ but their formal constitution is established in specific law decrees.⁴ Their main legal powers are indicated in the Law No. 27332: Framework Law on Regulatory Agencies for Private Investment in Public Utilities (*LMOR Ley Marco de los Organismos Reguladores de la Inversión Privada en los Servicios Públicos*), enacted in 2000. This law allows such regulators to supervise, regulate, norm and inspect the sector activity of regulated entities.

These regulators have as their main tasks monitoring and implementation of the regulation designed to improve the development of relevant economic sectors in the country. In order to comply with their functions, these entities are ruled by general and specific regulation. They follow laws and regulation designed for general public entities as the transparency obligations, but they are also subject to specific regulation as their general rules of procedure.

The scope of intervention modalities of the economic regulators goes from issuing of norms and regulation for firms and consumers within the sector (economic, administrative and technical), to the supervision and inspection of compliance of such regulations; as well as the imposition of sanctions due to infringements, and solution of controversies and complaints. Such functions are stated in the general regulation of each regulator (see Box 2.2).⁵

Box 2.2. Institutional design and legal powers of economic regulators in Peru

In Peru, four utilities regulators are in charge of the supervision of main open-to-private-investment markets. Their institutional design and faculties are explained in the next lines.

SUNASS, the National Superintendence of Sanitation Services, was created on December 19th, 1992. The agency is in charge of managing the market's regulatory framework in water and sanitation provision, the economic regulation of prices and tariff structure in these sectors, overseeing the quality and coverage of the services, verifying that the commitments assumed by the firms in the sector are met, auditing and imposing sanctions, and the settlement of customer complaints.

OSIPTEL, the Supervisory Agency for Private Investment in Telecommunications, was created on July 11th, 1991 with the goal of protecting the telecommunication public services market from practices against free and fair competition. The agency is in charge of regulating and supervising the telecommunication market. Also, OSIPTEL has the authority to fix the tariff structure, manage and issue regulatory instruments and, it can establish and impose sanctions and corrective measures to firms when needed. Furthermore, it has the exclusive role to settle complaints and controversies.

OSINERGMIN, the Supervisory Agency for Investment in Energy and Mining, was created on December 31st, 1996 with the responsibility of regulating and supervising the companies in the electricity and hydrocarbon sectors. Then, on the year 2007, the mining sector was incorporated to its scope. The agency is in charge of fixing tariffs and monitoring the activities of the companies to verify they comply with the regulatory framework, including risk management and health policies. Additionally, it seeks to guarantee that the companies in the electricity, hydrocarbon and mining sectors provide a permanent, safe and high quality service to the population of Peru.

OSITRAN, the Supervisory Agency for Investment in Public Transport Infrastructure, was created in January of 1998. It is in charge of supervising, regulating, auditing, sanctioning, settling controversies and responding to complaints about the activities and services involved in the use of the infrastructure of public transport and its market. Its goal to guarantee the efficient operation of the market is sought by regulating and supervising the companies holding concessions for air services, seaport services, railways and highways.

These regulatory agencies have administrative, functional, technical, economic and financial autonomy since the year 2000, when the Law No. 27332 was enacted. The entities became independent to define their technical guidelines, their objectives and strategies.

Afterwards, with the publication of the Law No. 29158 in 2007, the agencies were recognised as decentralised bodies of the executive branch, were given nationwide competences and were assigned to the Presidency of the Council of Ministers. The latter implies that any organisational, institutional or functional change requires approval by the Council of Ministries.

Source: Adapted from the SUNASS website: www.sunass.gob.pe/; OSIPTEL website: <https://www.osiptel.gob.pe/>; OSINERGMIN website: www.osinergmin.gob.pe/ and OSITRAN website: www.ositran.gob.pe/ (accessed 6 April 2016).

Congress

The Peruvian Congress is composed by 130 congressmen serving 5-year terms, selected through an electoral process. In Peru, the parliamentary organisation is divided by the Plenary Session, the Directive Council, the Directive Board, the Presidency and the Administrative Office. Its legislative work is organised by the Ordinary Commissions, the Permanent Commission and the Parliamentary Groups.

The functions of the Congress can be separated into the legislative affairs, the public control and the special activities. The first function comprises the debate and approval of Constitutional and law-level reforms, as well as the interpretation, modification and abrogation of articles of the Constitution, the law collection and the legislative resolutions. The public control functions include the delegation of legislative faculties; the installation of the Council of Ministries; the realisation of investigations and agreements about the government behaviour, the inspection about the usage of public goods, amongst the most important. Finally, the special functions are the designation of the treasury inspector, the members of the constitutional trial, the directives of the Reserve Central Bank (*Banco Central de la Reserva*) and the Superintendence of Banking, Insurance and Private Pension Fund Administrators (SBS).

Subnational governments

Besides the national government in Peru, there are three subnational layers of regulation: the Regional Government, the Provincial Local Government and the District Local Government. These governments' levels have exclusive and joint functions which are described in the Peruvian Political Constitution (CPP), the LOPE, the Organic Law of Regional Governments (LOGR, *Ley Orgánica de Gobiernos Regionales*) and the Organic Law of Municipalities (LOM, *Ley Orgánica de Municipalidades*) (see Box 2.3).⁶

Box 2.3. Main regulatory framework for subnational governments in Peru

The Organic Law of Regional Governments, Law No. 27867

Published on 18 November 2002, the law establishes and regulates the regional governments' structure, organisation, faculties, and duties, and defines the regional governments as decentralised or de-concentrated according to the Constitution and the Law of Decentralization Bases. The Law gives regional governments legal personality, with political, economic, and administrative autonomy, in matters falling under their legal powers.

