Chapter 7

The governance of regulators in Peru

This chapter addresses the governance arrangements in force in Peru for regulatory agencies that have a degree of independency from the central government. The OECD Best Practice Principles for Regulatory Policy: The Governance of Regulators *is employed as benchmark to assess elements such as role clarity, decision making and governing body structure for independent regulators, accountability and transparency, amongst others. It is found that economic regulators in Peru have a large degree of independence to exert budget and decision making, and that their practices on transparency and accountability are more advanced compared to obligations in the central government. Peru should consider strengthening the governance of economic regulators by reviewing their legal links with central government in order to enhance their decision making, upgrading current policies to make regulators more accountable to the central government, to Congress and to the general public, and introducing a system of ex ante impact assessment.*

Introduction

Good regulatory outcomes depend on more than well designed rules and regulations. Regulatory agencies are important actors in regulatory systems that are at the delivery end of the policy cycle. The OECD's 2012 Recommendation recognises the role of regulatory agencies in providing greater confidence that regulatory decisions are made on an objective, impartial and consistent basis, without conflict of interest, bias or improper influence. This chapter describes the practices of Peruvian regulators and assesses their use of the *OECD Best Practice Principles for Regulatory Policy: The Governance of Regulators* (OECD, 2014). It focuses only on regulators included in Law 27332: Framework Law of the Regulatory Organisms of the Private Investment in Public Services. These agencies are SUNASS (National Superintendence of Sanitation Services), OSIPTEL (Supervisory Agency for Private Investment in Telecommunications), OSINERGMIN (Supervisory Agency for Investment in Energy and Mining) and OSITRAN (Supervisory Agency for Investment in Public Transport Infrastructure)

This chapter highlights a brief description of each regulator's tasks, followed by the description of each governance principle. Practices of the Peruvian regulators are then assessed in the context of these principles. Finally, a general assessment of the principles as a whole is presented in order to identify areas of improvement and alternatives to policy issues.

Regulators in Peru: institutions and functions

In Peru, as in many Latin-American countries, the eighties were characterised by poor economic performance which came along with high public deficits and debt, high inflation, low inflows of private investment and trade, among others economic issues. In the beginning of the nineties, the strategy of the government to counteract these issues was the implementation of several economic structural reforms focused on macroeconomic stabilisation, markets liberalisation, economic growth and private investment. These reforms represented a political challenge, as they involved significant changes at constitution level and in primary laws.

In this context, the Peruvian Government created new regulatory agencies in order to promote competitiveness and competition, as well as to enhance productivity in key economic sectors. These new institutions were established with the aim to supervise the performance and the development of markets, which would be opened for private investment in transport, telecommunications, energy, and water sanitation.

Four regulatory agencies were created as Decentralized Public Organisms (DPO), a type of government bodies defined in Law No. 27332. They were SUNASS, OSIPTEL OSINERGMIN and OSITRAN. According to this law, the DPO are decentralised bodies of the executive branch with nationwide competences and assigned to the Presidency of the Council of Ministers. Amongst other implications, this formal linkage entails that any organisational, institutional or functional change in this economic regulators requires approval by the Council of Ministers.[1] Subsequently, with the Law No. 29158, Organic Law of the Executive Branch (LOPE), the regulatory agencies were reclassified as Specialized Public Organism (SPO). According to the LOPE, the SPO have independence to perform their duties under their Act creation. In what follows there is a brief description or main tasks of each regulator.

National Superintendence of Sanitation Services

The National Superintendence of Sanitation Services (SUNASS, *Superintendencia Nacional de Servicios de Saneamiento*)[2] is the Peruvian agency in charge of regulating, supervising and monitoring the provision of drinking water and sewage service in urban areas. SUNASS oversees and enforce legal and contractual obligations of sanitation utilities. Since August 2016, SUNASS regulates the groundwater monitoring and management service in some urban areas for non-agricultural groundwater users SUNASS also oversees the quality and nationwide coverage of these utilities, and is also in charge of settling customer complaints.

It also regulates tariffs for the provision of drinking water and sewage. In particular, it evaluates and sets tariff structure, tariff levels, and its readjustments. SUNASS also establishes targets for utilities'coverage and quality of sanitation, among other activities. Furthermore, it is responsible of supervising that contracts signed by firms in the water and sewage market are carried out and their obligations are met.

SUNASS was created by the Law Decree No. 25965 (19 December 1992), its General Rules were approved by the Supreme Decree No. 017-2001-PCM (of 21 February 2001) and the Regulation of Organization and Functions was approved by Directive Council Resolution 032-2006-SUNASS-CD.

Supervisory Agency for Private Investment in Telecommunications

The Supervisory Agency for Private Investment in Telecommunications (OSIPTEL, *Organismo Supervisor de Inversión Privada en Telecomunicaciones*),[3] is responsible for regulating and supervising telecommunications in the country. The tasks of OSIPTEL on telecommunications in Peru include rule enforcement and dispute resolution between actors, participants and consumers in the sector. Additionally, OSIPTEL is the competition agency on telecommunications' markets.

The agency has the authority to fix tariffs for certain telecommunication services, as well as to define and impose sanctions and corrective measures to firms or individuals participating in the sector due to non-compliance of legal or technical obligations set under concession contracts and regulation.

The Legislative Decree No. 702 (8 November 1991) constituted the OSIPTEL and its General Rules were approved by Supreme Decree No. 008-2001-PCM of 2 February. The current Regulation of Organization and Functions was approved by Supreme Decree No. 104-2010-PCM on 3 December 2010.

Supervisory Agency for Investment in Energy and Mining

The Supervisory Agency for Investment in Energy and Mining (OSINERGMIN, *Organismo Supervisor de la Inversión en Energía y Minería*)[4] is a public institution in charge of regulating and supervising the national compliance of legal and technical obligations related to electricity, hydrocarbon and mining sectors. In 2010 by Law No. 29325, Law on the National System of Evaluation and Environmental Control, and Supreme Decree No. 001-2010-MINAM, the functions of supervision, control and enforcement on environmental matters were transferred to the OEFA. The last modification of the established functions for OSINERGMIN is due to the transfer of powers to control occupational health and safety to the Ministry of Labour, determined by Law No. 29783, in 2011.

