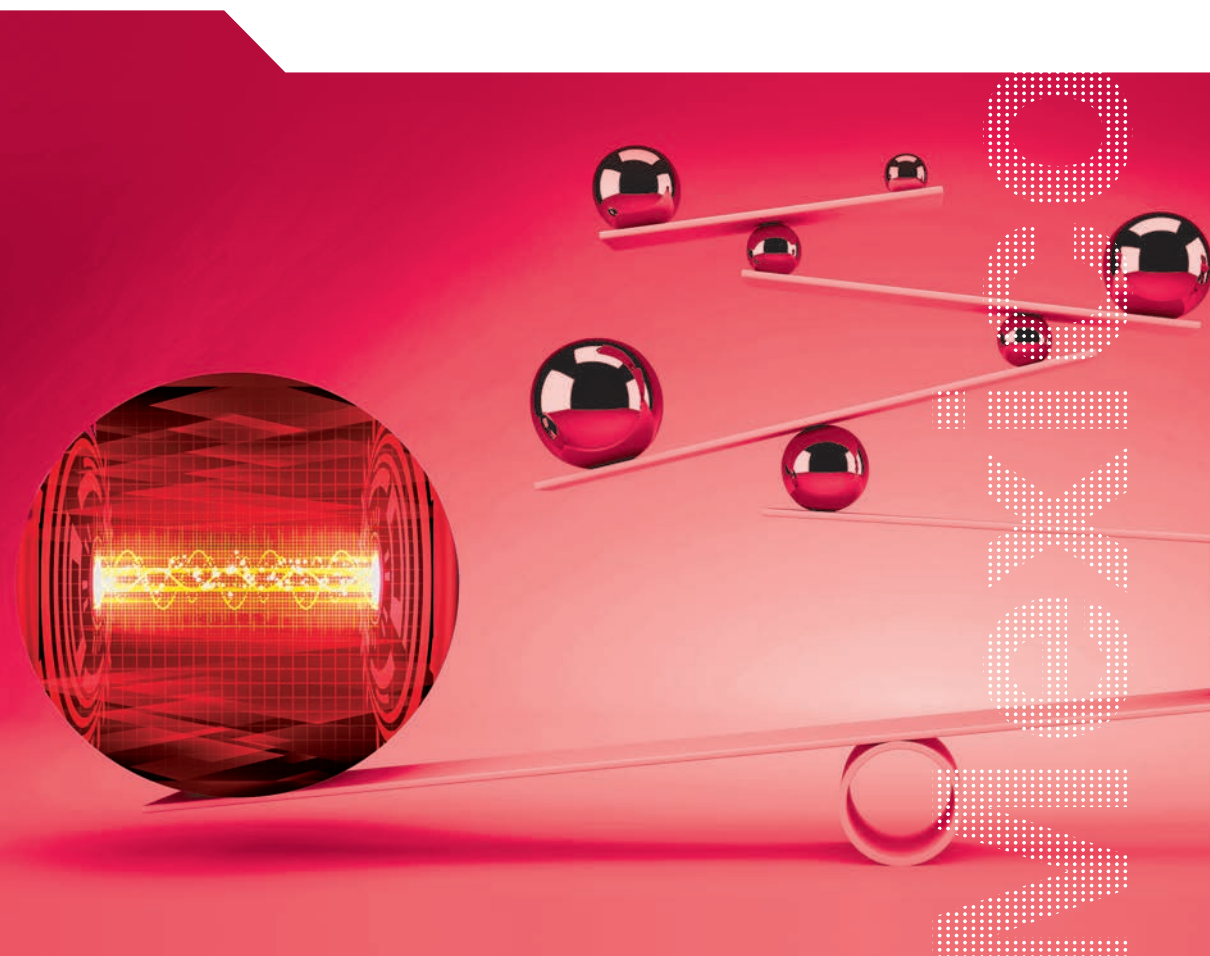


The Governance of Regulators

# Driving Performance at Mexico's Agency for Safety, Energy and Environment





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# **Driving Performance at Mexico's Agency for Safety, Energy and Environment**

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## *Foreword*

Regulators help ensure access to and quality of public utilities, facilitate investment and protect market neutrality. Good internal and external governance of regulators is crucial to ensure that they fulfil these functions and perform effectively. Internal governance includes organisational structures, behaviour, accountability, business processes, reporting and performance management, while external governance entails the roles, relationships and distribution of powers and responsibilities with other government and non-government institutions. The OECD has developed an innovative framework that supports good external and internal governance by helping regulators assess functions, practices and behaviour, and identify drivers of performance.

The framework has been applied to the regulatory governance of Mexico's energy sector at a critical moment, following a structural reform launched in 2013 that has opened up the energy sector and overhauled the roles and functions of its regulatory institutions. This review focuses on the internal governance of Mexico's Agency for Safety, Energy and Environment (ASEA) and has been conducted in parallel to the reviews of the National Hydrocarbons Commission (CNH) and the Energy Regulatory Commission (CRE). The review follows a review of the external governance of the energy sector (*Driving Performance of Mexico's Energy Regulators*), released in January 2017. That review noted the need to enhance institutions and processes that, upstream, strengthen role clarity, co-ordination and planning in a new and complex institutional context, and, downstream, instate accountability for agreed objectives and results. Taken together, these four reviews constitute a comprehensive body of work on the good regulatory governance of Mexico's energy sector. They identify synergies, joint solutions and the building blocks of an ecosystem for the good regulatory governance of a key economic sector.

This review finds that it is critical to enhance internal governance systems across the three regulators to ensure that they are fully equipped to support the implementation of the energy reform. It puts forth a series of recommendations to activate an integrated system of energy regulators and support organisational change within ASEA and the other regulators. These

include the creation of an Energy Regulators Group (ERG) to implement joint work, co-ordinate, and share information. The ERG could support a co-ordinated collective review of financial sources and needs beyond 2019, and establish an integrated energy regulators' career service, including staff exchanges and shared recruitment mechanisms, and a joint risk management register. There are also opportunities for synergies in ICT and online platforms, for example for data submission by regulated entities, as well as in harmonizing and co-ordinating indicators related to core activities.

Synergies and joint actions need to build on specific reforms within each regulator. The review of ASEA's internal governance arrangements finds that the Agency has achieved significant results in setting up internal management processes in its first years of operation. Consolidating these advances in ASEA's internal functioning in 2017-18 will be a key component of the successful implementation of Mexico's energy reform. While ASEA, as a ministerial agency, has a different status from the other two regulators, it has much to gain from being a fully-fledged member of the ERG. Moreover, its mandate and functions would need to be clarified in unified secondary legislation. ASEA would also benefit from enhancing accountability, such as by creating a dedicated internal audit office and building transparency measures into all of its activities. Finally, ASEA has already set up a comprehensive strategic planning and performance assessment framework to guide its planning and monitoring activities; this could be strengthened by streamlining some objectives and indicators.

This report is part of the OECD work programme on the governance of regulators and regulatory policy led by the OECD Network of Economic Regulators and the OECD Regulatory Policy Committee with the support of the Regulatory Policy Division of the OECD Directorate of Public Governance. The Directorate's mission is to help government at all levels design and implement strategic, evidence-based and innovative policies. The goal is to support countries in building better government systems and implementing policies at both national and regional level that lead to sustainable economic and social development.

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## Acronyms and abbreviations

<b>ASEA</b>	Agency for Safety, Energy and Environment ( <i>Agencia de Seguridad, Energía y Ambiente</i> )
<b>CCSE</b>	Co-ordination Council for the Energy Sector ( <i>Consejo de coordinación del Sector Energético, CCSE</i> )
<b>CENACE</b>	National Centre for the Control of Energy ( <i>Centro Nacional de Control de Energía</i> )
<b>CENAGAS</b>	National Centre for Energy Control ( <i>Centro Nacional de Control de Energía</i> )
<b>CFE</b>	Federal Electricity Commission ( <i>Comisión federal de Electricidad</i> )
<b>CNH</b>	National Hydrocarbons Commission ( <i>Comisión Nacional de Hidrocarburos</i> )
<b>CNIH</b>	National Centre for Hydrocarbon Information ( <i>Centro Nacional de Información de Hidrocarburos</i> )
<b>COFEMER</b>	Federal Commission for Regulatory Improvement ( <i>Comisión Federal de Mejora Regulatoria</i> )
<b>CRE</b>	Energy Regulatory Commission ( <i>Comisión Reguladora de Energía</i> )
<b>DOF</b>	Official Gazette ( <i>Diario Oficial de la Federación</i> )
<b>FMP</b>	Petroleum Fund for Stabilisation and Development of Mexico ( <i>Fondo Mexicano del Petróleo para la Estabilización y Desarrollo</i> )
<b>ERG</b>	Energy Regulators Group
<b>LFPA</b>	Federal Law of Administrative Procedure ( <i>Ley Federal de Procedimiento Administrativo</i> )
<b>LORCME</b>	Law of the Co-ordinated Energy Regulators ( <i>Ley de los órganos reguladores coordinados en materia energética</i> )

<b>OIC</b>	Internal Audit Office ( <i>Órgano Interno de Control</i> )
<b>PEMEX</b>	Mexican Petroleum ( <i>Petróleos Mexicanos</i> )
<b>PROFECO</b>	Federal Consumer Protection Agency ( <i>Procuraduría Federal del Consumidor</i> )
<b>RIA</b>	Regulatory Impact Assessment
<b>SE</b>	Ministry of Economy ( <i>Secretaría de Economía</i> )
<b>SEMARNAT</b>	Ministry of the Environment and Natural resources ( <i>Secretaría de Medio Ambiente y Recursos Naturales</i> )
<b>SEMS</b>	Safety and Environmental Management Systems
<b>SENER</b>	Ministry of Energy ( <i>Secretaría de Energía</i> )
<b>SFP</b>	Ministry of Public Administration ( <i>Secretaría de Función Pública</i> )
<b>SHCP</b>	Ministry of Finance and Public Credit ( <i>Secretaría de Hacienda y Crédito Público</i> )
<b>STPS</b>	Ministry of Labour and Social Affairs ( <i>Secretaría de Trabajo y Previsión Social</i> )

## Executive summary

The Agency for Safety, Energy and Environment (*Agencia de Seguridad, Energía y Ambiente*, or ASEA) is a technical regulator responsible for industrial and operational safety and environmental protection in Mexico's hydrocarbons sector. It oversees activities throughout the hydrocarbons value chain, from upstream exploration and extraction to midstream and downstream transformation, production and storage, as well as distribution and retail at petrol station level.

Created in 2015 as an outcome of Mexico's energy reform, ASEA has navigated initial challenges linked to its operationalisation admirably, notably by absorbing powers from a variety of actors, issuing regulations for previously unregulated areas, and defining and implementing solid management processes. The consolidation of these results and processes will be crucial for the successful implementation of the energy reform in the coming years.

### Role and objectives of the regulator

ASEA is a deconcentrated agency of the Ministry of Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales*, SEMARNAT), which sets it significantly apart from the other two energy regulators, the National Hydrocarbons Commission (*Comisión Nacional de Hidrocarburos*, CNH) and Energy Regulatory Commission (*Comisión Reguladora de Energía*, CRE).

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

ASEA has made considerable advances in defining its strategic objectives and accompanying performance framework in its first years of operations. These could be broadened into a medium- and long-term vision.

### ***Key recommendations***

- Create an Energy Regulators' Group, a collegial body that would bring together the three agencies to implement joint work, share information and facilitate co-ordination.
- Function as a fully-fledged member of the integrated energy regulators' system (the Energy Regulators Group, ERG and the Co-ordination Council for the Energy Sector, CCSE) and foster a culture of independence within ASEA to offset the Agency's lesser legal autonomy.
- Finalise the ASEA *reglamento unificado* to clarify mandate and functions.
- Review and fine-tune the strategic framework to include medium and long term and high-level policy objectives.

## **Input**

As a deconcentrated agency of SEMARNAT, ASEA is governed by SEMARNAT rules and procedures for the management of financial and human resources, which can be cumbersome. By law, ASEA is funded by the federal budget and its own income, but does not yet receive funds from regulated entities and has not yet set up the trust fund that would receive these resources.

ASEA has explored and implemented strategies to attract and retain staff in a challenging context due to competition from the private sector and lack of flexibility within the federal system. These efforts are worth pursuing in collaboration with CNH and CRE.

### ***Key recommendations***

- Bring the energy regulators together to collectively review financial resources and needs, establish an integrated energy regulators' career service (ERCS), mutualise digital resources and develop data-analytical capacity.

- Explore and strongly advocate for solutions that will increase the institutional agility and autonomy of ASEA, including advocating for a multi-annual budget settlement and setting up ASEA’s Trust Fund.
- Establish a resource management committee to regularly assess and re-allocate resources, roles and processes.

## Process

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

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

ASEA has set safeguards to avoid conflict of interest through a code of conduct that strictly regulates interaction with regulated entities. Unlike CNH and CRE, ASEA’s code does not instate a supervisory mechanism.

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

### ***Key recommendations***

- Create a joint risk management strategy for the energy sector as well as aligned processes to improve regulatory quality, such as a harmonised framework for systematic stakeholder engagement.
- Enhance and include a transparency dimension in all ASEA activities to build trust in the regulator and boost its culture of independence.
- Advocate for the creation of an ASEA-specific internal audit office.
- Review the Agency’s current governance model and explore options for more continuity in decision-making and focused oversight of strategic planning.
- Ensure that the *reglamento unificado* reflects good regulatory practices such as administrative simplification.

## Output and outcome

ASEA has advanced in defining strategic objectives and a monitoring framework, including indicators. To consolidate these results, the framework should reflect an appropriate balance between types of indicators and offer medium- to long-term visibility to the Agency. Similarly, ASEA needs to ensure that it has adequate skills and resources to process and analyse data that will be sent by regulated entities to adequately report on sector performance.

### *Key recommendations*

- Set organisational performance indicators, when possible in collaboration with the other energy regulators, and regularly report on these to the CCSE.
- Develop a methodology for engaging with the industry on their performance, based on the analysis of the data submitted.



## Assessment and recommendations

This assessment focuses on the internal governance arrangements of the Agency for Safety, Energy and Environment (*Agencia de Seguridad, Energía y Ambiente*, ASEA). It is the result of a review of the Agency led in parallel with reviews of Mexico's National Hydrocarbons Commission (*Comisión Nacional de Hidrocarburos*, CNH) and Energy Regulatory Commission (*Comisión Reguladora de Energía*, CRE). The assessment and recommendations on the external governance of the three agencies are presented in *Driving Performance of Mexico's Energy Regulators* (OECD, 2017), focusing on co-ordination and relations with other federal actors and sector stakeholders. The internal governance reviews of CNH and CRE are presented separately in other reports.

The review of the internal governance of the three regulatory agencies has highlighted a number of common challenges and opportunities for synergies and joint solutions through the establishment of an integrated energy regulators' system, in addition to actions specific to each regulatory agency. Building on these synergies, shared challenges and the joint solutions between the three regulators of Mexico's energy sector, the recommendations are structured as follows: first, recommendations for the integrated energy regulators' system that are common to ASEA, CNH and CRE, and, second, recommendations that are specific to ASEA.

### Role and objectives of the regulator

**The Agency for Safety, Energy and Environment (*Agencia de Seguridad, Energía y Ambiente*, ASEA), which was set up in 2015, is a regulatory agency overseeing industrial and operational safety, and environmental protection of Mexico's hydrocarbons sector.** It has responsibilities throughout the hydrocarbons value chain: from upstream exploration and extraction to midstream and downstream transformation, production and storage, as well as distribution and retail at petrol station level, making it a globally unique technical regulator.

**Consolidating ASEA’s advances and its internal functioning in 2017-18 will be a key component of the successful implementation of Mexico’s energy reform.** ASEA was created as an outcome of the ambitious 2013-14 energy reform, and has navigated the challenges linked to its first two years of operations admirably since starting operations in March 2015. These challenges have included:

- Managing the transfer of powers from a variety of actors (state-owned enterprises, federal states, regulators and line ministries);
- Issuing regulations for previously unregulated areas in record time; and
- Defining and implementing solid management practices that support its internal functioning and planning.

Following an initial period during which activities were guided by reactions to pressing priorities in order to set up the basis for the implementation of the reform, and as ASEA’s activities stabilise, these results and processes will need to continue to be strengthened for the medium and long term.