According to the present Law, regional governments have two kinds of powers: exclusive and joint faculties with the central government. The regional governments have the exclusive legal power to plan the comprehensive development of their own region; implement socio-economic programmes; develop the Regional Development Plan; approve its internal organisation and budget; promote the modernisation of small and medium regional enterprises; promote investments in infrastructure, regional utilities, watersheds, economic corridors and touristic circuits; facilitate the access to international markets for their region's products and services; manage and assign urban and vacant land; promote sustainable use of forest resources and biodiversity; develop regulation on subjects under their powers; among others.

The joint faculties of the regional governments include education services; public health; regulating and developing economic and productive activities for agriculture, fisheries, industry, trade, tourism, energy, oil, mining, transport, communications, and environment; dissemination of culture, among others.

Box 2.3. Main regulatory framework for subnational governments in Peru (cont.)**The Organic Law of Municipalities, Law No. 27972**

Published on 26 May 2003, the Organic Law of Municipalities establishes the rules on the creation, origin, nature, autonomy, organisation, purpose, types, faculties, classification, and economic regime of municipalities; also on the relationship between them and with other State and private organisations; as well as mechanisms for citizen participation and special regimes for municipalities.

This Law defines the local governments as basic entities in the territorial organisation of the State. These bodies represent the neighbourhood; promote the appropriate provision of local public services and of a comprehensive, sustainable, and harmonic development of its constituency. Local governments have legal personality and political, economic and administrative autonomy in matters under their powers.

The LOM classifies municipalities according to 1) their jurisdiction, into provincial, district and populated centres; and 2) their special regime, as the Metropolitan Municipality of Lima and the border municipalities.

The Law of Decentralization Bases and the LOM give the provincial and district municipalities exclusive and joint legal powers. The exclusive faculties of provincial municipalities consist on planning the local development and territorial order; promote strategic co-ordination with the district's development plans; promote, and implement investment projects and public services subject to externalities or economies of scale; issue technical standards on organizing physical space and land use, and on the protection and preservation of the environment.

The provincial and district municipalities have exclusive and joint legal powers on promoting, regulating and issuing regulation on the fields of: organisation of physical space and land use; local public services; protection and preservation of the environment, local economy development; neighbourhood participation; local social services; prevention, rehabilitation and fight against drug use.

Source: Adapted from The Organic Law of Regional Governments of Peru and the Organic Law of Municipalities of Peru.

Policies for regulatory quality in Peru

Peru does not have a legal or policy statement for the application of a whole-of-government regulatory policy. Instead, it has specific elements that pursue regulatory quality embedded in numerous legal documents. Elements of administrative simplification such as digitalisation, establishment of digital consulting platforms, elimination or reduction of burdens are the most common elements of regulatory policy. Other aspects regarding legal quality and standardisation, as well as goals to implement Regulatory Impact Assessment (RIA) are also found in the legal and policy framework of Peru. This section will outline the main documents that contain elements of regulatory policy.

Political Constitution of Peru

The Political Constitution of Peru delegates regulatory activities to the national, regional and local level governments, as well as to Congress and the constitutionally autonomous bodies. Similarly, there are areas in which there are joint legal powers to

regulate. However, the constitution does not contain any provision to oblige any public entity to perform specific regulatory quality activities.

At the national level, the exclusive legal competences include the design and supervision of national and sector policies. The national government also has functions regarding foreign affairs, defence and national security, justice, internal security, treasury and taxes, commerce and tariffs, marine and aviation regulation, public service regulations, nationwide infrastructure.

Subnational governments of Peru hold responsibilities on promotion and regulation of economic and social issues and the Constitution grants the regional governments the faculty to regulate and grant authorisations, licences and rights for the services of their responsibilities. They have to dictate also the regulations with focus to its regional management. In terms of specific regulation, the regional governments have the task to regulate the agriculture, fishery, agroindustry, trade, tourism, energy, mining, transit, communications, education, health and environment industries according to the specific laws of each industry.⁷

The local governments have the legal powers to create, modify and eliminate fees, contribution, taxes, licences and municipal rights. They also have the task to regulate local public services they have authority on. In terms of specific industry regulation, they have faculties over education, health, housing, sanitation, and environment, sustainability of natural resources, collective transport, tourism transport, archaeological monuments, culture, leisure, and sport.

It is important to notice that there are some concurrent regulatory faculties between different levels of government, although the national government retains the oversight of all the regulatory system (see Box 2.3 and Chapter 6). This organisation is complex and the regulatory production must be as clear as possible to achieve regulatory coherence. By the same reason, co-ordination across the different layers of government is warranted to complement regulation and avoiding duplications.

Regulatory quality in the rule-making process⁸

General guidelines that all regulatory entities in the public administration must consider when preparing bills and other proposals holding status of law are contained in the Framework Law for Legislative Production and Systematization (LMPSI, *Ley Marco para la Producción y Sistematización Legislativa*). Standard on legal quality and homologation of laws is rather important in the pursuit of regulatory quality (see Box 2.4).