OSINERGMIN was created by Law No. 26734 on 31 December 1996. But it started to operate on 15 October 1997, supervising and regulating only the electricity and hydrocarbon companies. In 2007, OSINERGMIN also assumed the responsibility of monitoring the mining sector. Its General Rules were approved by Supreme Decree No. 054-2001-PCM of 9 May 2001 and its Regulation of Organization and Functions was approved by Directive Council Resolution No. 459-2005-OS/CD of 20 December 2005, recently replaced by the Supreme Decree No. 010-2016-PCM of 12 February 2016.

Supervisory Agency for Investment in Public Transport Infrastructure

The Supervisory Agency for Investment in Public Transport Infrastructure (OSITRAN, *Organismo Supervisor de la Inversión en Infraestructura de Transporte de Uso Público,*)[5] is the entity responsible to supervise and regulate the investment in public transport infrastructure (air services, seaport services, railways, highways).

OSITRAN guarantees access, quality and continuity of transport infrastructure. Additionally, it oversees the fulfilment of public transport infrastructure concession contracts while safeguarding the interests of the State, investors and users. In particular, OSITRAN is in charge of the economic regulation related to transport infrastructure, including, among others, the establishment of tariffs, charges and access to public transport infrastructure.

OSITRAN was created by Law No. 26917 of 23 January 1998. Its General Rules were approved by Supreme Decree No. 044-2006-PCM of 27 July 2006; and its current Regulation of Organization and Functions was approved by Supreme Decree No. 012-2015-PCM of 28 February 2015.

General regulatory framework of regulators

Each regulator is constituted through specific laws but its main objectives, principles and normative functions are complemented on general rules approved by supreme decrees. Main organisational features and powers, are stated in 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,*), which was enacted in 2000.

This law defines regulatory agencies as entities with administrative, functional, technical, economic and financial autonomy. Therefore, OSITRAN, OSIPTEL, OSINERGMIN and SUNASS are self-governing to define their technical guidelines, objectives and strategies. Notwithstanding these agencies can define their expenditure policy, it has to be done in concordance with the general governmental policy defined in the Organic Law of the Executive Branch as they are ascribed to the Presidency of the Council of Ministries.[6]

According to the LMOR, regulators have supervising, regulatory and normative functions, as well as the duty to inspect, fine and to solve controversies between stakeholders and complaints from users or costumers. Additionally, regulators have specific supervising, inspecting and fining tasks described in other laws.

The governance body of each economic agency consists of a board of five directors – six in the case of OSINERGMIN.

According to the Supreme Decree No. 014-2008-PCM, all members of the Board are selected by public contest:

- The selection committee is integrated by: one member proposed by the PCM, one member proposed by INDECOPI, one member proposed by the MEF and one member proposed by the sectorial ministry related to regulator activities;
- The candidates must prove experience and formal education in the sector;
- The President of the Council of Ministers submitted to the President of the Republic the final list of selected candidates; and
- The President of the Republic appoints the member of the Board by Supreme Resolution, which will be endorsed by the President of the Council of Ministers, the Minister of Economy and Finance and the sectorial ministry related to the regulator activities.

According to Supreme Decree No. 042-2005-PCM (*Reglamento* of LMOR), each Board member is appointed for a period of five years and every year one member of the Board is renewed according to above procedure.

The practice of board designation, as indicated by the LMOR, is usually correlated with lower probabilities of regulatory capture, because the process becomes more transparent (OECD, 2014). Also, considering that according to the LMOR candidates must prove experience and formal education in the sector, quality on the regulatory decisions should also be enhanced.

The LMOR also establishes that SUNASS, OSIPTEL OSINERGMIN and OSITRAN can collect *regulatory contributions* from regulated firms. By law, each agency's contribution is approved by the Council of Ministers through a Supreme Decree subscribed by the President of the Council of Ministers and the Minister of Economy and Finance.[7] It cannot exceed 1% of the total annual income of regulated firms after taxes[8] of each firm. Apart from this *regulatory contribution*, regulators can collect additional income from the following sources:

- Payments from administrative procedures enlisted in their Single Text of Administrative Processes (*Texto Único de Procedimientos Administrativos*, TUPA)
- Donations, contributions or transfers made by natural or legal, national or international persons
- Interests or late fees derived from the *regulatory contribution*
- Financial interests generated by their own resources
- Sources from fines[9]

Another important aspect established in the LMOR is the Council of Users (*Consejo de Usuarios*), which is a participation mechanism for stakeholders interested in the regulatory activity of the sector.

OECD Principles of Governance of Economic Regulators and their application in Peru

The OECD has built standard international principles for good regulatory practices. These principles were built to improve the regulator's governance and the effectiveness in the overall regulatory system, including the three powers of the State, the regulated entities, the public and the regulators.

The importance of these principles relies on how they shape policy making outcomes due to an improvement over well-designed rules and regulations. The OECD's *Recommendation of the Council on Regulatory Policy and Governance* (OECD, 2012), state that countries must: "Develop a consistent policy covering the role and functions of regulatory agencies in order to provide greater confidence that regulatory decisions are made on an objective, impartial and consistent basis, without conflict of interest, bias or improper influence." The *OECD Best Practice Principles for Regulatory Policy: The Governance of Regulators* is an effort to assist countries in developing such policy through specific recommendations on the design of regulators.

In order to accomplish the objective to expand positive outcomes from regulatory actions, co-operative efforts amongst governments, regulators, regulated entities and the civil community are required. Therefore, regulators' governance arrangements must induce and foster co-operative efforts to build the legitimacy of any enforcement action.