**ASEA is a deconcentrated agency of the Ministry of Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales*, SEMARNAT), which sets it significantly apart from the other two regulatory agencies of the energy sector (CNH and CRE which have ministry level autonomy and follow sector policy set by the Ministry of Energy).** ASEA is governed by SEMARNAT mechanisms and processes, notably for financial and administrative management, the development of regulation, or the audit and supervision of its activities. Yet, ASEA intervenes in a sector where SEMARNAT has limited technical expertise and experience. In addition to this perceived mismatch between ASEA and SEMARNAT, ASEA’s status as a deconcentrated agency requires it to seek permission from SEMARNAT to proceed with most of its administrative transactions, from setting its budget to carrying out procurement activities. Such burdensome processes could get in the way of regulatory efficiency, especially in the event of incidents where, for example, deployment of human resources may be required in short order. Therefore, harmonising the status of the three energy regulators would contribute to overall coherence of the integrated energy regulators’ system. Moreover, it would reinforce ASEA’s ability to fulfil its mandate of guaranteeing safety and environmental protection in the hydrocarbons sector. The implementation of world-class management processes, as well as stringent transparency and accountability measures, would contribute to advancing ASEA towards this goal and help create a culture of independence within the Agency.

**ASEA's objectives are clearly articulated and defined in law.** However, ASEA's legal framework is much more complex than that of its fellow sector regulators, due to the fact that it administers functions previously delivered by many different administrative bodies. ASEA is working on streamlining this framework and should continue to prioritise this work. The Agency was created by a transitory provision of the reform Constitution of the United Mexican States (December 2013). Its functions and operational set-up are governed by the ASEA Act (August 2014). Having had to absorb functions from several bodies, ASEA is currently governed by 11 federal laws and 12 subordinate regulations (*reglamentos*), resulting in a fragmented legal landscape comprising 52 licensing and administrative procedures. Priority should be given to streamlining this context and consolidating these *reglamentos* into one tighter legal text that will govern ASEA functions and operations. The first draft of this ASEA *reglamento unificado* is expected to be finalised during the first quarter of 2017.

**The consolidation of these regulatory functions in ASEA is a key enabler for the regulatory reform.** Indeed, for the first time, both industrial safety and environmental protection are concurrently managed and enforced by the same institution. ASEA has the authority to provide and suspend licenses and authorisations, conduct inspections and quality control, and emit recommendations for corrective action in the area of industrial safety and environmental protection. The Agency is in the process of implementing a risk-based approach to inspections, using information provided by industry and third-party inspectors to define priorities for ASEA inspectors. During 2015-16, ASEA fielded 1 781 inspections, leading to 319 recommendations and 499 corrective measures of urgent application. In the same period, the number of licenses processed by ASEA has grown exponentially from 1 500 to 9 847, representing an increase of over 650% linked to the regularisation of petrol stations in line with new regulation, rather than higher risk activities upstream of the hydrocarbon sector.

**Pursuant to its mandate, ASEA collaborates with a wide variety and number of stakeholders in carrying out its functions.** It has responded well to this challenge in the first years, but collaboration will need to rely more on structured channels rather than on informal and operational exchanges in the future. ASEA has successfully worked with a number of partners in its first years of operations, from managing the transfer of responsibilities from federal entities or states as well as the implementation of its activities, namely issuing permits. ASEA's multidisciplinary role throughout the hydrocarbons value chain means that in order to carry out its functions it will also need solid and effective collaboration in the future. The mostly operational and informal collaboration will need to be consolidated,

structured and made more systematic to ensure its viability beyond the first years of operation. ASEA should strongly advocate for its automatic and systematic inclusion in the works of the CCSE and seek to set up structured and transparent operational collaboration with fellow regulators and operators.

**ASEA’s Strategic Objective (SO) framework should be streamlined and look beyond the short and medium term, as well as include objectives that consider the ultimate performance and results of the regulator’s work.** As part of setting up the new agency, ASEA’s leadership team engaged in a strategic objective setting exercise in 2015, led by the Executive Director. This led to the identification of 24 strategic objectives mapped under five dimensions in a system reminiscent of the Balanced Scorecard methodology. In June 2015, ASEA’s leadership team identified seven SOs among the 24 as critical for monitoring during the first strategic planning period (2016-18), focusing on “process” and “organisation and learning”. Following a similar exercise in January 2017, the SOs were revised to a total of 23 and among these two more SOs were “activated” for monitoring during the initial planning period. The decision to focus on management, or intermediate objectives, reflects a choice to prioritise solid procedures and organisational governance structures in the first years of operations of the Agency. They could be complemented and the strategic planning framework would be strengthened with the inclusion of more output or outcome related objectives. This would contribute to a clearer vision and direction for the Agency for the years to come, beyond 2018.

### ***Recommendations for the integrated energy regulators’ system:***

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

- **Ensure that the three agencies have in place three to five-year operational plans, including budget and resources, to achieve their long-term strategic objectives.** The plans should consider sequencing and phasing activities in line with formal obligations, and include milestones and budget information. This plan should be developed internally, involving the leadership team (agency heads, commissioners, heads of units) and staff, in workshops that could be facilitated by an external expert. The operational plans could be shared with other federal entities through the Co-ordination Council for the Energy Sector (*Consejo de Coordinación del Sector Energético*, CCSE).
- **Conduct a mid-term review of the operational plans based on the experience of the first years of implementation.** These reviews could be conducted by the regulatory agencies themselves with external support as necessary. The reviews could be used to identify any necessary modifications to the current operational plan as well as to assess the relevance and alignment of the agencies' mandated roles and objectives.

**Box 1. Management committees and periodicity of reporting mechanisms at the National Energy Board of Canada and the Water Industry Commission for Scotland**

The National Energy Board of Canada has set up a number of internal committees that deal with different management issues and adapt their meeting and reporting schedules to the themes and issues covered, as presented in the following table:

Name	Chair	Participants	Meeting cadence	Intent	Benefit
Senior Management Committee (SMC)	COO	COO, EVPs, CFO, Chief of Staff and Secretary	A short stand-up most days; a longer, agenda-driven meeting bi-weekly	Prioritise issue resolution approach for the day and raise new strategic issues, ensure issues are being addressed and that the NEB is aligned in its approach to those issues.	<ul style="list-style-type: none"> <li>• Prioritised issue resolution approach for the day</li> <li>• Greater transparency and alignment across the NEB</li> <li>• Provide advice and recommendations to CEO/DH</li> </ul>

**Box 1. Management committees and periodicity of reporting mechanisms  
at the National Energy Board of Canada and the Water Industry  
Commission for Scotland (cont.)**

<b>Name</b>	<b>Chair</b>	<b>Participants</b>	<b>Meeting cadence</b>	<b>Intent</b>	<b>Benefit</b>
Senior Management Committee Plus (SMC+)	COO	COO, EVPs, CFO, Chief of Staff and Secretary PLUS VPs, PLs, AGCs	Ad hoc basis	To provide clear direction, consistent messaging and align actions toward achieving the Strategic Outcome and Core Responsibilities.	<ul style="list-style-type: none"> <li>• Greater transparency and alignment across the NEB</li> <li>• Provide advice &amp; recommendations to CEO/DH</li> </ul>
Resource Management Committee (RMC)	CFO	CFO, EVPs, VPs, AGCs and Secretary	Monthly or more frequently as needed (ad hoc)	To discuss and plan BU financial and human resource allocations and provide opportunity to discuss constraints and needs. Provide COO with information to decide how to manage NEB resources.	<ul style="list-style-type: none"> <li>• Greater transparency and alignment across the NEB</li> <li>• Provide advice &amp; recommendations to COO</li> </ul>
Data Management Committee (DMC)	CFO	CFO, EVPs, Director Regulatory Information & Analysis	Monthly or more frequently as needed (ad hoc)	Responsible for the strategy, rules, policies, procedures, roles and responsibilities that guide overall management of the NEB's data; provides the guidance to ensure that data is accurate and consistently captured, complete, available and secure; provides advice on technical data requirements and capabilities of the NEB; and identifies and escalates risks and resolutions related to system functionality and data activities.	<ul style="list-style-type: none"> <li>• Ensures the standardisation and consistency of NEB data collection, storage and management supporting the availability and usage by all internal and external stakeholders.</li> <li>• Provide advice and recommendations to COO</li> </ul>
Chair Board Business Committee	Chair of the Board	Chair of the Board, COO, EVP Law, Secretary	Weekly	Determine the agenda for the weekly and quarterly Board Member meetings.	<ul style="list-style-type: none"> <li>• Ensure materials presented to the BMs are sufficiently prepared, researched and appropriate for presentation.</li> </ul>

**Box 1. Management committees and periodicity of reporting mechanisms at the National Energy Board of Canada and the Water Industry Commission for Scotland (cont.)**

Name	Chair	Participants	Meeting cadence	Intent	Benefit
Executive Management Committee (EMC)	A VP on a rotational basis	All VPs, AGCs, Assistant Secretary	Bi-weekly	A forum for Business Unit Management to share information and best practices, coordinate activities, and identify/manage issues of strategic importance.	<ul style="list-style-type: none"> <li>Honest exchange of ideas and consideration of different perspectives to allow individual VPs to incorporate an enterprise-first perspective into decisions.</li> <li>EMC is not a decision or recommendation-making body</li> </ul>

To ensure flexibility and responsiveness of reporting, the Water Industry Commission for Scotland (WICS) has also introduced differentiated reporting timeframes depending on the nature of the activity; administration of the non-household retail market is under constant review as actions may be taken quickly, financial reporting is done monthly, an update to members of the WICS is done every two weeks, and monthly meetings are held with Scottish Water and other stakeholders.

*Source:* Information provided by the Water Industry Commission for Scotland and the National Energy Board of Canada, February 2017.

***Recommendations for ASEA:***

- ***Advocate for ASEA’s systematic inclusion in the Co-ordination Council for the Energy Sector (Consejo de coordinación del Sector Energético, CCSE) by the Ministry of Energy*** and seek to set up structured co-operation frameworks with other relevant federal entities (Ministry of Labour and Social Affairs, the Mexican Navy or the General Co-ordination of Civil Protection).
- ***Actively propose relevant areas of work and co-ordination for inclusion in the work programme of the Energy Regulators’ Group.*** While being different in status from CNH and CRE, ASEA can gain strength in being a fully-fledged member of Mexico’s integrated energy regulators’ system.

- ***Finalise the ASEA reglamento unificado as soon as possible and socialise the new text and its implications with stakeholders.*** This legal text provides an important opportunity to clarify ASEA’s mandate with sector stakeholders and to simplify procedures.
- ***Review and fine-tune the current strategic framework composed of 23 Strategic Objectives (SO) with the ASEA leadership team, based on the experience of ASEA’s first two years of operations.*** This should involve efforts to streamline the number of SOs currently selected, and to focus monitoring and reporting on a smaller set of SOs and indicators that can all be reported on as soon as possible so as to build a comprehensive baseline for ASEA results and impact.
- ***Implement a better balance between intermediate and output/outcome focused Strategic Objectives (SO) that will include high-level policy and sector objectives, proposing a stable medium/long-term vision of the Agency’s objectives.*** It would also be desirable to de-link the planning period from the mandate of the executive for more certainty and continuity of the regulatory framework, thereby contributing to a culture of independence.
- ***Foster a culture of independence within the regulatory authority in order to offset the lesser legal autonomy granted to ASEA in comparison to the other two sector regulators.*** This culture of independence should permeate not only the internal governance arrangements of the Agency but also the relationship it needs to have with SEMARNAT, as well as all of its other external communications and transparency mechanisms.

### **Box 2. Business planning at Canada’s National Energy Board**

Business planning at the NEB occurs annually to review and identify risks, and to review Strategic Priorities on a rolling three-year basis.

Business planning at the Business Unit level is ultimately approved by the agency’s Chief Operating Officer (COO). Early consultation with the COO throughout the development of the Business Unit plans ensures embedding appropriate enterprise-first strategic thinking in the plan. This consultation happens through the Resource Management Committee (see Box 4).

The annual business planning process follows a series of established steps:

1. Results of past performance against Indicators are checked and reviewed in order to adjust current year plans.



**Box 2. Business planning at Canada’s National Energy Board (cont.)**

2. Starting point for planning is establishing the desired Outcomes to be achieved and aligning expected available resources to those desired Outcomes.
3. Existing Indicators are refined to align to new desired Outcomes or new Indicators are established as needed.
4. The business planning process leads to plans that better define priorities, planning commitments and resource allocations.
5. Planning of the process each year begins with making adjustments to simplify and improve the process based on lessons learned from the prior year.
6. Business Unit plans consistently demonstrate alignment with broader NEB Outcomes.
7. Senior management, including the COO and CEO/DH, are actively engaged in the review and monitoring of the development of Business Unit plans.

*Source:* National Energy Board (2016), “Management System Manual (MSM) Version 2.0”, November.

## Input

**By law, ASEA is funded by resources from the federal budget and its own income.** Currently, and following an increase in resources both for investment and human resources from the federal budget in 2016, it is generally felt that the level of resources allocated to ASEA is adequate. As a de-concentrated entity of SEMARNAT, the Agency follows the federal process for the preparation of its budget (which is approved on an annual basis), by submitting its proposal for the following year’s budget to the ministry in June or July. SEMARNAT includes this in its overall budget, which is then submitted to the Ministry of Finance (*Secretaría de Hacienda y Crédito Público*, SCHP). The consolidated federal budget is presented by the SHCP to Congress in September and, following a two-month period of discussion and eventual amendments, is approved in November.

Table 1. ASEA budget and resources, 2015-17, in MXN

	Transfers from executive		ASEA resources	Total budget
	HR budget	Operational Budget		
2015	140 300 374.08	167 147 961.40	0	307 448 335.48
2016	282 250 231.77	165 128 258.02	0	447 378 489.79
2017	321 370 608.00	240 135 265.00	0	561 505 873.00

Source: Information provided by ASEA, 2017.

Table 2. ASEA workforce 2015-16

Year	Number of supporting staff	Number of professional staff	Total Workforce
2015	49	256	305
2016	89	370	459
2017	89	370	459

Source: Information provided by ASEA, 2017.

**All three sector regulators have provisions to set up Trust Funds (*fideicomisos*) which are instrumental for their financial autonomy.** ASEA's Trust Fund is not yet operational and this should be a priority for the Agency. The operationalisation of the fund requires ASEA to set up a committee composed of the ASEA Executive Director, SEMARNAT and SHCP, which would define the rules and oversee the functioning of the fund. Without the existence of the fund, ASEA is not able to capture its own resources and continues to rely entirely on federal budget transfers via SEMARNAT. Moreover, the total level of the fund is set at three times the previous year's budget – flexibility around this rule is being explored.

**As per the implementation plan for the energy reform, it is intended that by 2019 CNH and CRE will no longer rely on federal resources but fund their operations solely with their own income.** A similar deadline does not exist for ASEA in law but it is intended that the Agency will gradually reach financial autonomy. The level of fines and fees recovered by ASEA in 2016 does not reflect the Agency's funding needs. The Agency is reviewing the methodology for their definition as well as their level in 2017. The objective of financial independence from the federal budget for ASEA seems unlikely in the immediate future and is in any case in line with the CNH and CRE target of 2019, even if the instrument for the capture of these resources (the Trust Fund) is made operational.

**Financial planning does not follow result-based management principles and is not linked to the strategic objective setting and monitoring exercise, which hinders integrated monitoring and evaluation of ASEA operations.** Budget planning is led by the Finance Unit to which other units send their submissions for the annual budget. It is not structured according to the strategic objectives defined by the leadership team, but according to three budgetary lines corresponding to federal practice (M, G, and P budget categories).

**Management of both financial and human resources is necessarily heavy, given that ASEA is a deconcentrated entity of SEMARNAT and, as a result, operations can be slowed down.** ASEA is governed by SEMARNAT rules and procedures for financial and administrative management. ASEA is also subject to SEMARNAT procurement board oversight and approval for its contracting. These processes carry a high transaction cost and are seen to undermine effective and autonomous operations.

**Regulators are faced with the challenge of attracting and retaining qualified staff, a task that will grow difficult as oil prices recover and the development of the industry in Mexico picks up speed.** It is important that the agencies have autonomy and flexibility to acquire and retain talent. For federal entities, the number and level of employees as well as their job descriptions are approved by the SHCP and the Ministry of Public Administration. Modifying these is cumbersome.

**ASEA has explored and implemented strategies to offer more attractive remuneration packages to staff, and it should continue these efforts as pressure from the private sector likely will increase.** This has included being able to offer salaries at the highest “band” available within a grade in the federal *tabulador de sueldos* to new staff. ASEA has also established training programmes with Mexican federal institutions (*Instituto Mexicano de Petroleo*) and international regulators (HSE from the United Kingdom, BSEE from the United States) to enhance staff skills, allowing them to carry out federal inspections. When investing in staff, ASEA should put in place retention mechanisms, including arrangements for employees who get education leave to commit to returning to ASEA for a pre-determined period of time, so as to minimise losing employees to the private sector.