Box 2.4. The Framework Law for Legislative Production and Systematization of Peru

The LMPSI establishes guidelines for the composition and publication of laws. This has as an objective the systematisation of the legislation in order to ensure stability and legal certainty (Art. 1). It is responsibility of the Ministry of Justice to systematise legislation, to foster its study and dissemination, as well as to execute or monitor its official edition (Article. 6-h LOPE).

To ensure legal quality, the LMPSI requires every law to have an official label provided by Congress; unless it is a Legislative or Urgent Decree, whose label must be provided by the executive branch (Art. 3). Likewise, the bylaw of the LMPSI provides the specific guidelines for the structuring and drafting of the legislation. It establishes that all laws and projects of

Box 2.4. The Framework Law for Legislative Production and Systematization of Peru (*cont.*)

Legislative and Urgent Decrees must include an explanation of the purpose of the proposal (*exposición de motivos*), a cost-benefit analysis and an impact analysis on the legislation, among others (Art. 1).

Explanation of the purpose of the proposal: every law and legislative project must include the objective of the legislation, as well as the background from which it derives. It also must include a legislative analysis, specifically on the legality of the draft, and its consistency with other laws and international treaties (Art. 2).

Cost-benefit analysis: this analysis is compulsory for constitutional projects, organic laws or State laws. It is also mandatory for every law related to social or environmental policies, as well as to any laws related to economic, financial, production or tax issues. This analysis must include a description on the quantitative and qualitative impact that the legislation will have on stakeholders, the society and the general wellbeing; its costs and benefits and the analysis of other alternatives (Art. 3).

Impact analysis on current legislation: this section must identify the impact of the project on the current legislation, providing information regarding whether it fills a gap in the legislation or if it amends or repeals current regulation (Art. 4).

Source: Framework Law for Legislative Production and Systematization (*Ley Marco para la Producción y Sistematización Legislativa*).

Box 2.5. The manual of legislative technique of Peru

Through examples and explanations, the manual guides the user how to present a legal project. This manual is divided into five chapters:

- *General aspects:* Explains the legal powers of the President to issue regulation with the status of law (legislative and urgency decrees). It also explains the normative faculty of the agencies of the executive branch and the basic principles for the design of a regulatory proposal.
- *Structure and rules:* To ensure legal quality, this manual explains thoroughly each requirement of a regulatory proposal. The chapter presents a wide array of explanations, from the sections that a law must contain, to how to include the references. This chapter focuses on the methodology to build a regulatory project.
- *Regulatory language:* This chapter focus on the style of the drafting, it includes: regulatory style, use of time and verbal modes, basic criteria of drafting, rules of spelling and grammar.
- *Reasoning of the project:* The chapter starts with a presentation on how to conduct an explanatory statement and aspects to be considered on it. It also contains the explanation about what is expected to be included in a Cost-Benefit Analysis and an analysis of the impact of the enforcement of the normative project.
- *Lists of verification.* It includes the three final checklists to assure that the project has the proper content to justify its necessity and viability, the drafting of the regulatory proposal and reasoning quality.

Source: Manual on legislative technique (*Guía de Técnica Legislativa para Elaboración de Proyectos Normativos de las Entidades del Poder Ejecutivo*) MINJUS 2013, www.minjus.gob.pe/wp-content/uploads/2014/04/Gu%C3%ADa-de-t%C3%A9cnica-legislativa.pdf (accessed 7 April 2016).

For regulation issued exclusively by the executive branch, there is the manual of legislative technique. The purpose of this guide is to be a reference and a practical manual for the entities in the executive branch to prepare regulatory projects (see Box 2.5 above).

The *Peruvian Competitiveness Agenda 2014-2018* also includes as one of its goal the application of regulatory quality tools in the process of rule-making. This agenda incorporates an integral view of the national competitiveness which is designed through eight topics: Business and Productive Development; Science, Technology and Innovation; Internationalisation; Infrastructure, Logistics and Transportation, Information and Communication Technologies, Human Capital, Easiness of Doing Business and Natural and Energy Resources.

The chapter of *Eases of Doing Business* of the Competitiveness Agenda is highly focused on regulatory improvement measures. In particular, Component I “Improvement of the regulation and the supervision processes through the life cycle of the enterprises” of the agenda states as one of its objectives the application of the RIA methodology up to the 100% of the regulations that create or modify procedures related to licences, authorisations and permits.

However, as it is discussed at length in Chapter 3, the requirements of a cost benefit analysis included in both the LMPSI and the manual of legislative technique is seldom met, or the analysis is not technically satisfactory, besides the fact that there is no overnight body to check the quality of the assessment. Similarly, the objective of applying RIA set in the competitiveness agenda has not been met.

Regarding public consultation, Supreme Decree No. 001-2009-JUS approves the bylaw that establishes provisions for the advertisement, publication and dissemination of regulatory instruments. According to this bylaw all drafts of regulation must be published at the *Official Gazette*, the official website of the public entity, or in any other communication media, such as institutional magazines (Article 13). This must be done at least 30 days before the schedule date for its entry into force and must allow comments from stakeholders. Exceptions to this rule are any norms whose publication is deemed not necessary or it is going against security or public interest; regulations designed by the Legislative and Judicial Branches, as well as Urgent and Legislative Decrees (Article 14).