The *OECD Best Practice Principles for Regulatory Policy: The Governance of Regulators* provides guidance to governments when establishing or reforming regulatory agencies and regimes. They offer regulators advice on how to evaluate and improve the governance arrangements to become more effective. Moreover, the principles also provide a framework to assess and review the current structure of regulatory agencies and address practical questions on how to deal with different country contexts. The principles are the following:

1. Role clarity
2. Preventing under influence and maintaining trust
3. Decision making and governing body structure for independent regulators
4. Accountability and transparency
5. Engagement
6. Funding
7. Performance evaluation

The following descriptions of each role are an extract of the *OECD Best Practice Principles for Regulatory Policy: The Governance of Regulators* (2014).

Role clarity

The role clarity principle suggests that the role of any regulator must be accurately defined in terms of its objectives, functions, agreements or relationships with other public or private entities. This should be clear for the regulator and those under the scope of the regulation as regulated bodies, citizens and stakeholders.

Role clarity is required in order to organise and conduct actions under the regulatory framework and to achieve the effectiveness of the regulation (see Box 7.1 for an international example). Unless clear objectives are specified, the regulator may not have sufficient context or guidance to establish priorities, processes and boundaries for its work. In this context, going beneath or beyond faculties is not efficient. Clear objectives on the other hand are needed to promote trust and transparent relationships between regulators and regulated entities.

In order to fulfil the role clarity principle, a regulator needs to take into account the following:

- Regulators should be afforded with the appropriate powers to achieve their objectives and to discharge their responsibilities and activities.
- When the objectives established in the legislation are set strategically broad, it is important to institutionalise other principles for the regulator to ensure capability to manage discretion.
- Actions of the regulator should remain within the scope defined by the legislation. Thus, the regulator has to be monitored in open, transparent and accountable processes. It also has to be penalised when it goes beyond its legitimately intended powers.
- Functions of the regulators must be complementary to each other, avoiding potential conflict amongst them. Thus, performance of any function should never limit or compromise the ability to fulfil other function.
- Obligations promoting regulatory compliance should be focused and the rationale and evidence behind regulators' decisions should be clearly set out in the regulator's business plan. It is important to consider that due to limited staff and financial resources, there will always be competition when prioritising functions.
- To reduce overlap and regulatory burdens, regulators should be explicitly empowered and required to co-operate with other bodies. The instruments for co-ordination between entities, such as formal agreements or contracts should be published in the interest of transparency.

Role clarity principle provides a framework by which regulators can be accountable to Congress or stakeholders. This is because performance indicators should be defined and computed as the objectives are accurately assigned.

Box 7.1. **Telecommunications in Mexico**

The 2013 telecommunications reform in Mexico created the Federal Institute of Telecommunications (IFT), as the agency in charge of sector regulation and antitrust. The Law of Telecommunications and Broadcasting states the faculties of both IFETEL and the Ministry of Communications and Transport (former regulator of the market).

IFT is in charge of regulating, promoting and supervising the use, exploitation of the radio electrical spectrum, orbital resources, public telecom networks and the concession of broadcasting and telecommunications. It also regulates the access to the active and passive infrastructure and other essential inputs. IFT is in charge of the technical guidelines regarding infrastructure and equipment that connect to the telecom network. Finally, it is the authority on antitrust issues for the telecommunication market.

The tasks of the Ministry of Telecommunications and Transport are more oriented towards the promotion of the market. This includes activities such as: planning policies to assure universal coverage, collaborate on international agreements on telecom, acquire infrastructure, and so forth.

The separation of regulatory and promotion activities, and the further autonomy of the regulatory agency in the Mexican telecom market has enhanced the role clarity principle in both authorities.

Source: Federal Law of Telecommunications and Broadcasting (Ley Federal de Telecomunicaciones y Radiodifusión, www.dof.gob.mx/nota_detalle.php?codigo=5352323&fecha=14/07/2014 (accessed 4 April 2016).

Practices of regulators in Peru regarding role clarity

Peruvian economic regulators OSPITEL, OSINERGMIN, OSITRAN and SUNASS have clear and detailed functions that allow them to operate with technical, administrative and financial independency from the central government. The main functions of the regulators are clearly stated in different legal instruments. The nature of regulators for instance is stated in the LMOR as decentralised public organisations (Art. 2) with interior legal capacities and with administrative, financial, technical and economic autonomy.

However, they have links with the Presidency of Council of Ministries that could reduce independency. Since they are assigned to the Presidency of the Council of Ministers, any reorganisation or institutional change, as well as changes in their regulation and functions, requires a supreme decree to give legal validity to the changes, similar to any other agency of the central government of Peru, and hence it also requires approval by the Ministry of Councils.[10] The LMOR also grants and details the supervision, normative and inspective functions, which provide the operation framework for regulators.

General and specific objectives of economic regulators are stated in their general rules: for OSITRAN is the Supreme Decree No. 044-2006-PCM, for OSINERGMIN the Supreme Decree No. 054-2001-PCM, for OSIPTEL the Supreme Decree No. 008-2001-PCM; and for SUNASS the Supreme Decree No. 017-2001-PCM.

Preventing undue influence and maintaining trust

Interaction between regulators and regulated entities should work in both directions; from regulators to regulated entities and the other way around. The first case is evident but in fact, regulators should learn from regulated entities about the industry environment and actors' behaviour so as to establish better suited regulation.

The regulatory framework design is not an easy task and guidance by industry actors would be valuable. On the other hand, there are incentives from regulated entities to influence regulators to lighten regulation. Thus, preventing undue influence and maintaining trust at the same time is a challenging goal to achieve (see Box 7.2 for an international example).

Box 7.2. **Federal Communications Commission (FCC): United States**

The Telecomm regulator of the United States publishes a three year strategic plan. The latest version covers from 2015 to 2018. Such strategic plan sets four strategic goals to generate credibility as it enhances the tasks evaluation accurately. The report outlines specific objectives for each of the following goals. In this context, as it can be seen in the Strategic Goal 4, the FCC has established a public commitment to improve accountability and transparency practices, which contributes to prevent undue influence and maintain trust.