**ASEA has set up an impressive number of human resource policies in a very short time; these are not very well publicised and could be made more transparent.** Unlike CNH and CRE, ASEA does not have the legal requirement to establish its own *servicio profesional de Carrera*. It could be of benefit for all three regulators to align, even share, HR practices

and systems. This would create efficiencies and enhance coherence through greater integration of the three energy regulators' systems.

***Recommendations for the integrated energy regulators' system:***

- ***Strengthen internal management practices to ensure that they are effectively used to align resources with the roles, objectives and deliverables of an integrated energy regulators' system beyond the current federal government requirement.*** The three regulators are subject to the financial management and planning requirements of the federal government. These requirements include obligations to develop indicators to track budget execution and reporting on risks. These requirements are welcome and useful. The three regulatory agencies can further enhance their internal systems to ensure that these reporting obligations become effective management tools. This could include the development of an internal set of indicators to track the use of resources to meet objectives beyond those reported to the SHCP. This could provide the basis for developing a result-based budget system (when it makes sense and it is feasible) which more clearly links objectives, resource needs and budget allocations.
- ***Reward staff reporting on internal and external risks.*** Federal requirements also extend to internal reporting on risks. As recommended below, regulators should go beyond this requirement to embed risk management in their operations. An internal culture of sound risk management should also translate into soft and hard incentives to report on emerging and possible risks within each agency and in the relation of each agency with the regulated sector. This could include rewarding staff (rather than punishing them) for reporting internal and external risks, and the development of a strategy to support a risk management culture.
- ***Conduct a co-ordinated collective review of financial sources and needs beyond 2019.*** An integrated energy regulators' system can provide unique opportunities to identify overall funding needs over the medium to long-term. The objective should be to clearly link missions and activities, related costs and revenue sources, based on a cost recovery mechanism. The three regulators should assess current and future sources of funding in a co-ordinated fashion to identify:
  - **needs over the long-term**, for example over a three to five-year planning horizon, also identifying possible synergies for collective funding sources if relevant (for example, through the National

Information Centre on Hydrocarbons/CNIH that could serve as a platform for sharing critical information with industry against a fee-for-service that would recover the costs of the platform);

- **cumulative costs for the regulated entities** of the fees and duties that regulated entities would need to pay, i.e. revenue sources outside the federal budget, to optimise revenue sources and minimise burden on the regulated sector;
- **a streamlined Trust Fund management system**, in co-ordination with the SHCP, to ensure that Trust Funds (already in place for CNH and CRE, and foreseen for ASEA) provides adequate and timely cash flows to finance the operational and investment needs of the three regulatory agencies. The Trust Fund management system might require redesigning the inflow and outflow mechanisms of the Trust Fund to align it with the budgetary requirements of the three regulators and the costs that the regulators need to meet to carry out their missions and activities. As a stopgap, there could be the need to ensure that the three regulators can borrow short-term to meet financial requirements before they can access Trust Fund resources if they become fully funded through their own resources. A streamlined Trust Fund management system should also include a review of the relevance and feasibility of the current cap on the Trust Fund in view of the agencies becoming fully financially autonomous. The management of the Trust Fund should be adequately resourced with appropriate expertise and supported by adequate regulation if it is to become the main conduit for the regulators’ funding.
- ***Establish an integrated energy regulators’ career service (ERCS).*** There are significant opportunities to develop an integrated ERCS common to the three regulators, which can be greater than the sum of its parts. The proposed ERCS would provide opportunities to attract and retain talent more easily by offering opportunities for mobility and career development across the three agencies. It would also facilitate the sharing of knowledge, experience and skills across the three regulators (and more easily fill temporary needs for certain skills and requirements in one of the regulators, for instance). It would equally create economies of scale for the establishment of common systems like workforce planning, competency frameworks, graduate programmes and the like. Each regulator would retain control on recruitment decisions, performance assessment and the

identification of specific competencies and skills. The ERCS could include:

- Common mechanisms/procedures for advertising positions;
- That all new starts attend a week-long technical regulation course;
- A common set of regulatory skills to be identified jointly by the three regulators (in addition to those specific to each agency);
- Opportunities for joint induction programmes for new recruits (for example on regulatory skills);
- A common graduate recruitment system with exchanges across regulators;
- Common gender and diversity policy across the regulators;
- Comparable career systems to facilitate movement across the three agencies;
- Common salary scales.

### Box 3. Recruitment processes at Spain’s National Authority for Market and Competition

First introduced to hire junior technical positions in December 2016 after several years of “hiring freeze,” the selection process at Spain’s National Authority for Markets and Competition (*Comisión Nacional de los Mercados y la Competencia*, CNMC) follows the principles of transparency, merit and non-discrimination. The principles and steps of the process are published in Spain’s Official Gazette as well as in the CNMC’s and the Spanish Public Administration.

For technical positions, three different profiles are defined: scientific-technical, legal, and economic. The selection process consists of two phases:

- In phase one, applicants have to pass:
  - Tests aimed at measuring: general capabilities (verbal, abstract and numeric reasoning), level of English and basic knowledge of regulation and competition principles. Applicants have to pass each one of these tests to move to the following exercise.
  - A practical written exercise followed by a public oral presentation. The practical exercise will be different for each one of the profiles defined. Applicants can obtain a maximum of 40 points in this exercise, and must get at least 20 to pass to phase two.

### Box 3. Recruitment processes at Spain's National Authority for Market and Competition (*cont.*)

- In phase two, the curricula of the applicants are assessed:
  - University and specialised education: maximum of 18 points, considering grades earned in university studies, post grade studies, and other qualifications.
  - Professional experience: maximum of 12 points.
  - Personal interview: maximum of 10 points.

The selection process is under the responsibility of a selection board. The selection board is composed of 6 senior staff members of CNMC and includes experts in the different areas of knowledge.

All the phases of the process can be followed through CNMC's website and applicants may challenge the final decision in courts if they consider that the process has not been developed according to the principles and procedures published in the Official Gazette.

Other recruitment processes in the CNMC, as well as internal promotions, are subject to the same principles of transparency, merit and non-discrimination. In the case of directors and heads of unit positions, the Council of the CNMC adopts the final decision.

*Source:* Information provided by the CNMC.

- ***Sequence the implementation of the energy regulators' career service (ERCS) and develop internal capabilities for designing and implementing it.*** The ERCS does not need to be overly complicated or burdensome. In fact, if it is built relying on lean-management principles, it can comprise only a few relatively simple steps which can be augmented progressively, as needs evolve. A key priority should be the establishment of an open and transparent recruitment system with processes for advertising positions, screening applications, assessing candidates (for instance through assessment centres) and taking final recruitment decisions. Creating pools of qualified candidates from the recruitment processes would further increase efficiencies. Developing a competency framework would enhance the recruitment process through the prioritisation of skills needs as well as potential recruitment needs. It is also very important that diversity be addressed in recruitment. The absence of women, as well as of minorities, in the leadership team and at other levels in these organisations will hamper the results of the reform, given that important talent pools will not have been tapped.

- ***Ensure that the recruitment strategy emphasises diversity.*** If the regulators do not proactively tap into all talent pools, they are not likely to attract a diverse, vibrant and competitive workforce.
- ***Mutualise digital resources and develop data analytical capability.*** Digitalisation provides significant opportunities to deliver on priorities and actions quicker and simpler, but it requires internal capabilities to develop and manage digital processes. Also on digitalisation, there are opportunities to mutualise some of the capabilities of the three regulators by, for example, developing common (and compatible) solutions and potentially having a shared group of IT specialists and relying on off-the-shelf solutions. IT expertise should be complemented by capacity for using digitalisation to read and manage data in order to facilitate the delivery of core activities (and truly make digitalisation a means to an end).

#### ***Recommendations for ASEA:***

- ***Explore and strongly advocate for solutions that will increase the institutional agility of ASEA, principally with SEMARNAT, thereby making it a world-class safety regulator, capable of acting in a timely and appropriate manner.*** To adequately fulfil its role and functions, ASEA needs to be able to act quickly and efficiently. This agility will need to rely inter alia on mechanisms for enhanced administrative autonomy.
- ***Advocate for a multi-annual budget settlement that can provide stability and facilitate long-term planning with SEMARNAT, the SHCP as well as with the legislature.*** This would be in line with budget information put forward in the operational plan and would be shared with other federal entities through the CCSE. Such a multi-year settlement would preserve the Agency from any undue influence and pressure.
- ***Assess when ASEA may reach the energy reform’s goal of financial independence and engage in dialogue with SEMARNAT and the SHCP to discuss this assessment.*** ASEA currently does not absorb into its budget any income from the industry, and the level of fees and levies paid by the industry does not seem to match the Agency’s yearly budget. Turning this situation around by 2019, when the other sector regulators are expected to reach financial autonomy, would be challenging.



- ***Prioritise the operationalisation of the ASEA Trust Fund (fideicomiso) to diversify sources of income and move towards less dependence on the federal budget, in collaboration with SHCP.*** This should include an assessment and potential review of the cap on the overall ceiling of the fund, carried out jointly with CNH and CRE whose Trust Funds are governed by a similar rule.
- ***Review and define the methodologies for setting fees and levies collected by ASEA, and consider other sources of funding for cost recovery calculations, in collaboration with SHCP.*** The definition of fees and levies should bear in mind the total burden created for industry by the three energy regulators’ requirements. ASEA could also explore making available (at a cost) data linked to its area of competence via the CNIH platform managed by CNH.
- ***Establish a Resource Management Committee or regularly (for example quarterly) hold leadership team meetings to assess and re-align, if necessary, the attribution of resources and the definition of roles and processes across the Agency’s different units. In its work, the committee would need to take into account:***
  - The evolving context of reform implementation (e.g. will certain activities phase out or stabilise?);
  - The level of risk involved in particular activities (e.g. are activities linked to high risk prioritised in terms of resources and process?);
  - The consistency of processes and certainty of the regulatory framework (e.g. are legal interpretations consistent?).

#### **Box 4. The National Energy Board’s Resource Management Committee in Canada**

Canada’s National Energy Board has set up a number of Management Committees that support the governance of the Agency. Among these, the Resource Management Committee (RMC) aims to discuss and plan financial and human resource allocations across the institution, to provide an inclusive opportunity to discuss constraints and needs, and ultimately to give relevant information to the Chief Operating Officer (COO) to decide how to manage NEB resources.

#### Box 4. The National Energy Board’s Resource Management Committee in Canada (*cont.*)

The RMC is chaired by the NEB’s Chief Operating Officer and brings together NEB Senior management (Executive Vice Presidents, Vice Presidents, AGCs and the Secretary) monthly or more frequently, if needed. It promotes greater transparency and alignment of resources and processes across the NER and provides advice and recommendations to the COO on resource management.

*Source:* National Energy Board (2016), “Management System Manual (MSM) Version 2.0”, November 2016.

- *Actively participate in and drive forward the definition and implementation of an integrated energy regulators’ career service (ERCS) with CNH and CRE.* This would enhance ASEA’s access to qualified staff and result in efficiency gains for the Agency.
- *Continue to explore and propose solutions making ASEA a more attractive employer, from flexibility within the federal salary scale to non-financial rewards.* ASEA should continue to advocate for greater flexibility in setting salary scales within the regulator to be able to compete with the regulated sector in attracting and retaining staff, and further develop the offer of training and development opportunities for staff. This should be based on a “total rewards” approach, which takes into consideration not only financial incentives but also non-financial incentives to attract and retain staff.

## Process

### *Decision-making processes*

**The Executive Director of ASEA is nominated by the Minister of Environment and appointed by the President of the Republic, based on criteria set forth in the ASEA Act.** S/he then holds the authority to appoint and/or terminate leadership team personnel. The Executive Director (ED) presents the Agency’s work programme to the Technical Council, which is presided by SEMARNAT. Most decisions linked to the technical work of the Agency or its management are made by the Executive Director.

**The role of the ASEA Technical Council as a formal institutional body could be complemented by more frequent meetings geared towards information sharing.** So far, the Technical Council has met once a year (in May 2015 and September 2016), to approve the annual work plan

and, in 2016, the annual report. Given the composition of the Council, including representatives from federal institutions that ASEA is led to collaborate with, it could meet more frequently for ends of information sharing and co-operation, rather than meeting annually as a formal exercise to approve plans and reports. While its rules of operation are available on the ASEA website, minutes of its meetings have not been published. In the interest of transparency, and following practice adopted by CNH, ASEA could publish these online.

**The ASEA Scientific Committee has potential as an independent expert panel that can provide opinions on ASEA’s areas of competence, but its operational set-up and transparency would need to be enhanced for it to fully play this role.** The Scientific Committee was installed in December 2015, but it has not been functional in its role of supporting decision-making by the Executive Director. The Committee is intended as a multi-disciplinary team that can advise the ED on technical matters. Members of the Committee are nominated by the ED for one year mandates and the ASEA *reglamento interno* states that they are to carry out their functions based on the principles of objectivity, impartiality, ethics and scientific rigour, and free of conflict of interest. This governance structure could be improved.

### *Accountability and transparency*

**ASEA presents its annual report for approval by its Technical Council, presided by the Minister of Environment.** The report is also published online.\* As all federal entities, ASEA is also accountable to Congress but no structured mechanisms exist for this dialogue. As a deconcentrated agency of SEMARNAT, it is unclear to what extent this dialogue takes place through the ministry or whether it could also be established directly. Both Chambers of Congress include Ordinary Committees on Energy and a Special Committee on following the co-ordinated regulators, with whom ASEA could engage with.

**The ASEA Code of Conduct was approved by the Technical Council in September 2016.**† The Code strictly regulates interaction between ASEA staff and the regulated industry, and stipulates that registries of different types of meetings be made public. Unlike CNH and CRE, ASEA’s code of conduct does not appoint a body responsible for overseeing its implementation.

\* [www.gob.mx/asea/documentos/primer-informe-anual-de-labores](http://www.gob.mx/asea/documentos/primer-informe-anual-de-labores).

† [www.gob.mx/asea/documentos/codigo-de-conducta-asea](http://www.gob.mx/asea/documentos/codigo-de-conducta-asea).

**As part of SEMARNAT, ASEA is audited as any subsidiary or deconcentrated entity of the ministry, which does not reflect its critical role for the implementation of the energy reform and overseeing activities in the country’s hydrocarbons sector.** Audits are carried out by entities from both the legislative and executive branches of government: the Superior Audit Office that reports to Congress, and the Ministry of Public Administration that conveys the information to the office of the President. As part of the latter, ASEA is audited and supervised by the Internal Audit Office (*Órgano interno de control*, OIC) of SEMARNAT. This OIC is responsible for auditing the ministry and all of its subsidiary and deconcentrated bodies, and it is unclear how many resources the SEMARNAT OIC can assign to matters specific to ASEA. Given ASEA’s critical work in the country’s hydrocarbons sector, it may be worthwhile exploring options for ASEA to be assigned its own OIC by the Ministry of Public Administration (*Secretaría de la Función Pública*, SFP).

### ***Internal organisational management***

**ASEA internal decision-making and management functions are centralised and more vulnerable to political change than is the case for its fellow regulators.** Most decision-making is centralised in the role of the Executive Director rather than a collegial body, as is the case with CNH and CRE who count with a number of commissioners whose terms are staggered in favour of continuity in decision-making. The Executive Director is responsible for both technical decisions linked to the regulatory functions of the Agency as well as management decisions linked to its internal functioning.

**ASEA’s internal processes and structure are governed by the *reglamento interno* which has not been updated to reflect modifications in practice since the Agency’s creation.** The current version was approved in 2015, and while the institutional structure and lines of reporting have been modified since, the official version of the text has not been modified. It is intended that once ASEA’s *reglamento unificado* is finalised (Q1 2017), ASEA will finalise its new *reglamento interno*. This will be an important step for clear and transparent lines of management for internal as well as external communication purposes.

**The ASEA management model is based on processes that are facilitated by a digital platform.** Workflows and the exchange of information between different ASEA units are defined as processes, sub-processes and procedures. These are mapped out using software (*Arquitectura Institucional*) that aims to facilitate their use and provide links to relevant documents. Socialising the use of this sophisticated tool and thus

ensuring its value will require significant resources and buy-in from management and staff.