As in the case of cost-benefit analysis, there is not an agency within the Peruvian government entrusted with the task of supervising whether this obligation of prior consultation is met, or to check the quality of the consultation process. Chapter 3 discusses in more details these findings.

Regulatory quality in the management of the stock of regulations⁹

Peru has included directly or indirectly the objective of administrative simplification of formalities in several legal and policy documents. The General Law of Administrative Procedure (LPAG, *Ley de Procedimiento Administrativo General*) in its Article IV states that “The established formalities by the administrative authority must be simple, eliminating any unnecessary complexity; that is, information requirements must be rational and proportionate to the objectives to be achieved”.

Administrative simplification is one of the most relevant elements in the National Policy of Modernisation of Public Management. The National Policy is an effort to develop a joint strategy across the government to modernise public practices. It was approved in January 2013, and it is based in the Framework Law of the Modernisation of the State Management (LMMGE, *Ley Marco de la Modernización de la Gestión del*

Estado). The National Policy includes as some of its objectives the implementation of management processes and the promotion of the administrative simplification on public entities; the promotion of e-government through the intensive use of Information and Communications Technologies (ICT), and the designing of mechanisms for the efficient co-ordination among public entities belonging to the three government branches.

As a result of the National Policy mentioned above, Peru issued the National Plan of Administrative Simplification on February 2013. Its general objective is to improve the quality, efficiency and opportunity of the administrative formalities and procedures. The plan's main specific objectives are:

- Promote the implementation of the administrative simplification processes oriented towards the generation of positive results and impacts for all the citizens;
- Promote the progressive incorporation of the information and communication technologies as a strategy to offer services and formalities of quality; and
- Develop a *Citizen Attention Model* and promote its implementation and strengthen the administrative simplification process.

Despite the existence of an implementation plan for this policy, meaningful results of this policy are yet to be observed, which is explained in part by the limited capacity of the Secretariat of Public Management to enforce compliance of this policy across the Peruvian government. See Chapter 4 for a detailed discussion.

Additional elements of administrative simplification policies are to be found in the Competitiveness National Agenda 2014-2018, whose Component II sets as objective the optimizing the management of the administrative procedures that have a negative impact in the business activities, which comprises the total simplification of prioritised procedures related with private investment, and the implementation of at least two one-stop-shop for formalities of procedures related to investment.

Similarly, the National Plan of Productive Diversification (*Plan Nacional de Diversificación Productiva*) incorporates elements to pursue practices to simplify government formalities. The broad goals of this plan include the achievement of a sustainable economic growth, reducing Peru's dependency on commodities, the improvement of productivity and the promotion of formal and quality employment. As part of its main avenues of work, the plan contains the line of regulatory quality, which is on improving regulations at least in the labour, health and environmental markets.

In addition, the administrative simplification strategy within this plan seeks the optimisation of formalities and the key procedures for the productive activities of Peru. This strategy has four key activities: i) simplify the formalities in charge of the Ministry of Production; ii) identify the opportunities for more proactivity; iii) facilitate the tax payment process; and iv) the systematisation of the information requested by the State.

A salient feature of the policies on the management of stock of regulation in Peru, are the Single Text of Administrative Procedures (TUPA). The TUPA is a tool to standardise the information published by public entities' on procedures, formalities and services. With this tool, the government provides certainty to citizens and businesses on how to comply with information obligations, request services or require information from public entities. To issue TUPAs is an obligation for all agencies of the public administration.¹⁰ Similarly, there is an obligation to publish the TUPAs in the Official Gazette and the institutional websites,¹¹ or the Journal of Judiciary Notices of the region and province.¹²

The compulsory information in a TUPA includes a detailed description of the obligation to be met, the type of procedure, fees, whether a silent-is-consent rule is applied, the office responsible, and the authorities with faculty to approve the procedures and handle appeals.¹³ A TUPA is a relevant foundation to build an administrative simplification policy as it provides with an inventory of information obligation. Nevertheless, this inventory must be consolidated, on a single place for ease of access, and should be reviewed regularly to reduce administrative burdens.

Finally, there are no specific legal provisions or policy statements or plans to carry *ex post* evaluation of regulation. As a result, it is not a standard practice for agencies within the central government of Peru. The main efforts in this area are made by economic regulators and the INDECOPI. The latter, however, pursues only legal coherence of regulations, not a comprehensive impact or results assessment.¹⁴

Institutions for regulatory quality in Peru

Mirroring the scattered elements of regulatory quality included across legal and policy instruments in Peru, the institutional landscape of Peru also offers a view in which legal attributions, practices, and efforts on regulatory policy are dispersed across several agencies, without articulated efforts for co-ordination, with some specific exceptions such as the Vice-Ministerial Coordinating Council.