Strategic goal 1. Promoting economic growth and national leadership: The first goal is to promote the expansion of competitive telecommunications networks, which are a vital component of technological innovation, economic growth and helps to ensure that the country provides opportunities for economic and educational development to their citizens.

Strategic goal 2. Protecting public interest goals: The rights of network users and the responsibilities of network providers form a bond that includes consumer protection, competition, universal service, public safety and national security.

Box 7.2. **Federal Communications Commission (FCC): United States** (*cont.*)

Strategic goal 3. Making networks work for everyone: In addition to increase the development of competitive networks, the FCC must also ensure that all Americans can take advantage of the services they provide without artificial impediments.

Strategic goal 4. Promoting operational excellence: The objective pretends to make the FCC an excellence model of efficiency inside the government by effectively managing its resources, maintaining a transparency commitment and be responsive for processes that encourage public involvement and the service focused on public interest.

Source: Federal Communications Commission: Strategic Plan 2015-2018, https://www.fcc.gov/about/strategic-plans-budget (accessed 4 April 2016).

An option in the design of a regulator with the objective to avoid undue influence is the independence from the executive branch. It can provide confidence and trust regarding the objectivity, impartiality and consistency of the regulator's. Of course, independence is not always the unique path to enforce a regulatory framework with positive outcomes. According to the *OECD 2012 Recommendations of the Council on Regulatory Governance*, independent regulatory agencies should be considered in situations where:

- Independence is needed to maintain public confidence in the objectivity and impartiality of decisions.
- Government and non-government entities are regulated under the same framework and competitive neutrality is therefore required.
- Decisions of the regulator could have a significant impact on particular interests and there is a need to protect its impartiality.

It is advised that the regulator should be legally independent and have a structurally separate body if any of the following factors are valuable:

- Credible commitments in the long run—an independent regulator sends a message about the government commitment on the objective and transparent administration.
- Greater distance from political influences is more likely to result in consistent and predictable regulatory decision-making.
- Addressing potential conflicts of interest.
- Development of regulatory expertise.

So as to consider if regulatory decisions would be better suited under the direction of a ministry, it should be taken into account if some of following situations are present:

- The regulatory function must be closely integrated to the Ministry´s activities, which retains the focus of specific knowledge and expertise within government.
- The environment being regulated is subject to rapid change with policy still being developed.

- The regulatory function is incidental to non-regulatory Ministry activities, and creating a separate entity to perform functions or assigning it to an existing independent regulator is not justifiable.

If an independent regulator reports directly to the legislature, clear procedures and mechanisms for reporting and consultation should be clearly set. When a Minister has been granted with powers to issue specific directions as a regulator, the limits of the regulatory powers should be clearly set out.

Another important institutional arrangement that protects the regulators' independence is the provision of terms of appointments of independent board members. Appointing terms and appropriate grounds for board-member removals with distance from any electoral cycle is likely to promote independence from the political process.

Practices of regulators in Peru regarding preventing undue influence and maintaining trust

Economic regulators in Peru seem to enjoy good reputation as professional and effective agencies across public institutions, enterprise chambers and academy. Nevertheless, these practices can be enhanced further to prevent regulatory capture and maintain trust from all stakeholders.

Law No. 27806 Law of Transparency and Access to Public Information establishes that all high ranking officials of the public administration of Peru, including economic regulators, must make publicly available information on officials meetings. Additionally, according to the current rules for the regulators, which include the supreme decrees OSITRAN: No. 044-2006-PCM, OSIPTEL: 008-2001-PCM, OSINERGMIN: No. 054-2001-PCM, in order to conduct meetings with external actors, the user must inform to the General Management of the regulator the reason, day and hour of the meeting. These meetings have to comply with the guidelines and criteria established by the General Management. The only regulator that does not have rules of this nature that go beyond the obligations set in the Law of Transparency and Access to Public Information is SUNASS. All economic regulators publish on internet information of their meetings, but there is variation across regulators in the available information This is a relevant practice, but a standard practice across regulators should be implemented.

Peruvian regulators have close interaction with stakeholders and they undertake relevant actions that can help prevent undue influence and maintain trust of stakeholders. For instance, each of the *Supreme Decrees* indicated above state the obligation for regulators to conduct a public consultation for any general rule to be issued. The draft regulation has to be published in the Official Gazette "*El Peruano"* or another media outlet that guarantees diffusion. It must include an explanatory statement and the deadline to receive comments from stakeholders, which must not be shorter than 15 calendar days from the publication date.

Decision making and government body structure for independent regulators

An adequate governing body structure is important to improve the effectiveness and objectivity of the independent regulators decisions, as well as to safeguard its independence. The *OECD Best Practice Principles for Regulatory Policy: The Governance of Regulators* (2014) indicates three main governance structures:

- *Governance Board Model:* the board is the main responsible for the oversight, strategic guidance and operational policy of the regulator. The regulatory decision-making functions are delegated to the chief executive officer and to its staff.
- *Commission Model:* in comparison with the *Governance Board Model*, the board itself makes the most substantive regulatory decisions.
- *Single Member Regulator:* an individual is appointed as regulator and it makes the most substantive regulatory decisions and delegates other decisions to its staff.

When deciding between a multi-member and a single member-decision-making model, the following factors should be taken into account:

- The potential consequences of regulatory decisions (commercial, safety, social, environmental, etc.), including the degree of impact and the probability of occurrence. For instance, a multi-member-decision-making model is less likely to be *captured* than an individual, but a group will bring differing perspectives to decisions.
- Collective decision-making provides better balancing of judgement factors and minimises the risks of varying judgements.
- Strategic guidance and oversight of delegated regulatory decisions required to achieve regulatory objectives.
- Where regulatory decisions require a high degree of judgement a multi-member decision making body provides more "corporate memory" over time.
- A board will be less susceptible to political or industry influence than a single decision maker.