### ***Regulatory quality tools, stakeholder engagement***

**ASEA follows federal public consultation requirements through COFEMER, and has set up additional early stage consultation mechanisms with relevant federal actors (line ministries and sector regulators) as well as the regulated industry.** ASEA’s engagement with COFEMER transits through SEMARNAT. ASEA also organises training and information sessions for the nascent industry on new regulations and their obligations. The early consultation and information sessions should be led transparently and with comments and meeting registers available for public consultation online.

**It is expected that the publication of the ASEA *reglamento unificado* (first draft planned for February 2017) will improve the overall quality of ASEA’s regulatory activities.** Given the number of administrative procedures and formalities with regulated entities managed by ASEA, special attention should be given to analysing and lightening the administrative burden on the sector within this exercise.

### ***Recommendations for the Integrated Energy Regulators’ System***

- ***Consider the creation of a joint risk management strategy for the energy sector where the three agencies can share information from their own measures to address risks and to have a platform that allows synergies within the Integrated System of the Energy Regulators.*** The strategy may consider, amongst others, elements such as setting clear governance and responsibilities on the management of the strategy, having a score to address the most imperative issues, measures and ways to address the aforementioned risks and specific guidance to elaborate the risk matrix. The topics could be discussed in the Energy Regulators’ Group.

#### **Box 5. Risk Management Strategy in the Water Industry Commission for Scotland**

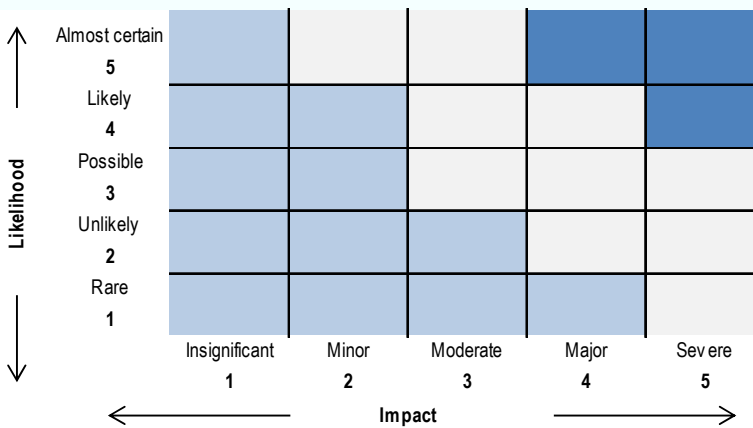
The Water Industry Commission for Scotland has a risk management strategy ran by a dedicated Audit and Risk Committee that meets regularly to discuss new or emerging issues and risks and their evaluation, decisions required and by whom, mitigating actions, actions owners, timescales and review points, ownership of new risks, and, review of the current controls in place. The risk management strategy clearly defines the level of responsibility of the workforce of the regulator *vis-à-vis* the issues and risks.

**Box 5. Risk Management Strategy in the Water Industry  
Commission for Scotland (cont.)**

Responsibility	Board	Audit and Risk Committee	Directors and senior management	Employees
Set policy and appetite	✓			
Assess risk	✓	✓	✓	✓
Treat risk			✓	✓
Monitor and report	✓	✓	✓	✓

The strategy considers risks from four different key areas: *political* (meeting the expectations of public officials and customers including fixing charge caps), *market* (facilitating a competitive framework), *operational* (efficiently delivering objectives in line with financial guidelines and budgets, required legal and regulatory compliance, focusing on developing people within the organisation) and, *thought expansion* (monitoring and participating in national and international innovation to deliver new methods to customers).

The risk is monitored by using a colour coding system to assign importance to different risks using the following colour risk ratings; red/high (unacceptable level of risk which requires urgent action), yellow/medium (level of risk which requires actions and active monitoring), green/low (acceptable risk based on the effective operation of relevant controls).



Three types of scores are considered for each identified risk:

- Each risk is assigned a **Gross Risk score** which evaluates the level of risk that would exist if no controls were being applied.
- The **Target Risk score** is the level of risk that is considered achievable if all controls are implemented and operating effectively.

**Box 5. Risk Management Strategy in the Water Industry  
Commission for Scotland (cont.)**

- The **Current Risk score** is the assessment of the risk given existing controls prior to any planned improvements or actions.

While some risks, such as the loss of offices or key computer systems, may not change significantly over time others, such as those associated with the Strategic Review of Charges, may change significantly over time. It is therefore important to review the assessment of all of the above scores as even the Gross score of a risk may change. The strategy comes with a risk scoring guidance for personnel and a risk framework to be filled out.

*Source:* Information provided by the Water Industry Commission for Scotland (February 2017).

- ***Assess the digitalisation needs of each regulator.*** Evaluate where possible matches and ICT sharing processes can be made in order to reduce costs and share knowledge (i.e. service platforms for data analytics and talent management). Particular focus should be given to the most immediate needs aimed at exploring ways to automate internal management processes.
- ***Seek to have an aligned process within the integrated energy regulators' system to improve regulatory quality.*** The three agencies should harmonise their rule-making process including the framework for stakeholder engagement (apart from the compulsory consultation process done for regulatory impact assessments by COFEMER) based on the forthcoming OECD Best Practice Principles on Stakeholder Engagement; preparing forward planning agendas for upcoming regulation or updates to better inform the regulated sector, and conducting *ex post* evaluation to verify that the intended objectives of regulation issued are being met. The synergies would enhance the benefits of a harmonised process while decreasing the transaction costs involved in designing and implementing these mechanisms.
- ***Assess and review the internal governance arrangements in light of changes to agency objectives and activities brought about by the reform.*** Particular attention should be given to assessing roles and responsibilities for decision-making and day-to-day management of the agencies, as well as to the necessary continuity and stability of these functions.

### ***Recommendations for ASEA:***

- ***Fulfil the potential of the Scientific Committee as an advisory body to the ASEA Executive Director by modifying some of its rules of operation.*** This would include lengthening the mandates of its members, and increasing its transparency and conflict of interest rules. Currently the Committee is not operational whereas it could play a role in strengthening ASEA decision-making processes.
- ***Enhance and include a transparency dimension in all ASEA activities, so as to foment trust in the regulator and to boost its culture of independence.*** This could include pro-actively publishing information related to inspections, meetings of the Technical Council and Scientific Committee, stakeholder engagement and bilateral meetings with the regulated industry. The publication of some of this information is already proposed by the Code of Conduct.

#### **Box 6. Transparency of supervisory activities at Norway’s Petroleum Safety Agency and Canada’s National Energy Board**

The supervisory activities of Norway’s PSA are made up of performance-based supervision (based on the understanding that the regulator cannot “inspect” quality into the sector) and consents (whereby an operator must obtain consent from the regulator at important milestones, ensuring that the operator has good checkpoints in place for its activities and that its key decisions are subject to government control).

PSA publishes all of its supervisory activities to facilitate learning and transfer of experience on its website. This includes audit reports, enforcement notices, investigations, consents, and acknowledgements of compliance. These are made available on the agency’s website in a matter of days following the activity, including an English language summary of the activity and its outcome (for example, the follow up actions requested by the operator) as well as a copy of the official letter of consent or audit report in Norwegian. For more information: [www.psa.no/supervision/category874.html](http://www.psa.no/supervision/category874.html).

Similarly, Canada’s National Energy Board (NEB) is committed to providing information on the safety of the pipelines and the facilities it regulates, including information on its compliance and enforcement actions. In 2011, the NEB began proactively posting information on its compliance and enforcement activities with the goal of providing all relevant information related to its compliance and enforcement actions, in a manner that is clear and accessible.



**Box 6. Transparency of supervisory activities at Norway's Petroleum Safety Agency and Canada's National Energy Board (cont.)**

Specifically on its website, the NEB publishes NEB Inspection Reports; NEB Audits of company operations; Inspection Officer Orders; Incident Investigation Reports published by the Board; Information related to Administrative Monetary Penalties; Board Orders (related to safety and environmental protection issues); Board Letters or Directives (related to safety and environmental protection issues); Corrective Action Plans related to the above; and other relevant documents, including any significant correspondence. For more information: <https://www.neb-one.gc.ca/sftnvrnmnt/cmplnc/index-eng.html>.

- ***Strongly advocate for the set-up of an Internal Audit Office (Órgano interno de control, OIC) that is specific to ASEA, to supervise its operations and oversee the implementation of its Code of Conduct with SEMARNAT and the Ministry of Public Administration.*** While being a deconcentrated entity of SEMARNAT, this would be justified given the specificity of ASEA's functions and sector of operations. The forthcoming anti-corruption law (July 2017) may provide an opportunity for this.
- ***Review the current governance model of the Agency and explore structures that would allow for more continuity in decision-making as well as more focused oversight of strategic planning.*** Separating high-level decision making from the responsibility of the daily management of the Agency and its processes could enhance the effectiveness of the Agency's governance model.
- ***Update the ASEA reglamento interno to reflect new responsibilities and reporting arrangements, in order to clarify these internally and externally and increase accountability.*** This could follow the publication of the ASEA *reglamento unificado* in the DOF.
- ***When drafting the unified ASEA reglamento, use good regulatory practices such as administrative simplification to avoid overburdening the sector while safeguarding the public interest, in particular with respect to administrative procedures and formalities.***
- ***In line with the ASEA annual operational plan, prepare and discuss with SEMARNAT the ASEA annual regulatory plan.*** This can help to anticipate any bottlenecks in the review of ASEA draft regulation by the SEMARNAT ROMR, before it is sent to COFEMER for review and public consultation.

- ***Plan an ex post evaluation of the regulation being issued in the longer term.***
- ***Operationalise digital platforms for administrative procedures managed by ASEA, if possible using joint systems with the other energy regulators.*** When re-engineering and defining digital solutions for administrative procedures, bear in mind the level of risk involved in simplifying submission and review of requests or impact assessments.

## Output and outcome

**Given the wealth of data that will be provided by the industry as of 2018, pursuant to SEMS regulation, ASEA should ensure it has adequate skills and resources, as well as analytical frameworks in place to process the information.** ASEA will start collecting data from the regulated industry as per the SEMS, in late 2018. Based on this information, ASEA will prepare annual reports on the performance of the sector. In addition to monitoring the sector it regulates, once the “Social perception” Strategic Objective is activated, ASEA plans to carry out public opinion surveys.

**ASEA has recognised the importance of assessing its own performance and the Agency’s leadership team has engaged in an exercise to set strategic objectives as well as indicators to monitor their implementation since 2015.** For the first planning period (2015-18) monitoring focuses on nine out of 23 defined strategic objectives. In a framework reminiscent of the Balanced Scorecard methodology, these relate to two out of five dimensions: Process and Organisation, and Learning. This framework should be reviewed to present an appropriate balance between input and process (internal functioning) and output and outcome (sector performance) indicators, so as to give medium/long-term visibility to the Agency.

### ***Recommendations for the integrated energy regulators’ system:***

- ***Set organisational performance indicators to measure and track the Agency’s effectiveness of implementing the strategic goals and activities in the operational plan.*** These should be led by the staff within each of the regulators responsible for designing and implementing the operational and annual plans, and involve collaboration with each of the units within the Agency. The indicators should:

- **measure** the organisations’ inputs and processes through critical dimensions such as quality, efficiency and timeliness;
- **assess the impact** of delivery of outputs (for example, permits granted, open seasons, inspections) on outcomes (for example, new entry in markets, market concentration ratios for each of the hydrocarbon markets, capacity made available by third parties in open seasons, amount of investment in infrastructure required to supply midstream and downstream markets, and compliance with regulatory obligations).
- ***Consider the process that will be used to evaluate performance at the start of the process.*** In particular, consideration should be given to the data and information that will need to be collected in order to have the evidence needed to measure performance for each of the indicators. Where possible, these measures would be prepared with information that the agencies already collect from regulated industry and elsewhere. The OECD’s input-process-output-outcome framework for performance indicators (see Figure 1 below) should be used to develop these measures.
- ***Overall energy sector outcomes should be used as an indicator of the impact of a regulator’s delivery, recognising that there are a diversity of factors that can affect the performance of the sector.*** Recognition should be provided to the extent to which the overall outcomes are necessarily attributable to the activities of the regulator. Overall indicators could be used to serve as a “watchtower” for assessing the overall performance of the sector, and the regulator’s own performance in delivering its operational plan. This information should be communicated to senior staff within the regulators on a regular basis to serve as a dashboard of progress and current trends in the energy sector.

**Box 7. Measuring organisational and policy performance: the National Energy Board’s departmental results framework (Canada) and OFGEM’s Retail Market Review Framework (United Kingdom)**

**The National Energy Board’s Departmental Results Framework**

The National Energy Board (NEB) measures its effectiveness in delivering its mandate using a Departmental Results Framework (DRF). Within the DRF, the NEB links its core responsibilities with outcomes, to which it attaches indicators that seek to demonstrate its performance in delivering its mandate. The DRF provides information that the NEB uses to refine the approach that it takes to delivering its mandate over time.

**Box 7. Measuring organisational and policy performance: the National Energy Board's departmental results framework (Canada) and OFGEM's Retail Market Review Framework (United Kingdom) (cont.)**

The NEB has also established a Performance Measurement Evaluation Committee (PMEC). The PMEC, composed of senior NEB officials and its CEO, reviews the DRF and presents the results to the board quarterly. The DRF performance report for the third quarter of 2016 sets out departmental results and indicators for a number of aggregate areas (for example, safety and environment oversight). For each of these sections, the DRF also sets out the NEB's programmes performance. For each of these programs, the outcomes that the NEB is seeking to achieve are linked to a performance indicator and target. Additionally, the intent of the measure, and the results and actions that the NEB proposed to undertake in light of its performance are also set out.

**OFGEM's Retail Market Review Framework**

OFGEM commenced a review of the electricity retail market in 2010 due to concerns that there were barriers to effective consumer engagement including the complexity of tariff options, poor quality of information provided to consumers and low levels of trust in energy suppliers (OFGEM, 2017a). The retail market review (RMR) was finalised in August 2013, and as part of that review OFGEM included a number of proposals to improve consumer engagement and competition in the electricity retail market.

OFGEM established a RMR evaluation framework to assess the effectiveness of its policies on consumer engagement and competition in the electricity market. OFGEM developed a theoretical framework setting out its expected outcomes of the policy and indicators to measure the impact. These outcomes and indicators were linked to three thematic areas of the reform: building trust, improving understanding, and simplifying tariff choices. OFGEM's evaluation approach included a number of techniques to determine the impact of its policies on the market, including bespoke consumer research, a time series study, descriptive monitoring, holistic context (putting findings into context with wider market monitoring and assessment), and process assessment (understanding how third parties had implemented its reforms) (OFGEM, 2014).