The MEF, the General Directorate of International Economy, Competition, and Productivity Affairs, and the General Directorate for Investment Policy

Inside the MEF, there is the General Directorate of International Economy, Competition and Productivity Affairs (DGAECYP, *Dirección General de Economía Internacional, Competencia y Productividad*), which belongs to the Vice-Ministry of Economy (*Viceministerio de Economía*). This office is one of the most active in topics related with regulatory quality and has two areas: the Directorate of International Economy Affairs and the Directorate of Normative Efficiency for the Productivity and Competition. The legal attributions of each directorate regarding regulatory policy include.¹⁵

Directorate for International Trade Affairs

- Analyse and give opinions regarding the provisions or obligations established by formalities which can affect domestic and international free trade of goods and services, such as tariffs, competition barriers or practices of competition surveillance;
- Propose and follow up policies and regulation oriented towards trade issues (subsidies and dumping);
- Participate in the design and implementation of economic and trade integration strategy; and
- Define the strategy and lead the negotiations of international agreements and treaties on private investment and financial services.

Directorate of Regulatory Efficiency for the Productivity and Competition

- Support the design and the implementation of policies and activities towards the development of areas such as education, labour markets, regional development, environment, institutional consolidation and technological innovation;
- Propose measures to improve the processes of expeditions of legal instruments;
- Propose measures to promote free competition, and
- Propose and supervise policies and regulation regarding public procurement.

As it is discussed in detail in Chapter 3, the DGAECYP in practice has taken the unofficial role of checking the quality of the impact assessment or the cost-benefit analysis of draft regulation, to the extent that these draft regulations have a crosscutting impact across the economy or impact on national or international commerce, without having a proper mandate in this sense. They also check for policy coherence of the new proposal against other public policy priorities. Nevertheless, this activity is not done in a systematic way, nor does the DGAECYP have sufficient powers to return the draft regulation in demand of higher quality.

The General Directorate for Investment Policy of the MEF

This office is in charge to design guidelines for public and private investment and for tracking the obstacles that these investments may suffer from public sector practices. In practice it may work as a manager to facilitate the compliance of regulatory processes for both public and private enterprises. In this sense, its work is highly related to regulatory quality, as its goal is to reduce regulatory burdens. In practice it has two mainstream functions: it studies the needs of the investors and continuously analyses the regulatory framework to seek areas of improvements. Specific tasks of this area include:

- Design and propose guidelines and strategies to promote private investment projects;
- Evaluate investment projects declaring its viability with regard to the actual regulation;
- Propose guidelines and measures which optimises the economic context of public investment to align the projects in track with the strategic goals.

The PCM

According to the regulatory framework, the PCM has functions on regulatory quality. The government modernisation process is to be developed by the executive branch through the General Direction of State Management of the PCM.¹⁶ Accordingly, it is the responsibility of the PCM to co-ordinate the multi-sectorial national policies, as well as to execute the national policies of modernisation of the public administration, among others.¹⁷ From this mandate the administrative simplification efforts derive. Specifically the entity responsible for co-ordinating and directing the process of modernisation of public administration is the Secretariat of Public Management, as it directly depends on the General Secretary of the PCM.¹⁸

An additional relevant obligation of the PCM is to “Promote the social participation and consultation and to co-ordinate with social instances over issues regarding national interests”.¹⁹ This is a relevant legal foundation over public consultation.

The Vice-ministerial Coordinating Council (CCV)

The Vice-Ministerial Coordinating Council (CCV, *Consejo de Coordinación Viceministerial*) is a body in which multi-sectorial regulation is analysed and approved.²⁰ The CCV is comprised by the vice-ministers of the central government and the General Secretary of the Presidency of the Council who chairs the meetings. The CCV has three main tasks:²¹

1. Review Law Projects, Legislative Decree Projects, Urgency Decree Projects, Supreme Decree Projects and Supreme Resolution Projects that either require the approving vote of the Council of Ministers or are related to multiple sectors
2. Facilitate the generation of input and recommendations in response to reports on multi-sectorial themes that are of high national interest or that affect the general policy of the government
3. Approve the CCV rules of procedure

According to the PCM, the CCV holds a standardised procedure with the help of ICT tools for the process of reviewing regulation. The process starts on Monday when the Coordination Secretariat of the PCM organises a tentative agenda for the week's meeting. After receiving and integrating the proposals from the ministries, the Premier decides what is to be included in the agenda and an invitation is sent for the weekly voting meeting to be held on Thursday. Before the meeting, the 35 vice-ministers have until Wednesday to upload in the digital platform the observations, comments and corresponding documentation. The possible range of status of the drafts regulatory instruments after the assessment of the CCV is the following:

- Viable without observations;
- Viable with observations;
- Not viable, and
- Viable with comments.

The matters considered as comments are those regarding grammatical and formatting aspects such as commas, numerals, etc. The observations on the other hands contain discussion about the substance of the regulatory projects. When comments arise, they are easily dealt with during the meeting on Thursday. In contrast, the observations have to be thoroughly discussed and they often cause the regulation to stall in the CCV. The voting is generally delivered physically during the meetings, although the CCV's digital platform can be used by the vice-ministries who are not able to attend the meetings.

The Secretariat of Public Management

Within the PCM, the Secretariat of Public Management (SGP) works as a technical unit with focus on the modernisation of public management practices in Peru. In the specific context of regulatory policy, the SGP is in charge of providing assistance in matters of administrative simplification, as well as to evaluate administrative simplification processes related to the TUPAs. The SGP has also the duty to issue directives and guidelines, as well as the legal power to request any information from other ministries on administrative simplification issues.²²

The role of the SGP has proven quite active in the TUPA publication and update. This unit designs and publishes the TUPA models for specific regulations that have to be used by entities. The goal of this practice is to reduce the administrative burdens and to homologate regulatory requisites throughout different localities.