Practices of regulators in Peru regarding decision making and government body structure

Peruvian economic regulators have adopted a commission model, in which there are five directors (with the exemption of OSINERGMIN that consists of six). This model can help preventing regulatory capture from public, government and regulated entities, as the probability of capturing the board is lower than the probability of capturing a single administrator. The main strength in this respect is the appointment by public competitive selection of candidates, who must demonstrate relevant experience and formal training.

One salient feature in the decision-making body structure is that there is an open call for candidates who must comply with minimum eligibility requirements, and who have to participate on a public contest. After the contest, selected candidates are directly proposed by central government officials. The mechanism therefore promotes the appointment of experts in the regulatory field of the position.

A relevant mechanism to avoid the executive branch having control of the board of directors is established in Article 6.4 of the LMOR: "Members of the Management Board of the Economic Regulators can only be removed in case they have incurred in a serious misconduct that has to be proved and founded. Previously, an investigation has to be initiated and they will be given fifteen days in order to submit their defence, in accordance with their respective regulations. The removal is made effective through a Supreme Resolution, endorsed by the President of the Council of Ministers, the Minister

of Economy and Finance and the sector Minister of the regulated industry. In case of removal, the President of the Council of Ministers will inform within ten working days to the Congress of the Republic's Permanent Commission the reasons behind their decision." Through this mechanism, the regulator is also protected from potential influences from the parent Ministry.

Accountability and transparency

Accountability and transparency are important elements that could create confidence between stakeholders. As far as organisations are more conscious about sharing information, their operation creates confidence. In order to promote confidence on regulatory policies, regulators need to be accountable and transparent to three groups of stakeholders:

- Ministers and the legislature
- Regulated entities
- The public

The regulator exists to achieve objectives deemed by government to be in the public interest and operates using the powers conferred by the legislature. Then, it is accountable to the legislature and should report regularly and publicly the achievement of its objectives and the discharge of its functions. It should also demonstrate that it is efficiently and effectively discharging its responsibilities with integrity, honesty and objectivity (see Box 7.3 for an international example).

Box 7.3. **Environmental Protection Agency (EPA): United States**

The EPA reports as a relevant part of its tasks the enforcement of federal clean water and safe drinking water laws; the support for municipal wastewater treatment plants; and pollution prevention efforts to protect watersheds and sources of drinking water. Annually, the EPA sends a report to the Congress with a performance evaluation and a financial analysis. This report is also published in their website with free access to the general public.

The financial section includes consolidated financial statements with extensive notes to clarify such reports. An audit to the financial statements is conducted by an external agency which is included in the report. The notes of the financial statements include the following information:

- Leases
- Payroll and benefits payable
- Loans receivable
- General property, plant and equipment
- State credits
- Preauthorised mixed funding agreements
- Stewardship land
- Funds from dedicated collections

Source: U.S Environmental Protection Agency: Fiscal Year 2015 Agency Financial Report, https://www.epa.gov/planandbudget/results (accessed 4 April 2016).

The regulator has a responsibility to exercise its powers in a way that increases confidence in the market, it has to assure the rule of law and create trust in the state. At the same time, the regulator is also accountable of the exercise of its powers and the degree of achievement of its policy goals.

Complete disclosure to the public and regulated entities of the regulator's objectives and policies should contribute to create confidence and understanding about what it is expected from the regulators and how their compliance will be monitored, judged and enforced. As long as a regulator makes transparent its goals, it can be scrutinised by rigorous methods and *ex post* evaluations can be conducted. A mechanism to clarify Ministers' expectations over the performance and behaviour of regulated entities is the subject of a *Statement of Expectations* and a *Corporate Plan*. Each *Statement of Expectations* should outline the most relevant governments' policies, current objectives and details of the operation strategy. The document should also involve relevant stakeholders because defining expectations will improve the extent of which they can buy-in the regulatory activity and outcomes.

The regulator should outline in the *Corporate Plan* and the, *Statement of Intent*, how it proposes to meet the expectations of the government. This document should include key performance indicators agreed with the relevant Minister. Where competing priorities exist within a regulator's functions for a given objective, the *Corporate Plan* should outline a set of prioritising principles. Both, the *Statement of Expectations* and the *Corporate Plan* (including key outcomes, outputs, quality and timeliness performance indicators agreed between the Minister and the regulator), should be published on the regulator's website.

It is relevant that the executive and the legislators monitor and review periodically how the regulation system is working and how it is aligned with the intended plan. In order to facilitate this, the regulator should develop a comprehensive and meaningful set of performance indicators. It is also recommended to have independent external reviews of significant regulatory decisions. External reviews, when they come from independent entities subject to transparency and accountability measures themselves, can act as an accountability mechanism and can improve the quality of the regulator's decision-making and internal review processes. The mechanisms for the external independent reviews should be timely, transparent and robust. It is advisable that the regulator should outline on its website the process by which regulated entities may seek an independent external review.

As for the regulated entities, they should have the right of appeal of decisions that have a significant impact on them, preferable through a judicial process. Such right of appeal shall be allowable, on grounds that the regulator has exceeded the powers attributed to it.

Practices of regulators in Peru regarding accountability and transparency

Economic regulators in Peru must meet the transparency responsibilities as all public institutions in the Peruvian central government, according to the Law No. 27806 Law of Transparency and Access to Public Information. In general, transparency obligations focus on general and budget information of agencies, public procurement, official activities and public finance management, which are some of the basic obligations in many OECD countries for public institutions.

In general, economic regulators in Peru display more and more profound information than the rest of the central administration. Examples include: more detailed information on meetings with stakeholders, comments from the public to draft regulatory proposals, and performance indicators related to financial and budgetary matters.

It is important to consider that transparency obligations should be aligned with independency of functions. Thus, as long as any public institution is more independent, more transparency practices are needed to insure confidence amongst stakeholders and avoid regulatory capture.

Accountability is also a concept which has to be aligned with independency. Peruvian economic regulators report relevant information to different institutions of the central government, according to their regulatory framework. They also address information requests and enquiries from Congress on regular basis, although there is no current obligation to provide performance reports to Congress on a systematic way.