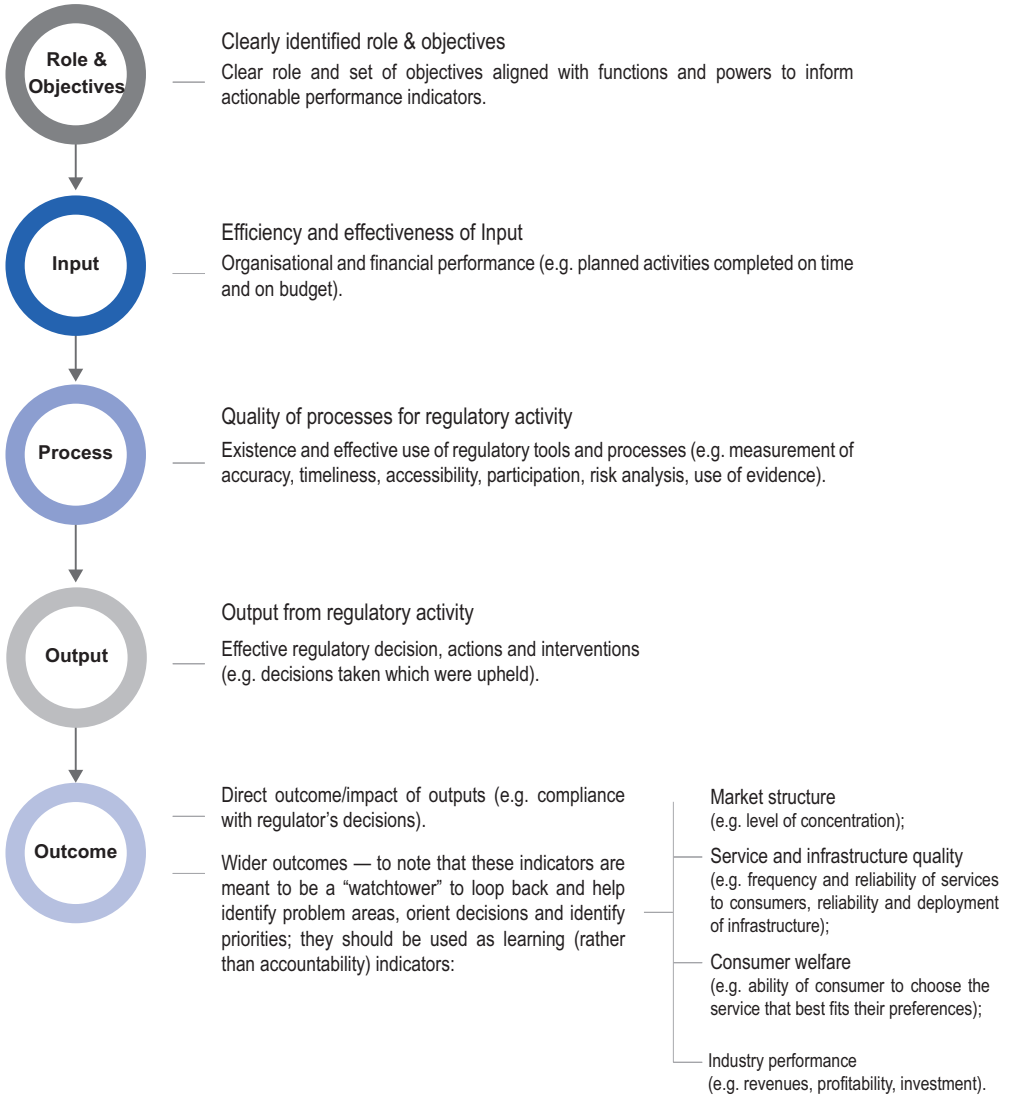
OFGEM intends to conduct annual surveys looking at the impact of these policies. So far, OFGEM has commissioned two surveys looking at the impact of its policies which cover 6000 energy consumers. OFGEM's 2014 survey created a baseline of consumer attitudes and behaviour, while the 2015 survey looked at changes over time (TNS BRMB, 2015).

**Box 7. Measuring organisational and policy performance: the National Energy Board's departmental results framework (Canada) and OFGEM's Retail Market Review Framework (United Kingdom) (cont.)**

*Source:* National Energy Board (2016), “Performance Report”, Q3 report, March 2017; OFGEM (2015), “Retail Market Review: A proposed way forward”, <https://www.ofgem.gov.uk/ofgem-publications/85836/retailmarketreviewmonitoringandevaluatingtheimpactofthenewrules.pdf> (accessed 4 April 2017); (OFGEM, 2017a), “Retail Market Review”, <https://www.ofgem.gov.uk/gas/retail-market/market-review-and-reform/retail-market-review> (accessed 4 April 2017); TNS BRMB (2015), “Retail Market Review 2015 Survey Report”, [https://www.ofgem.gov.uk/sites/default/files/docs/ofgem\\_rmr\\_survey\\_2015\\_report\\_published.pdf](https://www.ofgem.gov.uk/sites/default/files/docs/ofgem_rmr_survey_2015_report_published.pdf) (accessed 4 April 2017).

- ***Where relevant, the regulators should collaborate in developing performance indicators.*** While the diversity of the mandates of regulators means that there is no “one-size-fits-all” approach to developing indicators (particularly with regard to output and outcome), there would be merit in ensuring that the indicators that are related to the core responsibilities of each regulator be harmonised and co-ordinated so that the performance activities of one regulator does not conflict with the performance activities of the other. Additionally, there are some common elements within the process and input stages (for example, organisational and financial performance, existence and effective use of tools and regulatory processes) for which indicators could be developed collaboratively. Common indicators of organisational performance would facilitate comparison of the effectiveness of internal processes across agencies, facilitating the identification of alternative and more effective internal processes. The regulators should use the ERG as the forum for co-ordinating the development of these indicators.
- ***Establish a common platform for providing information to stakeholders about the performance of the energy sector.*** The overall indicators that the regulators use as a watchtower for assessing the performance of the sector should also be made available externally to enable all stakeholders to track the performance of the energy sector. A single source of information on the performance of the energy sector would ensure that all stakeholders have a common data set from which they could form conclusions about sector performance, the effectiveness of regulation and upcoming issues. This could be developed through the ERG.

Figure 1. **Input-process output-outcome framework for performance indicators**



*Note:* This framework was proposed in the initial methodology for the performance assessment framework for economic regulators (PAFER) discussed with the OECD Network of Economic Regulators (NER). It has been refined to reflect feedback from NER members and the experience of other regulators in assessing their own performance.

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

- ***The agencies should report regularly to the CCSE, the ordinary Energy Committees of the two chambers of Congress and the Special Commission of the Co-ordinated Energy Regulators.*** The content of reporting should be tailored to the specific mandate of the committee, for instance reporting could focus on sector performance for both the CCSE and Special Commission for the Co-ordinated Energy Regulators (given its mandate to oversee the implementation of the Energy Reform). In contrast, reporting to the two committees in congress could focus on both the sector performance and the internal functioning of the energy regulators given Congress' role determining the federal budget and the Senate's role in making appointment decisions for Commissioners at CRE and CNH.

### ***Recommendations for ASEA:***

- ***Build skills and internal capacity to analyse the data that will be sent to ASEA by the industry and ensure that this is in place for late 2018 when SEMS data will begin to be submitted.*** This will guarantee that ASEA is equipped to process and analyse the data into relevant information and evidence.
- ***Explore and implement more engaging and accessible ways to communicate on the activities and results of the Agency, beyond the publication of its institutional annual report on the website.***
- ***Develop a methodology for engaging with industry on their performance, based on the analysis of the data submitted.*** This would include the compilation of an annual report and its socialisation to the wider public.

#### **Box 8. Norway's Trend in Risk Level Project**

The Trend in Risk Level Project (RNNP) was developed in 1999 as a consensual measurement tool of the level of risk in Norway's offshore petroleum sector, in response to disagreements on the level of risk between different parties. Since its conception, the RNNP has become an essential yearly activity of PSA, with methodology and indicators being improved and enhanced every year.

A key output of the RNNP methodology is the identification of relevant indicators that reflect different aspects of risk relevant to the petroleum industry. Analysis is based on triangulation: the use of different methods, indicators and tools to measure the same phenomena. Data is collected through various channels: interviews, fieldwork, the analysis or systematisation of written reports, and goes through a quality insurance process (data provided by industry is checked by PSA and vice versa).

**Box 8. Norway's Trend in Risk Level Project (cont.)**

The RNNP relies on close collaboration with other parties, including on feedback from the industry on methodology and indicators, in order to guarantee agreement on a reliable description of the level of risk. Industry participation in the early stages of the process is also essential to ensure the collection of good quality data for the exercise. The project is supported by highly qualified safety experts from national academic institutions, industry, and other specialists.

Engagement with stakeholders as well as the publication of the RNNP annual report take place within the Safety Forum, established in 2001 to initiate, discuss and follow up relevant safety, emergency preparedness and working environment issues in the petroleum industry, both offshore and at land facilities, in a tripartite perspective. The forum is led by the Director-general of PSA and brings together industry associations and trade unions.

The output of the RNNP is an annual report at industry level (no results on identifiable companies are published), which is presented in the Safety Forum. The presentation identifies areas for improvement and challenges the industry to identify corrective measures and to implement them. In addition to this direct impact on industry actions to mitigate risk, the exercise also helps PSA identify strategic priorities and plan its supervisory activities.

*Source:* Dr. Øyvind Lauridsen (2012), “Trends in Risk Level Norwegian Petroleum Activity (RNNP)”, delivered at the CSB Public Hearing on Safety Performance Indicators, Houston, Texas, July.



## Chapter 1

### Methodology

*Measuring regulatory performance is challenging, starting with defining what to measure, dealing with confounding factors, attributing outcomes to interventions and coping with the lack of data and information. This chapter describes the methodology developed by the OECD to help regulators address these challenges through a Performance Assessment Framework for Economic Regulators (PAFER), which informs this review. The chapter first presents some of the work conducted by the OECD on measuring regulatory performance. It then describes the key features of the PAFER and presents a typology of performance indicators to measure input, process, output and outcome. It finally provides an overview of the approach and practical steps undertaken for developing this review.*

## Analytical framework

The analytical framework that informs this review draws on the work conducted by the OECD on measuring regulatory performance and the governance of economic regulators. OECD countries and regulators have recognised the need for measuring regulatory performance. Information on regulatory performance is necessary to better target scarce resources and to improve the overall performance of regulatory policies and regulators. However, measuring regulatory performance can prove challenging. Some of these challenges include:

- *What to measure*: evaluation systems require an assessment of how inputs have influenced outputs and outcomes. In the case of regulatory policy, the inputs can focus on: i) overall programmes intended to promote a systemic improvement of regulatory quality; ii) the application of specific practices intended to improve regulation, or, iii) changes in the design of specific regulations.
- *Confounding factors*: there is a myriad of contingent issues that have an impact on the outcomes in society which regulation is intended to affect. These issues can be as simple as a change in the weather, or as complicated as the last financial crisis. Accordingly, it is difficult to establish a direct causal relationship between the adoption of better regulation practices and specific improvements to the welfare outcomes that are sought in the economy.
- *Lack of data and information*: countries tend to lack data and methodologies to identify whether regulatory practices are being undertaken correctly and what impact these practices may be having on the real economy.

The *OECD Framework for Regulatory Policy Evaluation* starts addressing these challenges through an input-process-output-outcome logic, which breaks down the regulatory process into a sequence of discrete steps. The input-process-output-outcome logic is flexible and can be applied both to evaluate practices to improve regulatory policy in general, and also to evaluate regulatory policy in specific sectors, based on the identification of relevant strategic objectives. It can be tailored to economic regulators by taking into consideration the conditions that support the performance of economic regulators (Box 1.1).

The *OECD Best Practice Principles for Regulatory Policy: The Governance of Regulators* (OECD, 2014b) identifies some of the conditions that support the performance of economic regulators. They recognise the importance of assessing how a regulator is directed, controlled, resourced and held to account, in order to improve the overall effectiveness of

regulators and promote growth and investment, including by supporting competition. Moreover, they acknowledge the positive impact of the regulator’s own internal process on outcomes (i.e. how the regulator manages resources and what processes the regulator puts in place to regulate a given sector or market) (Figure 1.1).

### Box 1.1. The input-process-output-outcome logic sequence

- Step I. Input: indicators include for example the budget and staff of the regulatory oversight body.
- Step II. Process: indicators assess whether formal requirements for good regulatory practices are in place. This includes requirements for objective setting, consultation, evidence-based analysis, administrative simplification, risk assessments and aligning regulatory changes internationally.
- Step III. Output: indicators provide information on whether the good regulatory practices have actually been implemented.
- Step IV. Impact of design on outcome (also referred to as intermediate outcome): indicators assess whether good regulatory practices contributed to an improvement in the quality of regulations. It therefore attempts to make a causal link between the design of regulatory policy and outcomes.
- Step V. Strategic outcomes: indicators assess whether the desired outcomes of regulatory policy have been achieved, both in terms of regulatory quality and in terms of regulatory outcomes.

Source: OECD (2014a), *OECD Framework for Regulatory Policy Evaluation*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264214453-en>.

Figure 1.1. The OECD Best Practice Principles on the Governance of Regulators



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

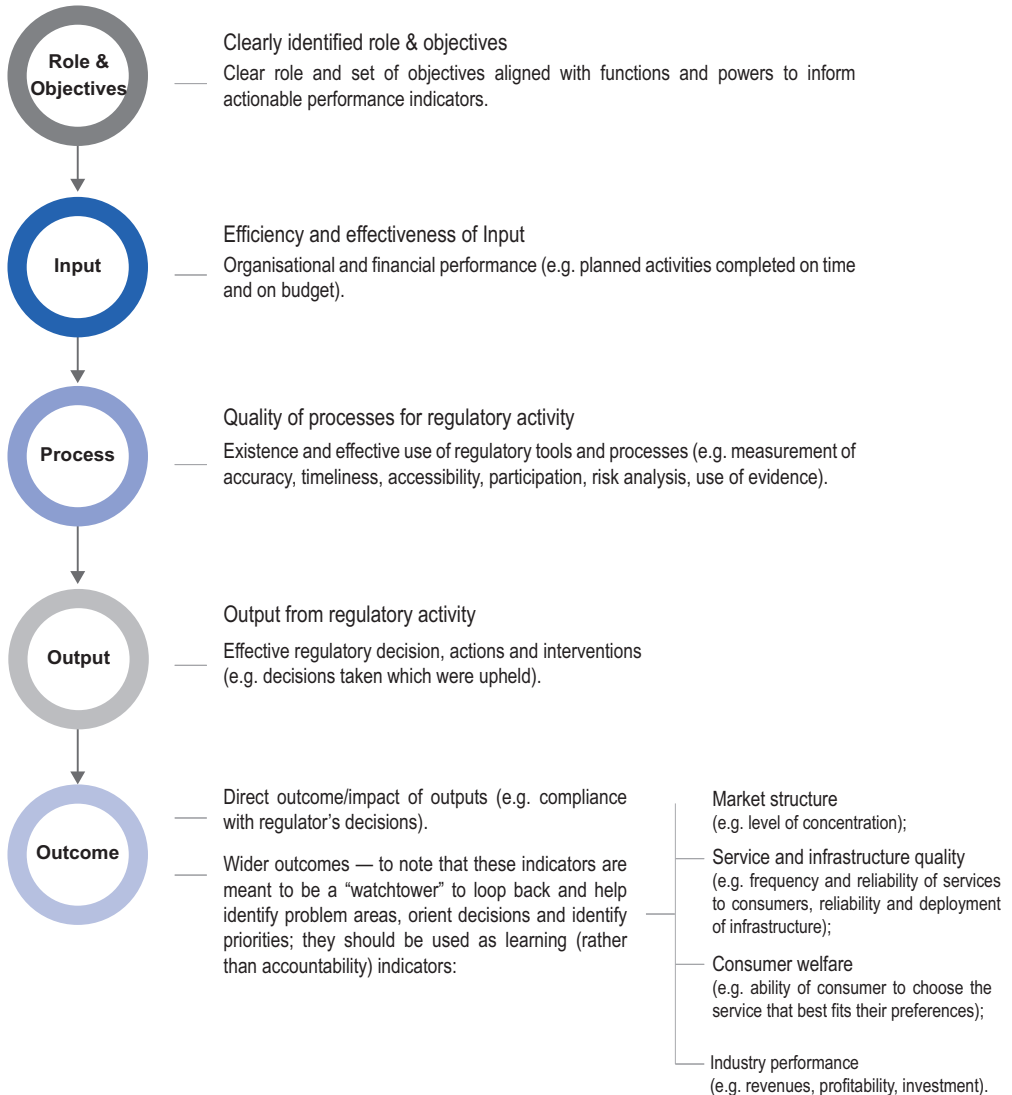
The two frameworks are brought together into a Performance Assessment Framework for Economic Regulators that structures the drivers of performance along the input-process-output-outcome framework (Table 1.1).

Table 1.1. Criteria for assessing regulators' own performance framework

References	Strategic objectives	Input	Process	Output and outcome
<b>Best Practice Principles for the Governance of Regulators</b>	<ul style="list-style-type: none"> <li>• Role clarity</li> </ul>	<ul style="list-style-type: none"> <li>• Funding</li> </ul>	<ul style="list-style-type: none"> <li>• Maintaining trust and preventing undue influence</li> <li>• Decision making and governing body structure</li> <li>• Accountability and transparency</li> <li>• Engagement</li> </ul>	<ul style="list-style-type: none"> <li>• Performance evaluation</li> </ul>
	<ul style="list-style-type: none"> <li>• Objectives and targets</li> <li>• Functions and powers</li> </ul>	<ul style="list-style-type: none"> <li>• Budgeting and financial management</li> <li>• Human resources management</li> </ul>	<ul style="list-style-type: none"> <li>• Strategy, leadership and co-ordination</li> <li>• Institutional structure</li> <li>• Management systems and operating processes</li> <li>• Relations and interfaces with Government bodies, regulated entities and other key stakeholders</li> <li>• Regulatory management tools</li> </ul>	<ul style="list-style-type: none"> <li>• Performance standards and indicators</li> <li>• Performance processes and reports</li> <li>• Feedback or outside evidence on performance</li> </ul>
<b>Institutional, organisational and monitoring drivers</b>				

## Performance indicators

For regulators, performance indicators need to fit the purpose of performance assessment, which is a systematic, analytical evaluation of the regulator's activities, with the purpose of seeking reliability and usability of the regulator's activities. Performance assessment is neither an audit, which judges how employees and managers complete their mission, nor a control, which puts emphasis on compliance with standards (OECD, 2004).