The MINJUS and the General Directorate of Legal Framework and Development

The General Directorate of Legal Framework and Development (DGDOJ, *Dirección General de Desarrollo y Ordenamiento Jurídico*) is the office within MINJUS in charge of legal co-ordination within the executive branch. This office has the utmost goal of assuring legal quality among the government. In terms of providing legal advice to the public sector entities it has three conventional lines of legal advice:²³ 1) issue decisive opinions when two or more offices of government have disagreements in the application, interpretation or scope of the regulation; 2) issue legal reports about the scope of regulations, and 3) issue consultation when the legal nature of a certain regulation seems diffuse. Furthermore, it has some specific activities aligned with the nature of regulatory policy:

- Detect voids and deficiencies in the legal framework and elaborate drafts of codes, laws and regulations to improve the legal instrument;
- Systematise the legal instruments and the electronic support for the national legislation. The LMPSL obliges public entities in Peru to adopt regulatory quality tools such as the *Cost-Benefit Analysis* and the analysis of the impact of the national legislation;
- Disseminate the national legislation according to the regulatory framework.²⁴ Some important aspects include the official publication of all legislative instruments in the Official Peruvian Gazette, as a necessary condition for its enactment;
- Issue legal reports on regulatory projects when a public entity requires it, and
- Propose the creation of commissions for the preparation, reform, revision or update of legislation.

The National Institute for the Defence of Competition and Protection of Intellectual Property (INDECOPI)

The INDECOPI is an administrative independent body assigned to the PCM. The core of its public policy nature is to address competition and intellectual property issues. Nonetheless, this body is also one of the main actors in terms of regulatory quality in Peru. Through the Commission of Elimination of Bureaucratic Barriers (CEBB, *Comisión de Eliminación de Barreras Burocráticas*), of INDECOPI, the Peruvian government strives to eliminate existing regulation that lacks reasonability or legality. In this sense, the CEBB follows principles of administrative simplification and a form of *ex post* evaluation of regulation.

Bureaucratic barriers are understood as regulation that hinders illegally or unreasonably the access or permanency of economic agents in the market, in particular small enterprises. The CEBB works in two modalities to eliminate bureaucratic barriers: office investigations and complains from affected parties, the latter is the most common practice (see Box 2.6).

Box 2.6. Process for the elimination of bureaucratic barriers

The process of elimination of administrative burdens can be started through a complaint or from an official investigation carried out by the CEBB.

Complaint process

1. A formal complaint from a citizen: this should be presented as a written request to INDECOPI's Technical Secretary
2. Admissibility test: the Technical Secretary or the Commission reviews the complaint to assess if it is admissible. At this point, it can also request additional evidence to the citizen.
3. Approval of complaint admission: the Technical Secretary or the Commission issues the resolution admitting the complaint
4. Notification: the Technical Secretary notifies the public agency that it is being investigated, which has 5 days to reply. The submission of evidence can be delayed for up to 15 additional days, once the original period of 5 days has finished.
5. Submission of evidence: the public agency under investigation sends evidence to justify its actions. Some public agencies do not reach this step. The reason is that they prefer to eliminate the obligation to avoid any possible fine.
6. Conciliatory hearing: the Technical Secretary can summon the public agency and the citizen to a conciliatory hearing. The process ends if both parties reach an agreement. The Technical Secretary can then continue with the elimination of the obligation through an official investigation.
7. Final resolution: the Technical Secretary prepares the final resolution and presents it to the Commission. In turn the Commission may fine the entity and eliminate the obligation for the citizen.

Official investigation process

1. An official investigation: the Commission or the Technical Secretary decides to carry an investigation.
2. Review of the official investigation report: the Commission or the Technical Secretary review the investigation report in order to determine if there is evidence of a bureaucratic barrier.
3. Beginning of official investigation: The Technical Secretary or the Commission issues the resolution of the admission of the complaint admissibility or the starting of the official investigation
4. Notification: the Technical Secretary notifies the public agency that is being investigated, which has 5 days to reply. The submission of evidence can be delayed for up to 15 additional days, once the original period of 5 days has finished.
5. Submission of evidence: the public agency under investigation sends evidence to justify its actions. Some public agencies do not reach this step. The reason is that they prefer to eliminate the obligation to avoid any possible fine.
6. Final resolution: the Technical Secretary prepares the final resolution and presents it to the Commission. In turn the Commission may fine the entity and eliminate the obligation for the citizen.
7. The case is sent to the Citizen's watchdog (*Defensoría del Pueblo*) because INDECOPI has no legal powers to make the removal of the obligation binding. As a result, INDECOPI may file a claim for unconstitutionality to the Citizen's watchdog.

Source: Legislative Decree No. 807: Faculties, rules and organisation of INDECOPI.