For instance, regulators report the implementation of recommendations to the General Audit Office of the Republic (*Contraloría General de la República*); budget execution to the Ministry of Economy and Finance; strategic and operation plans and performance indicators to the Presidency of Council of Ministries; amongst others. These practices are relevant to evaluate specific tasks of regulatory agencies, but it is important to be accountable to external public powers which could evaluate the regulator´s performance as a whole, from administration targets to the achievement of strategic objectives.

The four regulators publish their budgetary information in their website, including information on revenues and expenditures. For instance, the planned budget expenditure of SUNASS is presented in terms of activities: administrative management, legal advisory, development of regulatory instruments, regulation and tariff fixation, amongst others. This practice goes in the right direction when pursuing accountability and transparency. Nonetheless, there is opportunity for improvement in terms of the consistency of the information. For instance, the executed budget could be presented with the exact same categories as the planned budget, in order to make easy comparisons.[11]

Engagement

A primary objective of good regulator governance is to enhance public and stakeholder confidence in the regulators' decisions and actions. Effective engagement with regulated parties and other stakeholders helps to achieve this. It is important, though, to inform about the policy-making process and the decisions of the regulator. This can improve the quality and efficiency of the rules and regulations that are implemented and enhance the credibility of the regulatory framework (see Box 7.4 below for an international example).

Effective engagement is vital to achieve positive regulatory outcomes which are supported by community and regulated entities; there are risks however concerning engagement that need to be managed because it is crucial not to favour particular interests. The simple appearance that engagement has favoured some interests can compromise the regulator's ability to achieve broader outcomes. An alternative to prevent this situation is an open and transparent consultation. It allows any regulated party or member of the public to contribute and comment on proposals rather than just allow participation of representative groups. It is very important to ensure that all actors as regulated entities have the same channel to express opinions and there is no distinction between them.

Box 7.4. **Office of Gas and Electricity Markets: United Kingdom**

The Office of Gas and Electricity Markets of the UK (OFGEM) is an independent regulator of the United Kingdom overseeing the gas and electricity markets funded by licences provided to the private industry. OFGEM has formal mechanisms of engagements; both with the industry and other British regulators.

The engagement platform with the private stakeholders is particularly important since the nature of its funding calls for a strong relationship with the regulated entities. The regulator conducts industry meetings, stakeholder events and working groups to receive inputs from the markets to assure quality on its public policies. All of these forums may be found on OFGEM's website.

An example of a periodical working group is the Demand Side Working Group. Its purpose is to "identify and address any practical or commercial obstacles to demand side participation in wholesale gas or electricity trading arrangements". The group has meetings every twelve weeks. For each meeting, OFGEM publishes its minute of the meeting and the presentations given.

The minute includes the following information:

- External attendees
- OFGEM attendees
- Introduction
- Agenda items (the items cover particular subjects of the meeting)
- Other business
- Date of the next meeting

Source: https://www.ofgem.gov.uk/publications-and-updates/sustainable-development-advisory-group-minutes-june-2015 (accessed 1 of April 2016).

Some regulators have formal advisory bodies established in legislation or explicit power in the legislation enabling the Minister or the regulator to create formal advisory bodies. These advisory bodies may be helpful to provide insights from industry actors and the community on strategies to influence behaviour or warning on developments that could create a change in the compliance approach of the regulator.

A consultation policy is also a strategy in which the regulator makes the key stakeholders be aware of the regulator's practices and its expectations. Apart from the mechanisms used, engagement with key stakeholders should be institutionally structured to produce concrete and practical opportunities for dialogue based on achieving active participation and if possible, exchange of empirical data rather than to achieve consensus.

Practices of regulators in Peru regarding engagement

Communication between regulated entities and regulators is done through public consultations, direct meetings to discuss specific points of interest and user's councils.

Public consultation is a mechanism which contributes to co-ordinate interaction with stakeholders, limit the risk of regulatory capture, and promote transparency. As long as consultation is carried out with the objective to improve draft regulation, and the regulator communicates the way comments are addressed and taken into account,

engagement with stakeholders can be an effective regulatory tool which promotes participation. In Peru, all economic regulators prepare a *matrix of comments* that assembles stakeholders' comments on regulatory proposals. This matrix also includes the regulation under consultation; the proposed modifications; the name of the stakeholders providing comments; the specific comments, opinions or point of view of the stakeholders; and the evaluation of the regulator regarding these comments which includes whether and how the comment will be considered.

According to the LMOR (Art. 9-A), economic regulators will have one or more *Councils of Users* with the objective to constitute a mechanism for stakeholder participation on each sector—council members will be elected for two years. These councils can be local, regional or national depending on the characteristics of the markets. Regulators publish a call for potential candidates to the council, as well as a provisional list of candidates and a final list of elected members. Member councils come from consumer associations, universities, professional colleges, non-profit organisations and business organisations not related with the regulated entities.

The *Councils of Users* is a practice that enhances stakeholder engagement practices of Peruvian regulators. In the case of OSITRAN there are seven councils of users: three national councils for airports, ports and road network; and four regional councils for Arequipa, Piura, Cusco and San Martin. In the internet portal of OSITRAN information on these councils is available.

Regarding public consultation, this takes place regularly across regulators, but further steps can be taken to establish this practice is in a more systematised way. For instance, the website of OSITRAN has a platform where public consultation of draft regulations passes through four steps: draft proposal, public audience, comments and final decision. However, since 2012 there have been only seven public consultations: one in 2012, five in 2015 and one in 2016. This has included the publication of the matrix of comments, which includes responses from OSITRAN and if applicable, modifications due to stakeholder's comments.

Funding

Regulators can be funded mainly by two means: cost-recovery fees or government budget funding. In order to enhance public confidence and efficiency in the regulator's decisions, it is essential to have clarity and transparency of the financial funding sources and expenses. Clarity about the regulator's sources and levels of funding are necessary to protect its independence and objectivity (see Box 7.5 for an international example). This can be archived by making a disclosure on its annual report about who pays for the regulator's operations, how much and why, as well as what proportion of its revenue comes from each of these sources. A good practice is that regulator submits to the Minister for approval a *Corporate Plan* with the proposed expenditure.