Figure 1.2. **Input-process-output-outcome framework for performance indicators**

*Note:* This framework was proposed in the initial methodology for the performance assessment framework for economic regulators (PAFER) discussed with the OECD Network of Economic Regulators (NER). It has been refined to reflect feedback from NER members and the experience of other regulators in assessing their own performance.

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

Accordingly, performance indicators need to assess the efficient and effective use of a regulator's inputs, the quality of regulatory processes, and identify outputs and some direct outcomes that can be attributed to the regulator's interventions. Wider outcomes should serve as a "watchtower", which provides the information the regulator can use to identify problem areas, orient decisions and identify priorities (Figure 1.2).

## Approach

The analytical framework presented above informed the data collection and the analysis presented in the report. The present report follows a first phase in the review of Mexico's energy regulators that focused on the external governance elements of the Agency for Safety and Environment (ASEA), the National Hydrocarbons Commission (CNH) and the Energy Regulatory Commission (CRE) (OECD, 2017), and looks at the internal governance arrangements of ASEA in the following areas:

- **Strategic objectives:** to identify the existence of a set of clearly identified objectives, targets, or goals that are aligned with the regulator's functions and powers, which can inform the development of actionable performance indicators;
- **Input:** to determine the extent to which the regulator's funding and staffing are aligned with the regulator's objectives, targets or goals, and the regulator's ability to manage financial and human resources autonomously and effectively;
- **Process:** to assess the extent to which processes and the organisational management support the regulator's performance;
- **Output and outcome:** to identify the existence of a systematic assessment of the performance of the regulated entities, the impact of the regulator's decisions and activities, and the extent to which these measurements are used appropriately.

Data informing the analysis presented in the report was collected via a desk review, a fact-finding mission and a peer mission to Mexico:

- **Desk review:** OECD Secretariat carried out a desk review of existing legislation and ASEA documents to collect information on the de jure functioning of the Agency and to inform the basis of the fact-finding mission. Given the recent installation of the Agency, this approach, coupled with a longer fact-finding mission, was agreed in lieu of sending a questionnaire to be filled out by the Agency.

- **Fact-finding mission:** the mission was conducted by the OECD Secretariat staff on 9-20 May 2016 in Mexico City and was the key tool to collect and complete the de jure information with the de facto state of play. The work of the fact-finding mission tailored the PAFER methodology already applied to Colombia's Communications Regulation Commission (OECD, 2015a) and Latvia's Public Utilities Commission (OECD, 2016b) to ASEA's features. Information collected in May 2016 was completed and updated during missions in August 2016 and January 2017 that were also dedicated to fact-finding for the other two energy regulators.
- **Peer mission:** the mission took place on 21-24 February 2017 in Mexico City and included peer reviewers in addition to OECD Secretariat staff. This mission included three teams working in parallel on three reviews of the internal governance arrangements of the energy regulators: ASEA, CNH and CRE. By doing so, teams were not only able to identify initial recommendations specific to the separate regulators but also to identify important synergies and joint solutions for the three regulators in discussions with key stakeholders.

During the fact-finding and peer missions, the team met with ASEA's leadership team, members of the CNH and CRE board, as well as staff from across the three institutions. A list of other agencies and institutions met for the work on the external governance of the regulators can be found in *Driving Performance of Mexico's Energy Regulators* (OECD, 2017).

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## *Chapter 2*

### **Sector context**

*This chapter describes the main features of Mexico's federal institutional set-up and regulatory framework. It provides an overview of the energy sector reform in 2013 and ensuing institutional sector transformations.*

The government of Mexico introduced a major transformation of the country's energy sector. The reform restructured the oil and gas industry in order not only to increase investment and government revenue for the benefit of all Mexicans but also to lead on environmental issues by embedding clean energy targets in legislation. It opened access to the country's hydrocarbon resources to national and foreign, public and private entities, thus ending the monopoly of the state-owned oil company *Petróleos Mexicanos* (PEMEX). Equally important, the national energy system was fully opened up to private participation in order to reduce electricity costs, facilitate the transition to renewable sources of energy and extend electricity coverage. Corresponding significant modifications were made to the institutional framework with regard to sector regulation, including a modification of the Constitution of the United States of Mexico and the promulgation of several primary and secondary laws. This new institutional framework strengthened existing regulators, created new ones and introduced important changes in the functions and powers of different federal entities.

## Institutions

The Constitution of the United States of Mexico divides the Supreme Power of the Mexican federation into three branches: Legislative, with a bicameral Congress; Executive, with a directly elected president; and Judiciary. Mexico is composed of 32 federal entities, including Mexico City; each one has its own constitution, congress, judiciary and executive power, the latter exercised by a governor. The constitution states that the right to initiate laws and decrees belongs to: the president of Mexico, the deputies and senators to Congress, and the state legislatures (OECD, 2014).

### *Executive*

Within the executive branch, several institutions intervene at different stages of the regulatory cycle. They include:

- The Office of the President of the Republic (*Oficina de la Presidencia de la República*). It supports the President in the exercise of his functions, and monitors and periodically evaluates public policies, with the aim of contributing to decision-making by the executive.
- Federal line ministries (*Secretarías*). They are the core entities of the Federal Executive and are responsible for putting forward national public policies in their area of competence. Ministries are entitled to propose bills, enact regulation, decrees and agreements, among other legal instruments. The Ministry of Finance (*Secretaría*

*de Hacienda y Crédito Público, SHCP*) leads the effort of preparing and monitoring the National Development Plan (*Plan Nacional de Desarrollo*), which sets out the overarching development objectives of the administration.

- Ministry of Interior (*Secretaría de Gobernación*). It promotes the political development of the country and contributes to relations between the executive federal power and other entities. While all ministries are hierarchically equal, the Ministry of Interior co-ordinates the actions of the Federal Public Administration, its centralised and parastatal entities. The ministry administers the Official Gazette (*Diario Oficial de la Federación, DFO*) where all laws and regulations are published.
- Legal Counsel of the Federal Executive (*Consejería Jurídica del Ejecutivo Federal*). It reviews and validates all decrees, agreements and other legal instruments that are submitted for consideration of the President, as well as those initiated by the President before they are presented to Congress. It evaluates coherence of the proposals with the Constitution and existing legislation.
- Federal Commission for Regulatory Improvement (COFEMER). It is responsible for driving forth the regulatory quality and improvement agenda in Mexico, established as the regulatory oversight body by the Federal Law of Administrative Procedure in 1994. All federal ministries and agencies are obliged to submit their regulatory proposals and corresponding RIA for consideration of COFEMER.
- Independent federal regulators. These are autonomous entities whose independence is enshrined in the constitution, with powers ranging from emitting regulation, setting tariffs, enforcing regulation and applying sanctions. The 2013 constitutional reform established the Federal Institute of Telecommunications (IFETEL) and the Federal Commission for Economic Competition (COFECE) as constitutionally independent regulators.
- Co-ordinated Energy Regulators. These are entities with technical, financial and managerial independence that, like the former category, are ministry level institutions whose budgets are approved by Congress, and who submit their draft regulations directly to COFEMER. The 2013 reform transformed the National Hydrocarbons Commission (CNH) and Energy Regulatory Commission (CRE) – that had previously been attached to the Ministry of Energy – into Co-ordinated Energy Regulators.

- Deconcentrated bodies. These include regulators that have technical independence but with differing degrees of administrative or financial autonomy from federal line ministries. They have generally been created either through laws or decrees with sector-specific mandates. As specialised entities of the federal government, their jurisdiction applies at federal, regional and state levels. In the energy sector, ASEA, CENACE and CENAGAS are deconcentrated entities with technical and managerial independence.

### ***Legislature***

The federal legislative power in Mexico is vested in a General Congress composed by the Chamber of Deputies and the Senate. The Congress is formed by a Chamber of Deputies made up of 500 deputies and the Senate, which hosts 128 senators and has as its main purpose the analysis, discussion and issuance of laws. The Chamber of Deputies approves the federal budget and supervises the Superior Audit Office, which verifies its execution.

### ***Judiciary***

The Federal Judiciary Power in Mexico is vested in the Supreme Court of Justice of the Nation (*Suprema Corte de Justicia de la Nación* – SCJN), the Electoral Tribunal (*Tribunal Electoral*), the collegiate courts (*Tribunales Colegiados de Circuito*), the unitary circuit courts (*Tribunales Unitarios de Circuito*) and the district courts (*Juzgados de Distrito*). The administration, supervision, and discipline of the Judiciary of the Federation, except for the Supreme Court and the Electoral Tribunal, rely on the Federal Judiciary Council (*Consejo de la Judicatura Federal*).

The SCJN has final appellate jurisdiction over all state and federal courts. Below the SCJN are the circuit courts, which are divided into single-judge circuit courts and collegiate circuit courts. The Federal Judiciary oversees a broader range of cases, and thus holds more judicial power than do the judiciaries at the state level (OECD, 2014).

### ***Supreme audit institutions***

- Office of the General Prosecutor (*Procuraduría General de la República*). A part of the executive branch of government, it is responsible for the investigation and prosecution of federal crime. The Attorney General heads the Federal Public Ministry (*Ministerio Público de la Federación*). A reform of the Attorney General's Office plans to transform it into the General Prosecutor of the Republic (*Fiscalía General de la República*) that will act as a constitutionally independent body.

- Ministry of Public Administration (*Secretaría de Función Pública, SFP*). It establishes the normative framework for the control and audit of federal funds, supervises the implementation of existing norms and can, upon request, audit federal institutions. The ministry counts with detached units (*Órganos internos de control*) in all federal entities that oversee the use of resources and report to the ministry.
- Superior Audit Office (*Auditoría Superior de la Federación*). It has the power to carry out external audits of the three branches of government, as well as of the constitutionally independent bodies, states and municipalities. It verifies the fulfilment of government policy and programme objectives, and examines the level of performance of public entities and the correct management of income and expenditure. It is a technical body of the Chamber of Deputies and supports it in its role of monitoring the Federal Public Treasury.

### Box 2.1. Structural reform in Mexico

In 2012, Mexico’s newly elected government embarked on a bold package of structural reforms aimed to help the country break away from three decades of slow growth and low productivity, as well as the high levels of poverty and inequality that have hampered the quality of life of its citizens. The foundations for these goals were laid in the 13 Presidential decisions for Mexico, contained in President Enrique Peña Nieto’s Message to the Nation, upon taking office on 1 December in the National Palace. These were further developed in the 95 commitments of the Pact for Mexico (*Pacto por México*), signed by the leaders of the main political parties.

Each of the reforms is wide-ranging in scope, and addresses the main challenges in their respective sectors. They include: a labour reform that substantially increased the flexibility of hiring; a reform of “*amparos*” that made the legal system more efficient and fair; the introduction of a national code of criminal procedure; a wide-ranging educational reform that introduced clearer standards for teachers and schools; a fiscal reform that improved the efficiency of the tax system, raised the revenue ratio and strengthened the fiscal responsibility framework; an economy-wide competition reform; reforms to the financial, telecom and energy sectors that have opened long-closed sectors to competition and strengthened the powers of regulators; and a reform of the political system to allow politicians to be re-elected, giving them a longer-term perspective on policy. This impressive policy effort, which makes Mexico the top reformer in the OECD over the past two years, deserves acclaim.

### Box 2.1. Structural reform in Mexico (*cont.*)

If fully implemented, these reforms could increase annual trend per capita GDP growth by as much as one percentage point over the next ten years, with the energy reforms having the most front-loaded effects, and the education reforms more lasting effects in the years to come. From now on, the main challenge is to ensure full implementation of these reforms and progress further in areas that have not yet been tackled, and that are key to ensure success of the current package.

*Source:* OECD (2013), *Getting It Right: Strategic Agenda for Reforms in Mexico*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264190320-en>.

## Institutional and regulatory reform of the energy sector

### *Market reform*

Prior to the 2013 reform, the energy industry in Mexico was characterised by limited private sector involvement. Activities in hydrocarbons, such as extraction and sale of oil and gas, were the sole responsibility of PEMEX. PEMEX's sole responsibility for the hydrocarbons sector was set out in Mexico's Constitution (Seelke et al., 2015). Mexico's oil production has decreased steadily over the past decade, due to natural production declines in the country's largest oilfields, as well as a lack of investment in the sector. Despite this, Mexico has remained one of the largest producers of oil and related products in the world, and the fourth largest in the Americas after the United States, Canada and Venezuela. The hydrocarbon sector carries much weight in the country's economy in all respects: in 2014, earnings from the oil sector represented 30% of government income and 11% of export earnings (EIA, 2015). In 2013, fiscal revenue from non-renewable natural resources represented 8% of GDP (OECD, 2015b).

For natural gas, PEMEX had a monopoly over the entire supply chain until 1995, when part of the market was opened. This enabled private firms to enter the downstream gas market (in the transport, storage and importing of natural gas) (OECD, 2004).

### Box 2.2. Summary of current trends in Mexico's energy sector

- Mexico's Energy Reform (*Reforma Energética*), initiated in 2013, is transforming the country's oil, gas and electricity sectors. A new regulatory and institutional framework has brought an end to long-standing monopolies, opening competition in all aspects of oil and gas supply, and power generation. Private investors can now participate, alongside PEMEX and CFE, the two large state-owned enterprises, in a wide range of the energy industry value chain, attracting capital and technology to areas that are in need of renewal.
- Total energy demand in Mexico has grown by a quarter since 2000 and electricity consumption by half, but per-capita energy use is still less than 40% of the OECD average, leaving scope for further growth. The energy mix is dominated by oil and gas, with oil accounting for around half of the total – a share higher even than that in the highly oil-dependent Middle East.
- Oil has traditionally played a major role as a fuel for power generation, but it is rapidly losing ground to natural gas, whose cost advantage has been reinforced by the shale gas boom in the United States. Non-fossil fuelled generation, primarily from hydropower and nuclear, currently accounts for one-fifth of the total. Wind power has gained a foothold, with capacity of around 3 GW in 2015, but this remains far below its potential. The market for solar PV is nascent, but is expected to grow rapidly: the first two auctions for new long-term power supply, held in 2016, demonstrated private sector willingness to invest in new solar and wind capacity.
- Mexico's long-standing position as one of the world's major oil producers and exporters has weakened in recent years, with oil production declining by over 1 mb/d since 2004. This fall in output is linked to a shortfall in the funds available to PEMEX for capital expenditure to slow declines in mature fields or to develop new ones. A combination of limited refining capacities and rising demand means that Mexico is a net importer of oil products. Natural gas output has also been in decline (most of the production is associated with oil) and imports now meet almost 50% of gas demand.
- Sustainability and climate change considerations are prominent in Mexico's energy policy. Mexico was among the first nations to submit a climate pledge in the run-up to COP21, and was among the countries that pushed hardest for a climate change agreement in Paris. It has legislated to adopt a binding climate target: the second country in the world to do so. With institutional changes that help promote clean energy, Mexico is embarked on a course towards a considerably more sustainable and efficient energy system in the future.

Source: IEA (2016), *Mexico Energy Outlook*, IEA, Paris, <http://dx.doi.org/10.1787/9789264266896-en>.

Similar to the hydrocarbons sector, prior to 2013, the electricity sector was primarily operated by a state owned entity, the Federal Electricity Commission (CFE).<sup>\*</sup> Reforms to Mexican energy legislation enacted in 1992 had enabled private companies to obtain permits to generate electricity and as a result there was private sector involvement in electricity generation in Mexico even prior to the 2013 reform. However, the electricity network (both the transmission and distribution networks) were owned and operated by CFE (OECD, 2004).

The 2013 reforms were designed inter alia to increase investment in the hydrocarbons sector with the objective of increasing oil production, as well as to place downward pressure on electricity prices (Mexican Presidency, 2013). Greater use of markets in the hydrocarbons and electricity sectors, combined with strengthened independent regulation, were used to achieve this objective. As such, PEMEX’s monopoly was ended, opening the country’s hydrocarbons resources for exploration and production also by private and foreign entities, in rounds of bidding administered by CNH. However, the reforms make clear Mexico’s ownership of hydrocarbons (SENER 2014). In the electricity sector, as a result of the reform, private companies are able to participate in power generation and sell to the new Mexican wholesale market independently of CFE (SENER, 2014). While the reforms reinforce the transmission and distribution of electricity as “exclusive and strategic state activities” in the Mexican Constitution, CFE may contract with private firms to reinforce its electricity network (SENER, 2014).