The agency applying a regulation that the CEBC considers to be excessive or illegal may receive a sanction under the following scenarios:

- When the mandate of inapplicability or elimination of a bureaucratic barrier is not complied with.
- When tax restrictions are applied to the free transit of goods or services.
- When a procedure initiated by a citizens refers to a regulation being previously considered illegal or unreasonably.
- When a procedure is consider illegal due to the following reasons: i) the obligation is above the law; ii) demand of fees above the amount published in the TUPA; iii) fail to comply with the information set in the TUPA; iv) establish longer response times for licences, permits, authorisations or formalities of similar nature than the ones set in the legal framework; v) demand documentation or information prohibited by the Law of General Administrative Procedures.

Assessment

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 (see Box 2.7). 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.

Box 2.7. Adoption of an explicit regulatory policy across OECD countries

An explicit regulatory policy sets the ground for a profound regulatory reform. The first Recommendation of the Council on Regulatory Policy and Governance urges OECD countries to: commit at the highest political level to an explicit whole-of-government policy for regulatory quality. The policy should have clear objectives and frameworks for implementation to ensure that, if regulation is used, the economic, social and environmental benefits justify the costs, the distributional effects are considered and the net benefits are maximised.

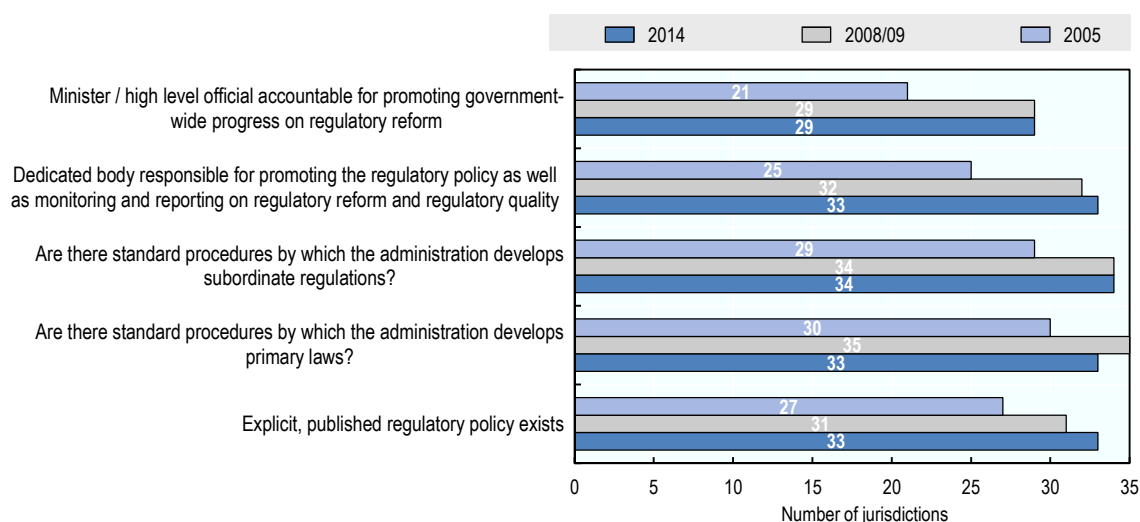
Box 2.7. Adoption of an explicit regulatory policy across OECD countries (cont.)

The survey results of the OECD *Regulatory Policy Outlook 2015* confirm that most countries show signs of such a commitment. An increasing number of countries have nominated a minister or a high-level official to be accountable for promoting government-wide progress on regulatory reform; and have developed and published an explicit regulatory policy. Most countries have also established a dedicated body responsible for promoting regulatory policy and for monitoring and reporting on regulatory reform and quality. In practice, most countries have standard procedures for developing primary and subordinate laws (Figure 2.3).

This high-level of commitment is encouraging. It shows that OECD countries have established the conditions for implementing the 2012 Recommendation: developing an explicit policy and making it widely known, securing high-level political leadership and advocacy with government; and establishing de facto procedures. The survey results also raise the issue of the small number of OECD countries that still do not have an explicit regulatory policy. There are also countries that no longer report having some of the major requirements for regulatory quality that they had reported in 2008/09. On the whole, however, the survey data show evidence of stalling rather than backsliding.

Source: OECD (2015), *Regulatory Policy Outlook 2015*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264238770-en>.

Figure 2.3. The adoption of an explicit whole-of-government policy for regulatory quality



Notes: Based on data from 34 countries and the European Commission. Chile, Estonia, Israel and Slovenia were not members of the OECD in 2005 and so were not included in that year's survey.

Source: OECD (2015), 2014 Regulatory Indicators Survey results, www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm.

- 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.

Box 2.8. Adoption of an oversight body across OECD countries

The 2012 Recommendation of the Council on Regulatory Policy and Governance recommends that countries should “establish mechanisms and institutions to actively provide oversight of regulatory policy procedures and goals, support and implement regulatory policy and thereby foster regulatory quality. The specific institutional solution must be adapted to each system of governance”.