When cost-recovery fees contribute to the funding of the regulator, it should be taken into account that:

- The level of the (cost recovery) fees and the scope of activities associated with fees. It is advisable that the legislature or the Minister sets the fees according to the policy objectives of the government and any cost recovery guidelines.

- Regulator should be aware that fees increase the overall cost of regulations and because of this, it has to ensure that the new scheme does not impose unnecessary or burdensome costs on regulated entities and create significant compliance costs that cannot be justified through a cost benefit analysis.
- The scheme and process to determine recovery-fees should be transparent, clear, understandable and accessible to all stakeholders.

Sometimes is not efficient to impose charges to users or there are other justifications not to charge them. In that case, budget funding can be an appropriate mean to fund regulators. Under this scheme, multi-year funding arrangements can contribute to maintain the independence of the regulator by protecting it from budget cuts motivated by political reaction to unpopular decisions.

Under budget funding and cost-recovery fees, financial transparency can reduce: i) the risks to the regulator's political and administrative dependence from government; and ii) the over-sensitivity to lobbying against the public interest. It is recommended that all contracts with third parties should be disclosed and the regulator should be able to demonstrate that all activities funded contribute directly to meeting its policy objectives.

Box 7.5. **Office of Rail and Road, United Kingdom**

The rail regulator of the United Kingdom is mainly funded by industry fees. During 2013-14 the ORR had an income of GBP 13.3 billion from which GBP 9.0 came from passengers' fares, GBP 3.8 billion from the Government and GBP 0.5 billion from other sources.

In this way, the Office of Rail Regulation can work with more autonomy from the central government as its budget is not decided by the executive branch or approved by the Parliament. Nonetheless, to ensure transparency of the budget management, the ORR sends to the Parliament and publishes on its website an annual report with detailed financial indicators.

Source: http://orr.gov.uk/about-orr/open-rail/how-the-rail-industry-works/railway-funding-in-britain (accessed 4 April 2016).

Practices of regulators in Peru regarding funding

According to regulator officials, budget resources for all regulators, with the exemption of SUNASS, seem to be sufficient to cover the current regulatory responsibilities. The funding scheme is defined in the LMOR (Art. 10). The financial resources available for each regulator consist of up to 1% of the total annual amount of sales from regulated entities after consumer and municipal taxes. This amount is set through supreme decree, approved by the Council of Ministries and endorsed by the President of the Council of Ministries and the Ministry of Economy and Finance.

The funding scheme of economic regulators in Peru seems to be consistent with OECD practices. However, a drawback of this arrangement is that profitability of regulated entities across sectors can be low, and this may limit the resources available. Such is the case of SUNASS, whose budget comes from public utilities (frequently with financial distress), and which according to SUNASS officials it is not enough to conduct the agency´s duties and functions properly.

Performance evaluation

Performance evaluation is important to regulators because it allows them to be aware of the impacts of their actions and decisions. Of course, this helps to conduct policy improvements which rely on internal systems, processes and effectiveness of actions. Performance evaluation can be conducted in different ways, *ex ante*, when actions are taking place and *ex post* (see Box 7.6 for an international example). The selected strategy to conduct performance evaluations, however, has to guarantee that results are spread and that the regulator is open to improve its performance applying short and long run remedies. A good performance evaluation should take into account:

- A comprehensive group of meaningful indicators in line with the objectives and goals expected to achieve. These should incorporate quantifiable regulator's activities, as well as the costs it imposes.
- Independent external evaluations from bodies with high level of transparency and accountability should focus on the achievement of the strategic goals of the regulator. Internal evaluations should focus on the processes and procedures of its overall operations.

Box 7.6. **Key Performance Indicators of regulators in Australia and how Australian Communications and Media Authority (ACMA) meet them**

The Australian Government has set a benchmark to homologate self-performance evaluation throughout each public agency. By means of the following six Key Performance Indicators (KPI) each agency, including regulators, carry out and publish their performance evaluation:

- KPI 1: Regulators do not unnecessarily impede the efficient operation of regulated entities
- KPI 2: Communication with regulated entities is clear, targeted and effective
- KPI 3: Actions undertaken by regulators are proportionate to the risk being managed
- KPI 4: Compliance and monitoring approaches are streamlined and co-ordinated
- KPI 5: Regulators are open and transparent in their dealings with regulated entities
- KPI 6: Regulators actively contribute to the continuous improvement of regulatory frameworks

Taking this KPI into account, every public agency of the Australian Government conducts its own evaluation with particular methodologies. In its annual report published in August 2015, ACMA explained the four-stage process it took to conduct its performance evaluation:

- **Stage 1:** Assess available evidence to support each performance measure and then map this to the relevant Regulator Performance Framework (RPF) of KPIs. The nature of the available evidence against each performance measure will vary according to sector, environmental factors, consumer behaviour, technological innovation, and risk profile.
- **Stage 2:** Setting of targets and benchmarking. For the first cycle of the RPF, targets are drawn from statutory targets across the ACMA's functions. Additional stretch-targets and baseline measures for benchmarking to support continuous improvement of the ACMA's performance will be identified on completion of the ACMA's first full RPF cycle.

Box 7.6. **Key Performance Indicators of regulators in Australia and how Australian Communications and Media Authority (ACMA) meet them** (*cont.*)

- **Stage 3:** Individual analysis of each RPF of KPI. This will comprise an assessment against: the relevant ACMA performance measures evidence against the RPF of KPIs stakeholder satisfaction with the ACMA's performance. The ACMA will seek direct input from stakeholders as to their assessment of the ACMA's performance against its self-assessment questions. This will be via a consultation process that the ACMA anticipates conducting in December and June of each RPF cycle.
- **Stage 4:** Reporting. The ACMA will then use the analysis developed at stages 2 and 3 to report on its performance against the RPF of KPIs, both individually and as a whole. The scope of the ACMA's remit will influence the choice of measure, as different sectors the ACMA regulates have varying degrees of interaction with the ACMA and different risk profiles.