### ***Institutional and regulatory reform***

Prior to the reform, sector policy was set by SENER and activities were regulated by the ministry, CNH and CRE, and in some instances by states or PEMEX itself. The reform introduced very significant changes to this institutional set-up, enacted by a reform of the Mexican Constitution and the subsequent promulgation of 21 federal laws and 24 secondary laws (*reglamentos*). The changes included:

- Strengthening existing energy regulators into ministry level independent agencies, that regulate the participation of public and private companies: CNH and CRE (the Co-ordinated Regulators of the Energy Sector);

\*. Until 1999, Central Light and Power also supplied electricity (Center for Energy Economics and *Instituto Tecnológico y de Estudios Superiores de Monterrey*, 2013).



- The creation of a new regulatory agency responsible for regulating and enforcing industrial safety and environmental protection throughout the hydrocarbons value chain: ASEA;
- Granting responsibilities linked to the hydrocarbons sector to the Ministry of the Environment and Natural resources (*Secretaría de Medio Ambiente y Recursos Naturales*, SEMARNAT) with the attachment of ASEA to the ministry;
- Creation of new decentralised agencies that operate the electricity and gas markets: National Center for the Control of Energy (*Centro Nacional de Control de Energía*, CENACE), and the National Center for the Control of Natural Gas (*Centro Nacional de Control del Gas Natural*, CENAGAS);
- Creation of two state productive enterprises that compete and can associate with private companies (previous monopolies): *Petróleos Mexicanos* (PEMEX) and Federal Electricity Commission (*Comisión Federal de Electricidad*, CFE);
- Creation of federal fund to manage, distribute and invest revenue from hydrocarbon activities: Petroleum Fund for Stabilisation and Development Of Mexico (*Fondo Mexicano del Petróleo para la Estabilización y Desarrollo*, FMP);
- Creation of the National Center for Hydrocarbon Information (*Centro Nacional de Información de Hidrocarburos*, CNIH) to manage national data and information on hydrocarbons, a function previously carried out by PEMEX. CNIH is integrated in the structure of CNH.

Following the reform, SENER continues to set policy for the energy sector. Main regulatory functions for the sector are now held by CNH as the “upstream regulator”, CRE as the “midstream and downstream regulator” in hydrocarbons and as the electric power regulator, with ASEA holding responsibilities for safety and protection throughout the hydrocarbons value-chain.

Figure 2.1. **Timeline of the implementation of the energy reform, 2013-19**

**2013**

**Dec.**

- **Constitutional reform of Mexico's energy sector**



• Reform of the constitution of Mexico

**2014**

**Aug.**

- **Promulgation of a set of laws relative to the implementation of the energy reform**



- **Round 0: assignment of areas of exploitation to PEMEX by SENER and CNH**

- Hydrocarbons Act
- Electrical Industry Act
- The Co-ordinated Energy Regulators Act
- PEMEX Act
- Fedecal Electricity Commission Act
- ASEA Act
- Geothermal Energy Act
- Hydrocarbons Revenue Act
- Petroleum Fund for Stabilisation and Development of Mexico Act

**Oct.**

- **Publication of ASEA reglamento interno**

**Nov.**

- **CNH issues guidelines for oil & gas bidding rounds**

**Nov.-Dec.**

- **Definition of internal structure and functioning of ASEA, CNH and CRE**



• Reglamento interno of ASEA, CRE and CNH (secondary legislation)

**2015**

**Jan.**

- **CNH issues guidelines for G&G surveys**

**March**

- **ASEA begins operations**

**Jul. - Mar. 2016**

- **Round 1: tender of oil and gas fields by SENER and CNH**

**Aug.**

- **CNH issues guidelines governing the procedure for quantification and certification of reserves of the nation**

**Sept.**

- **CNH issues dispositions for licensing information of the Hydrocarbons National Data Repository**

- **CNH issues guidelines for the approval of oil & gas production[**

- **CRE issues Electricity transmission tariffs**

**Nov.**

- **CNH issues guidelines for the approval of exploratory & production plans**

**Dec.**

- **ASEA emits its first regulation relative to design, construction, operation and maintenance of petrol stations**

- **CRE issues Electricity distribution tariffs and Independent ISO tariffs**

- **CRE issues permits for retail gasoline stations**

Figure 2.1. **Timeline of the implementation of the energy reform, 2013-19** (*cont.*)**2016**

- Jan.**
  - CNH issues guidelines for the usage of the non-associated gas in oil production
- Mar.**
  - CRE publishes Clean Energy Certificate (CEC) initial market rules
- April**
  - CRE issues National electricity system grid code
  - CNH issues guidelines for the migration of historical information
- May**
  - ASEA emits regulations on Safety and Environmental Management Systems (SEMS)
- June**
  - ASEA issues regulation on insurance for upstream activities
- Jul. -Oct. 2017**
  - Round 2: tender of oil and gas fields by SENER and CNH
- Sept.**
  - First meeting of the Co-ordination Council for the Energy Sector (CCSE)
- Oct.**
  - CNH issues guidelines for drilling wells for exploration and production of hydrocarbons
- Nov.**
  - CRE to issue Ancillary services and Basic supply tariffs
- Dec.**
  - ASEA issues General Administrative Provisions establishing guidelines on Industrial and Operational Safety and Environmental protection for Surface Surveying (Seismic), and Exploration and Production of Hydrocarbons Activities

**2017**

- Electricity wholesale market monitoring by CRE
- Gasoline market opening (subject to early opening, under proposed legislation Revenue Law Initiative 2017)
- ASEA to issue comprehensive ruling for midstream activities
- ASEA issues regulation for Safety and Environmental Management Systems (SEMS) for downstream and retail
- CRE to issue rate methodologies for hydrocarbons (refined products, oil, Natural Gas and LPG) integrated natural gas storage and transportation system, pipeline transportation and storage activities, and natural gas pipeline distribution.
- CRE to issue general administrative provisions for registration of business transactions hydrocarbons (using SIRETRAC information system)
- CRE to modify and update First Hand Sales price methodology for LPG and Natural Gas.
- CRE to issue rate methodologies for pipeline transportation and storage activities and pipeline distribution activities.
- CRE to conduct Pemex Logistica's open season for granting transport and storage capacity to third parties for LPG.
- CRE to the General Administrative Provisions on First Hand Sales and commercialisation of gasoline and diesel with asymmetric regulation for Pemex.
- CRE to issue Guidelines for disclosing the selling price of fuels at service stations.

Figure 2.1. **Timeline of the implementation of the energy reform, 2013-19** (*cont.*)

- CRE to issue technical standards for the market and electric power sector participants, and on efficient co-generation.
  - CRE to issue a number of General Administrative Provisions for electricity, including:
    - CENACE carrying out auctions to ensure system reliability
    - Establishing operative, function and accounting separation
    - Assessing the net benefit of new distribution and transmission infrastructure to the Electric Power System Modernization and Expansion Program
    - Distributed energy resources
  - CRE to issue regulation concerning the operation of the Renewable Energy Certificate System.
- 2018**
- ASEA aims to finalise consolidated secondary legislation for industrial safety and environmental protection in the hydrocarbons sectors
  - CRE to release first CEL market monitoring report with SENER
- 2019**
- The three energy regulators are expected to reach financial autonomy through perceived duties and fines

Source: Adapted by OECD from ASEA, CNH and CRE.

Figure 2.2. **Areas of influence and legal status of energy sector institutional actors, post-2013**

Areas of influence						Legal status
Oil	Gas	Electricity	Nuclear energy	Energy efficiency	Safety & env hydrocarbons	
SENER					SEMARNAT	Sector head
			CNSNS	CONUEE	ASEA*	Ministry's deconcentrated entities
CRE**						Regulatory bodies
CNH***						
PEMEX		CFE				State productive enterprises
	CENAGAS	CENAS				Independent transmission operators
IMP		INEEL	ININ****			Technological research institutions

\* Regulations are applicable to the entire hydrocarbons value chain.

\*\* In the oil and gas industry, the regulations are applicable only to the midstream and downstream segments.

\*\*\* In the oil and gas industry, the regulations are applicable only to the upstream segment.

SENER: Ministry of Energy; SEMARNAT: Ministry of Environment and Natural Resources; CNSNS: National Commission for Nuclear Safety and Safeguards; CONUEE: National Commission for the Efficient Use of Energy; ASEA: Agency for Industrial Safety and Environmental Protection of the Hydrocarbon Sector; CRE: Energy Regulatory Commission; CNH: National Hydrocarbons Commission; PEMEX: Petróleos Mexicanos; CFE: Federal Electricity Commission (utility); CENACE: National Centre for Energy Control; CENAGAS: National Centre for Natural Gas Control; IMP: Mexican Petroleum Institute; INEEL: National Institute for Electricity and Clean Energy; ININ: National Institute for Nuclear Research.

Source: Adapted from APEC Secretariat (2016), “APEC Energy Overview”, <http://aperc.ieei.or.jp/file/2017/6/7/apec+overview+2016.pdf> (accessed 13 June 2017).

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## *Chapter 3*

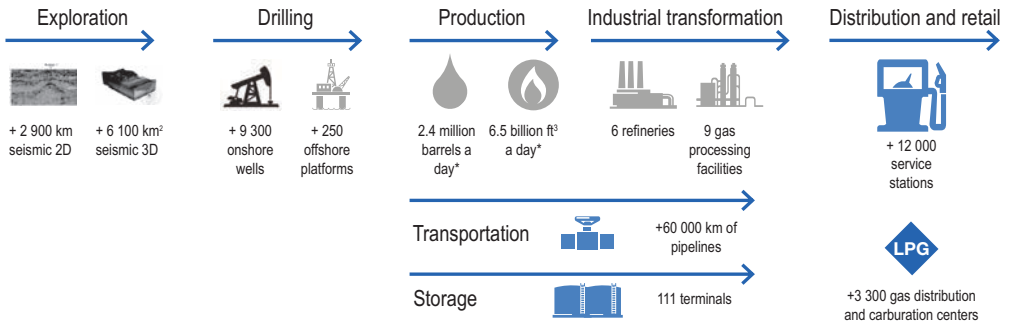
### **Internal governance of the agency for safety, energy and environment (ASEA)**

*The Performance Assessment Framework for Economic Regulators (PAFER) was developed by the OECD to help regulators assess their own performance. The PAFER structures the drivers of performance along an input-process-output-outcome framework. This chapter applies the framework to the internal governance of Mexico's Agency for Safety, Energy and Environment (ASEA) and reviews the existing features, the opportunities and challenges faced by the regulators in developing an effective performance assessment framework.*

## Role and objective

Established as part of Mexico’s ambitious energy sector reform, ASEA is a multidisciplinary regulatory agency charged with the mission of overseeing industrial and operational safety and environmental protection throughout the hydrocarbons value chain, from upstream, midstream, downstream to retail activities. Given the scope of its responsibilities, ASEA is internationally unique, and it is the first time that industrial safety and environmental protection are brought under the competence of one institution in Mexico.

Figure 3.1. **Functions of the Agency for Safety, Energy and Environment (ASEA)**  
**REGULATE and SUPERVISE industrial safety and environmental protection**  
**HYDROCARBONS**



Source: Adapted from information provided by ASEA, 2015.

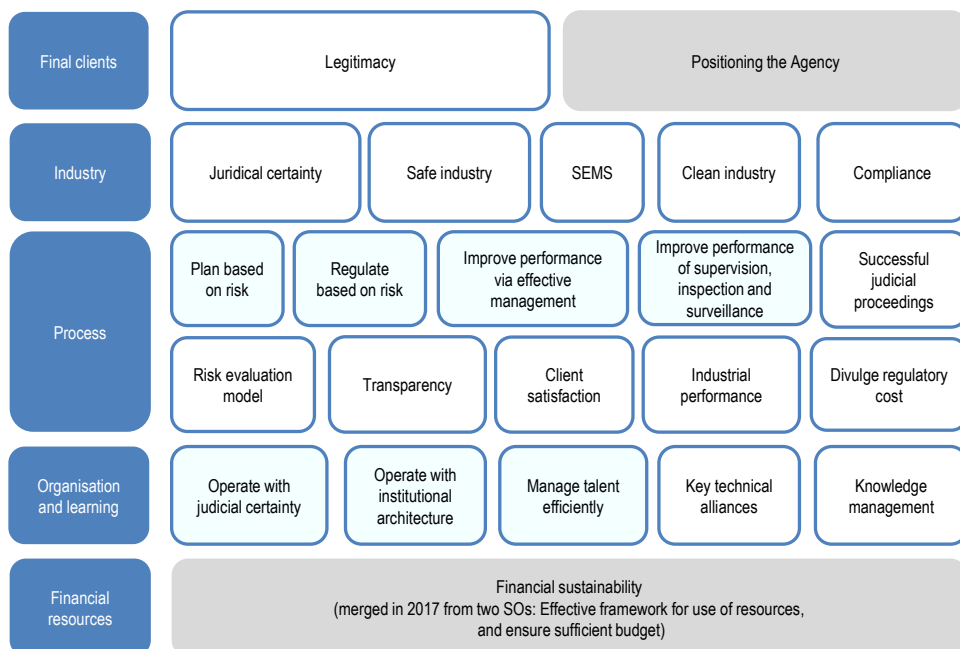
Upon creation in March 2015, ASEA had to tackle complex transfers of powers and the existence of previously unregulated areas. Prior to the reform, most environmental regulation and licensing powers had been held by the Ministry of Environment (SEMARNAT) and its bodies, and some by CNH and CRE. As the sole sector operator, PEMEX had auto-regulated its industrial and operational safety, and the reform created a regulatory void in this area. Regulatory and supervisory functions linked to the retail sector (petrol stations) had been held by state-level authorities. In this challenging context, ASEA divided its first years of operations into three distinct phases: i) stabilisation: transfer of powers from other entities and processing of transferred applications (2015); ii) transition: aligning regulation to the hydrocarbon value chain (2016-17); and iii) final architecture: ASEA specific secondary legislation enacted (2018).



The ASEA leadership team, composed of the Executive Director, his Chief of Staff, and Heads of Units, approves ASEA strategic objectives. The first framework for the 2016-18 period was approved in June 2015. The three-year duration purposefully coincides with the second half of the current Presidential mandate (2013-18); a new strategic framework will be proposed upon entry into office of the newly elected executive in 2019.

ASEA strategic objectives (SOs) are mapped under five dimensions (Final clients, Industry, Process, Organisation and learning, Financial), in a system that follows the Balanced Scorecard methodology. The 24 strategic objectives were established in an inclusive process by the Executive Director and Heads of Unit during the Agency’s first year of operations. These objectives were determined considering compliance with the ASEA Act. Given the amplitude of challenges at hand, seven strategic objectives (SOs) were selected from an initial menu of 24 in June 2015 for the first strategic planning period (2016-18) by the leadership team in a strategic planning workshop, and were then validated in a larger group including all general directors.

Figure 3.2. ASEA strategic objectives



*Note:* SOs “activated” for monitoring in 2015 appear in light blue, in 2017 in grey. Indicators for the others have not yet been developed or are monitored.

*Source:* Information from ASEA, 2016.

The SOs that were selected following this process all appear under Process (4) and Organisation and learning (3), reflecting an explicit decision to focus on establishing solid procedures and organisational governance structures following the creation of the Agency. Thus the retained objectives seem to be mostly management objectives, or intermediate objectives, rather than ones that look at the ultimate performance and results of the regulator's work.

In a workshop in January 2017, the leadership team agreed to “activate” two additional SOs for monitoring, linked to Positioning the Agency as well as its Financial Sustainability. It also merged two SOs under the Financial resources heading, bringing the total of SOs to 23.

The strategic objectives are translated into annual Programmes of Work which are approved by the Technical Council.

### ***Functions and powers***

The creation of a federal entity to regulate and supervise the hydrocarbon sector's installations and activities in the areas of industrial and operational safety and environmental protection was proposed in transitory article 19 of the December 2013 Constitutional Reform. The Agency was created by the ASEA Act in August 2014, which assigns it the following functions:

- Contribute technical elements relative to industrial and operational safety and the protection of the environment to national energy policies and laws;
- Regulate and supervise activities in the hydrocarbon sector relative to industrial and operational safety and the protection of the environment throughout the value chain, including the dismantling of infrastructure;
- License operators throughout the hydrocarbons value chain relative to industrial and operational safety and environmental protection in collaboration with CNH and CRE (who hold responsibility for other areas of the licensing process);
- Authorise Safety and Environmental Management Systems (SEMS) based on requirements established by ASEA;
- Carry out inspections, propose corrective actions, and impose sanctions or suspend activities;

- Co-ordinate and review Root Cause Analyses (RCA) (*investigaciones de causa raíz*) in case of incidents or accidents, and communicate risks and lessons learnt;
- Provide technical elements to the design of national contingency plans and safety protocols in case of emergency with a view to reducing risks in the energy sector;
- Produce economic analyses of the environmental externalities and associated risks of industry installations and operations.