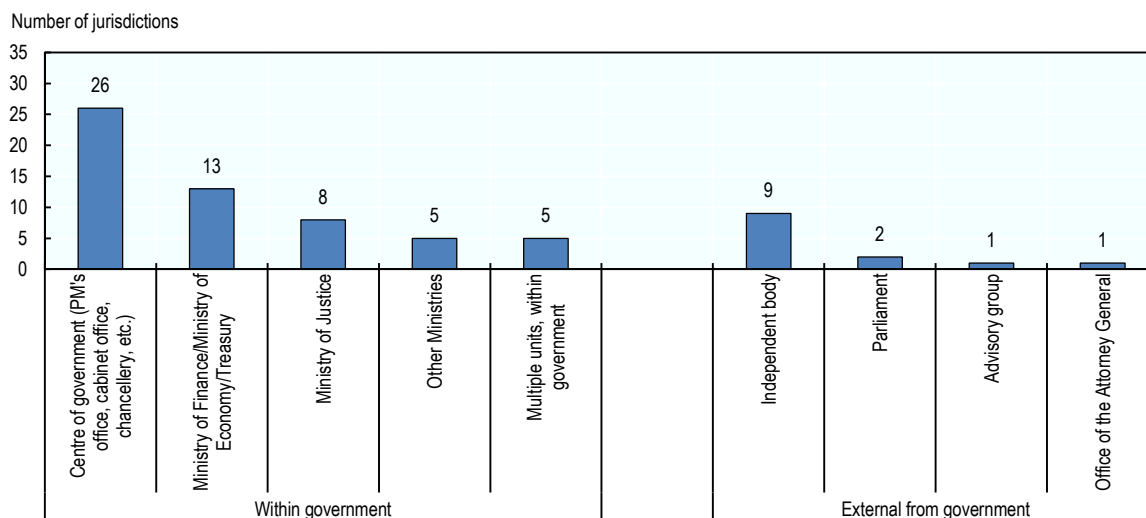
According to the 2014 Regulatory Indicators Survey, there is a heterogeneous institutional setting of oversight bodies across OECD countries. For instance, there is a variation in the number of oversight bodies within the government on each country. The study found that 33 of the 35 surveyed countries have instituted either single or multiple oversight bodies to ensure regulatory quality, with an average of 2.8 per country. This shows compliance with the previously mention recommendation but requires intergovernmental co-ordination among the various oversight bodies to maintain a whole-of-government approach.

Additionally, the Council recommends that “a standing body charged with regulatory oversight should be established close to the centre of government (...)”. In this regard, the Survey found that a majority of countries (26 out of 35) have at least one oversight body located at the centre of government (e.g. the prime minister’s office or cabinet office, see Figure 2.4), but they can also be found in the Ministry of Economy, Finance or Business, the Ministry of Justice, and recently, independent oversight bodies have been created. The location of these institutions should vary according to the focus and nature of their work.

Likewise, the recommendation states that “the regulatory oversight body should be tasked with a variety of functions or tasks in order to promote high-quality evidence-based decision making (...)”, these responsibilities range from RIA, administrative simplification, stakeholders engagement, *ex post* analysis, legal quality and others. The Survey results show substantial variety across countries in relation to the oversight functions and responsibilities of the oversight bodies. For instance, four bodies enjoy responsibilities for all categories while 35 bodies are limited to one regulatory oversight activity.

Source: OECD (2015) *Regulatory Policy Outlook 2015*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264238770-en>.

Figure 2.4. The location of oversight bodies



Note: Based on data from 34 countries and the European Commission.

Source: 2014 Regulatory Indicators Survey results, www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm.

- 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.

Notes

1. Article 15 of the Organic Law of the Executive Branch (LOPE).
2. Article 17 of the LOPE.
3. Article 33, LOPE.
4. SUNASS was created by the Law Decree No. 25965 of December 19th, 1992; OSIPTEL by the Legislative Decree No. 702 of July 11th, 1991; OSINERGMIN by the Law No. 26734 of December 31st, 1996; and OSITRAN by Law No. 26917 of 23 January 1998.
5. See Chapter 7 for the description and assessment of the governance arrangements of economic regulators.
6. See Chapter 6 for a description and assessment of the multilevel regulatory governance in Peru.
7. Art 192. Political Constitution of Peru.
8. See Chapter 3 for a detailed description and assessment of practices of *ex ante* assessment and public consultation of regulation in Peru.
9. See Chapter 4 for a detailed description and assessment of administrative simplification policies and management of the stock of regulation in Peru.
10. Article 1, LGPA.
11. Article 38.4, LPGPA.
12. Article 38.3, LPGPA.
13. Article 37 of LPGPA.
14. See next section and Chapter 4 for more detailed discussion of INDECOPI.
15. Article 139 to 143 of the Supreme Decree N° 117-2014-EF which approves the internal regulation of organisations and functions of the MEF.
16. Article 1.2, LMMGE.
17. Article 19, LOPE.
18. Rule of procedures for the organisation and functions of the Presidency of the Council of Ministers, Supreme Decree No. 063-2007-PCM.
19. Article 18.7, LOPE.
20. Art. 1.3 of the Ministerial Resolution No. 251-2013-PCM: General Rules of the Vice-ministerial Co-ordination Council (*Reglas Generales de la Comisión de Coordinación Viceministerial*).
21. Art. 4. Ibid.

22. Article 37.7, Supreme Decree that approves the Rules of Procedures and Organization of the Presidency of Council of Ministers (*Decreto Supremo que aprueba el Reglamento de Organización y Funciones de la Presidencia del Consejo de Ministros*).
23. Rules of Organization and Functions of the Ministry of Justice and Human Rights.
24. Supreme Decree No. 001-009-JUS.

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