Source: Regulation Performance Framework: ACMA self-assessment Methodology (August 2015), www.acma.gov.au/theACMA/About/Corporate/Accountability/regulator-performance-framework (accessed 4 April 2016).

Practices of regulators in Peru regarding performance evaluation

Economic regulators report different type of information, including statistics and indicators regarding budget, finance, quality of services, customer perception, inspections, amongst others, to several public institutions. Regulators also publish and share this information in their transparency portal and other electronic pages.

Regulators in Peru make public their *Strategic Plans,* which contains general and specific objectives, as well as strategies and related activities. For instance, OSINERGMIN publishes quarterly its report on performance indicators. These indicators focus on how they fulfil their scheduled activities. In the fourth quarter of 2015, for example, 80% of the activities were met, 17% were started and kept unfinished and 3% were not started. The report also disaggregates these percentages by area and publishes progress of each specific action. OSINERGMIN also carries out perceptions surveys across stakeholders that help them steer its strategic plan and the fulfilments of its objectives.

In the case of OSIPTEL, it publishes its strategic and operative plans annually on its web page. These plans include measurable indicators according to its results-oriented budget. Its indicators reflect how the market and the telecommunications users improve due to policy intervention. The progress report on these performance indicators is published biannually on OSIPTEL's web page

The strategic plans or any other planning document could be complemented by defining indicators directly intended to assess progress in achieving policy objectives. Policy objectives refer to the basic objectives of public policies such as lower prices and a wider variety of goods and services as a result of more competition, or increase in the quality of life of citizens due to better provision of services.

Ex ante and *ex post* evaluation

Economic regulators incorporate several relevant practices of regulatory quality as part of their regulatory process. For instance, public consultation of regulation is a relevant practice, which helps collect evidence and identify possible side effects of the

intended regulation. However, regulators in Peru could take a more active role in adopting more sophisticated regulatory tools, which can contribute to effectively evaluate anticipated effects of draft regulation or existing regulation, and in this way ascertain whether regulations are meeting the underlying public policy objectives.

Economic regulators also conduct a cost benefit analysis (CBA) for draft regulations. This analysis is more sophisticated compared to the analysts undertaken by line ministries and agencies of the central government, which most of the time is limited to the inclusion of a statement indicating whether the proposed regulation creates additional costs to the government. As part of the CBA analysis, economic regulators in Peru identify costs and benefits qualitatively and sometimes quantitatively. However, CBA conducted by economic regulators requires specific guidelines to improve and standardise the assessment. Institutionalisation of procedures helps to maintain quality in the face of change in personnel.

In fact, evaluation of draft regulation should go beyond cost benefit analysis. Alternatives to regulation should also be contemplated, and a full description as to whether and how the regulatory option will meet the policy objectives should also be carried out. Stakeholder engagement through public consultation should also inform the assessment, as it can provide evidence to select the most desired alternative. A Regulatory Impact Assessment (RIA) system comprises all these activities.

In Peru, some economic regulators have conducted *ex post* evaluations of regulation focusing on competition effects. For instance, for tariff regulation, they have analysed competition conditions in order to inform whether to keep or remove tariffs. This type of evaluation, however, does not necessarily assess whether the regulation is meeting the underlying policy objectives. A more comprehensive analysis would include assessment of the impacts of the regulation on welfare, and on other desired societal objectives, including whether the regulation achieved its intended public policy objectives.

Assessment

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

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

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

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

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

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

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

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

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

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

The funding scheme of the water regulator could be enhanced further

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

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

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

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

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

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

Key recommendations

Peru should consider strengthening the governance of economic regulators by:

- .Review the funding scheme of SUNASS so as to ensure the necessary funding that allows it to discharge its functions and reach its policy objectives effectively, while maintaining its independence.
- Reviewing the legal links of economic regulators with central government in order to enhance decision making by regulators. This should include, but not be limited to, administrative decisions and tasks, such as internal organisation.
- Upgrading current policies to make regulators more accountable to the central government, to Congress and to the general public. This should include periodic performance reports, as well as the publication of operational policies. To this

aim, relevant indicators should be developed to help assess the achievement policy results from the regulatory interventions.

- Carrying out on a regular basis formal engagement processes with stakeholders. This should include guidelines and procedures for consultation on draft regulation and other forms of engagement with regulated entities. Rules on transparency for the treatment of comments by the public should be set.
- Introducing a system of *ex ante* impact assessment, i.e. a Regulatory Impact Assessment, for draft regulations and regulations that are subject to modifications, which should be independent from the RIA system of the central government of Peru. Measures should be taken to target resources and apply a deeper analysis to regulations with the most significant impact. As part of the consultation process of draft regulations, RIAs should be also made available to the public. RIA manuals and guidelines should be issued, and capacity building training for public officials should be provided. Regulators should establish their own provisions to ensure and asses the quality of their own RIAs, which should be independent from the oversight on RIA for the central government of Peru, to be carried out by the co-ordinating council on regulatory policy recommended in this report.

Notes

1. See Article 28, Organic Law of the Executive Branch.
2. Official website: www.sunass.gob.pe.
3. Official website: www.osiptel.gob.pe.
4. Official website: www.osinergmin.gob.pe.
5. Official website: www.ositran.gob.pe.
6. See Article 32, Organic Law of the Executive Branch.
7. See Article 10, Framework Law on Regulatory Agencies for Private Investment in Public Utilities.
8. After Value Added (VAT) and Municipal Promotion Taxes.
9. In the case of SUNASS, the fines are transferred to the Public Treasure. In the case of OSIPTEL, fines collected are transferred to the Investment Fund on Telecommunications (FITEL)
10. Other restrictions on the everyday activities of the regulators include salary caps, restrictions on capacity building and training, and restrictions on international travel by regulators' staff.
11. The website of the MEF provides this information, but it is not replicated in the websites of the regulators.

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