### ***Licensing***

ASEA has powers to provide authorisations, permits and licenses in the area of industrial safety and environmental protection, as well as to suspend them following identification of non-conformity. Most applications also involve other regulators, with CNH or CRE receiving these and forwarding if relevant for ASEA review. Some areas such as SEMS, or dangerous residues, are under the sole competence of ASEA.

Since its creation, ASEA has principally focused on licensing in the area of environmental protection, having absorbed the functions of several entities in this area. With the publication of regulation on upstream industrial and operational safety in May 2016 (SEMS), ASEA will begin granting authorisations relative to these areas (during the transition phase, these considerations were included directly in operator contracts, in co-ordination with CNH).

Licences emitted by ASEA are governed by 11 federal laws, and refer to 12 subordinate regulations and 52 different application processes. Applications are submitted on paper. ASEA aims to simplify the administrative process by creating a unique online system by the end of 2016 (*ventanilla única*), and to streamline the number of application procedures via the elaboration of *reglamento unificado* which is expected to be finalised by late 2017 – early 2018.

Since starting operations, the number of licenses processed by ASEA has grown exponentially (Table 3.1). This increase corresponds to licences delivered to petrol stations, previously regulated by federal states. As such, in 2016, 84% of the 9 847 licences were given in the retail end of the hydrocarbons value chain, which presents a lower level of risk compared to extraction and exploration activities.

Table 3.1. Number of licences processed by ASEA

	2015	2016
Number of licences	1 500	9 847
Percentage increase p.a.	–	654%

Source: Information provided by ASEA, 2017.

### ***Inspection and quality control***

ASEA has the power to inspect industry operators throughout the hydrocarbons value chain, to emit recommendations for corrective action and to impose sanctions or suspend operations in case of non-compliance or high risk. During the stabilisation phase, the Unit for Inspections concentrated on the follow-up of incidents and accidents. A framework for risk-based inspections, that will prevent incidents through targeted inspection, is currently under preparation and will include indicators to measure risk for seven specific areas of operations (*bloques*). It will be informed by data from several sources: i) risk evaluations and inspections by operators as part of the SEMS; ii) inspections by insurance companies; iii) inspections by certified third parties every two years; and iv) inspections by ASEA targeting high-risk sites based on an analysis of the previous information.

Table 3.2. Overview of inspections, recommendations and corrective measures implemented by ASEA, up to December 2016

Item	2015	2016
Root Cause Analyses (RCA) submitted	24	24
RCA pending submission	1	3
Recommendations	172	147
Inspections	594	1 187
Recommended security measures	26	88
Recommended urgent corrective measures	296	167
Oil spillage simulation	8	4

Note: In 2016, ASEA participated in one international oil spillage simulation in Houston, Texas, MEXUSGULF 2016.

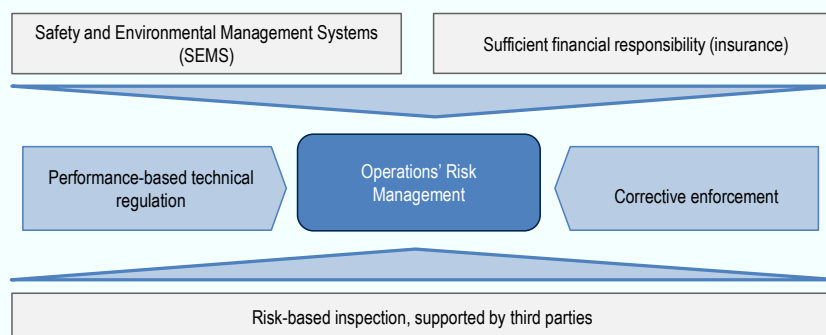
Source: Information provided by ASEA, 2017.

Inspections fielded by ASEA are governed by the ASEA Act and the Agency's *reglamento interno*. The number of inspectors per visit is limited to a maximum of three by current federal austerity measures published in DOF on 22 February 2016 by SHCP and SFP.

### Box. 3.1. ASEA risk-based management model

ASEA implements a risk-based management model to tackle its ample responsibilities and target its resources in the most efficient manner. This model is based on five pillars:

- Regulated entities are requested to design, implement and report on **Safety and Environmental Management Systems (SEMS)**, which include risk assessment and strategies that are followed up on a yearly basis.
- ASEA prioritised emitting regulation on regulated entities' **insurance requirements**, to ensure sufficient financial responsibility in case of incidents or accidents.
- ASEA favours **performance-based** rather than prescriptive regulation, allowing for innovation by industry.
- ASEA favours **corrective enforcement** over sanctions, emitting recommendations for corrective measures designed to decrease risk.
- **Inspections** are fielded according to analysis of the level of risk, targeting high-risk sites, and are supported by accredited third parties.



Source: Information provided by ASEA, 2016.

### *Co-ordination with other government stakeholders*

Other stakeholders are involved in the management of the hydrocarbons sector, including ministries and other regulatory bodies. As ASEA has absorbed functions from a variety of entities, a clear separation of powers and functions, as well as co-ordination with these actors, is particularly

important to minimise “grey zones” and overlapping activities. During the stabilisation and transition phases, ASEA has closely collaborated on a daily basis with a large number of federal entities. This has taken place, for example, in the analysis and granting of authorisations in co-operation with CNH or in response to incidents with other government agencies; this de facto collaboration takes place when a specific task arises (for example, analysis of an application or incident) and is not governed by formal co-operation agreements. The ASEA Act foresees a co-ordination mechanism at least with the Ministry of Labour and Social Affairs (*Secretaria de Trabajo y Prevision Social*); the Agency also expects to set up formal co-operation agreements with CNH and CRE.

During the stabilisation and transition phases, ASEA’s legal department has emitted a number of *oficios* that seek to clarify powers and responsibilities with other entities. These take the form of punctual official correspondence sent to relevant agencies concerned, and are not made public.

The creation of the Co-ordination Council for the Energy Sector (*Consejo de Coordinación del Sector Energético*) is stipulated in the Law of the Co-ordinated Energy Regulators (2014). Among its objectives, the Council is to implement systems for information sharing and institutional co-operation in the sector. It is headed by the Ministry of Energy and is to meet at least quarterly; ASEA is not included in the statutory list of participating institutions but it can be invited to participate in meetings. The CCSE was constituted in September 2016, when it met for the first time.

Table 3.3. **Collaboration with stakeholders in Mexico**

Institution	Role	Area of collaboration with ASEA	Governance / modality
<b>Federal line ministries</b>			
Ministry of Environment and Natural Resources (SEMARNAT)	Dictates and conducts the national policy on natural resources, when not managed by other federal institutions, and environment.	SEMARNAT is the head of the environmental sector and ASEA is a deconcentrated entity of the ministry  Interaction between different areas of ASEA and SEMARNAT according to their areas of competence	Legal framework (ASEA Act)

Table 3.3. **Collaboration with stakeholders in Mexico** (*cont.*)

Institution	Role	Area of collaboration with ASEA	Governance / modality
Ministry of Energy (SENER)	Dictates general policies for the energy sector as a whole.	Interaction between different areas of ASEA and SENER according to their areas of competence. (e.g. bidding rounds) Participation in consultations of indigenous peoples regarding E&P activities through the Inter-institutional Committee ASEA receives opinions from SENER on draft regulations	Legal framework (Hydrocarbons Act)
Ministry of Labour and Social Affairs	Responsible for Occupational Safety and Health Administration.	Operational collaboration on areas such as inspections in the workplace	Legal framework (ASEA Act).
Ministry of Communications and transports	Dictates and conducts the policy of transportation development and communications.	Operational collaboration on topics such as inspections and the prevention of hydrocarbon pollution in the sea	Legal framework (ASEA Act; other).
<b>National energy regulators</b>			
CNH	Upstream regulator in hydrocarbons sector, that regulates and supervises E&P activities, manages bidding processes, and signs and administers E&P contracts on behalf of the Mexican State.	Interaction between different areas of ASEA and CNH according to their areas of competence ASEA receives opinions from CNH on draft regulations	Legal framework (Hydrocarbons Act, LORCME).
CRE	Midstream and downstream regulator in hydrocarbons, and economic regulator in the electricity sector.	Interaction between different areas of ASEA and CRE according to their areas of competence ASEA receives opinions from CRE on draft regulations	Legal framework (Hydrocarbons Act, LORCME).

Table 3.3. **Collaboration with stakeholders in Mexico** (*cont.*)

Institution	Role	Area of collaboration with ASEA	Governance / modality
<b>National industry associations</b>			
Mexican Association of Oil Companies (AMEXHI)	Non-profit civil association that brings together the main investors and oil and gas operators in Mexico. Founded in Mexico City in February 2015, it currently has about 50 members.	Implementation of Mexico's bidding rounds Open communications regarding the regulation that the ASEA has to issue: SEMS, Insurance requirements Regional environmental baseline studies	No written agreement. Operational co-operation.
Natural Gas Mexican Association (AMGN)	The AMGN started operations in 1998 as an association that represents the interest of the companies that participate in the natural gas industry. It has more 30 members.	Definition of criteria to implement regional environmental impact assessments Revision of Mexican Official Standards (NOM) "Call before digging"; preventive excavation programme	No written agreement. Operational co-operation.
Service stations	Service station associations represent the interest or objectives of their members.	Structured dialogue to address and resolve concerns Socialisation of regulation. Presentation and information on permits and authorisations (regional events)	No written agreement. Operational co-operation.
LPG Associations	Several independent and non-profit associations represent the interest of the sector's companies. There are both national and regional associations.	Structured dialogue with the associations Sharing of upcoming regulation Information sessions	No written agreement. Operational co-operation.

*Source:* Information provided by ASEA, 2017.



Table 3.4. **Collaboration with international actors**

Institution / Forum	Area of collaboration with ASEA	Modality / governance
<b>International regulators</b>		
USA: Bureau of Safety and Environmental Enforcement (BSEE)	Offshore regulation Deep waters Safety and Environmental Management Systems (SEMS) Emergency Preparedness and Response Well control	Memorandum of Understanding signed in October 2016.
USA: Bureau of Ocean Energy Management (BOEM)	Harmonisation of baseline studies criteria in the Gulf of Mexico Use of dispersants Environmental Impact Regulation	Letter of Intent signed in October 2016.
Canada: Alberta Energy Regulator (AER)	Non-conventional resources Collaboration within the International Centre of Regulatory Excellence (ICORE)	No written agreement. Operational co-operation.
Norway: Petroleum Safety Authority (PSA)	Sharing of best practices	No written agreement. Operational co-operation.
United Kingdom: Health and Safety Executive (HSE)	Technical staff training (through the UK Prosperity Fund) Offshore regulation Inspections and enforcement	No written agreement. Operational co-operation.
Canada: National Energy Board (NEB)	Culture of a regulatory body Safety Culture Management systems and performance measurement Independence of regulators	No written agreement. Negotiation of a Letter of Intent
<b>International industry associations</b>		
American Petroleum Institute (API)	Access to oil & gas standards Third parties accreditation	Memorandum of Understanding signed in May 2016.
Centre for Offshore Safety (COS)	Access to oil & gas standards Third parties accreditation	Collaboration is governed by MOU with API.
<b>Multilateral co-operation fora</b>		
International Offshore Petroleum Environmental Regulators (IOPER)	Industrial safety and environmental protection in offshore installations Indicators common to the sector, across different regulators Decommissioning Annual reporting on incidents and accidents	

Table 3.4. **Collaboration with international actors** (*cont.*)

Institution / Forum	Area of collaboration with ASEA	Modality / governance
International Regulators Forum (IRF)	Industrial safety and environmental protection in offshore installations Safety Culture Indicators	
<b>Think tanks</b>		
Centre for Clean Air Policy	Training and exchange of information on best practices to regulate, prevent and mitigate methane emissions in the hydrocarbon's sector	Letter of Interest.

Source: Information provided by ASEA, 2017.

### ***Participation in public policy***

The competences of the ASEA Technical Council include contributing technical elements relative to industrial safety and environmental protection to national policies. As at December 2016, the Council has not been called upon to submit recommendations on policy.

### ***Relation with the executive***

ASEA is a deconcentrated agency of the Ministry of Environment (SEMARNAT). It has technical and managerial independence, meaning that the ministry cannot interfere in technical decisions, but depends of SEMARNAT for financial and budgetary aspects. This sets it apart from the other two main sector regulators, CRE and CNH, which are ministry levels organs and, as such, are endowed with a higher level of financial and administrative autonomy.

ASEA's affiliation to SEMARNAT sits well with its absorption of several SEMARNAT functions. The creation of a new technical regulator was motivated by the need for clear responsibilities for previously unregulated areas as well as the desire to instate a counterweight to other federal actors that intervene in the sector, and are historically closer to the Ministry of Energy. The creation of ASEA significantly increased the responsibilities held by SEMARNAT in the hydrocarbons sector. This means that ASEA intervenes in a sector where SEMARNAT has limited technical expertise and experience, which has led to perceived misunderstandings and frustration. It also increases the need for close collaboration between SEMARNAT and SENER.

### ***Relation with the regulated sectors***

ASEA has sought to establish a structured dialogue with industry, in order to provide information regarding its role and new procedures, and to hear industry concerns. This dialogue takes place mainly through collective industry bodies, divided into upstream (AMEXHI, Mexican Association of hydrocarbon companies), midstream (AMGN, Mexican Association of Natural Gas) and retail groups (service stations and natural gas/LGP representatives). Meetings are organised regularly in Mexico City and in federal states. ASEA prepares a register of attendees for these meetings. ASEA is not required by law to make information relative to the calendar and content of these meetings public, and this information is not available on the Agency website.

## **Input**

### ***Financial resources***

#### ***Sources of funding***

ASEA is funded through transfers from the executive (SEMARNAT) that are included in the federal budget, and through income from fees and fines paid by industry operators. The ASEA Act foresees the creation of a trust (*fideicomiso*) that will serve to receive the latter. The trust is expected to eventually finance all operational costs of the Agency, which would no longer depend on transfers from the executive. As per the implementation plan of the energy reform, the sector regulators should gradually reach financial autonomy and no longer depend on transfers from the federal budget.

In December 2016, the Trust had not yet been set up and, as such, funds perceived from industry cannot yet be absorbed and used by ASEA. A technical committee, composed of a representative of the Ministry of Finance, SEMARNAT and the ASEA leadership team, that is to define the Trust's rules of operation and oversee its functioning, has not been constituted. As for the two co-ordinated energy regulators (CNH and CRE), the overall ceiling of the *fideicomiso* is set at three times the previous year's budget; however, it is estimated that this might not be sufficient to cover the needs of the Agency. The *fideicomiso* can also absorb unused funds from the previous year (carry forward) without any additional approvals. It has the potential to be a powerful instrument of financial autonomy.

In early 2017, ASEA is seeking to restructure the methodology used to define the level of fees paid by the industry. This will concern updating the fee for 10 procedures transferred to ASEA from SEMARNAT and

PROFEPA, as well as defining the fee for 11 new procedures managed by ASEA. The new methodology will be defined with a view to cost-recovery and the viability, admissibility and legality of the fee.

For fines related to industrial safety, ASEA determines their level based on parameters set by the ASEA Act as well as the Metrology Law. For fines related to environmental protection, ASEA sets them based on Chapter IV of the Environmental Protection Act.

Table 3.5. ASEA budget and resources, 2015-17, in MXN

	Transfers from the executive		ASEA resources	Total budget
	HR budget	Operational budget		
2015	140 300 374.08	167 147 961.40	0	307 448 335.48
2016	282 250 231.77	165 128 258.02	0	447 378 489.79
2017	321 370 608.00	240 135 265.00	0	561 505 873.00

Source: Information provided by ASEA, 2017.

In 2015, the initial proposal for ASEA's budget was almost halved, and it was further affected by cuts implemented across the federal budget in December 2015. These decreases to the headcount and budget of ASEA were felt to be hindering the capacity of the Agency to take on the formidable tasks during the stabilisation and transition phases of its operations. The situation was resolved through dialogue with SEMARNAT and SHCP in 2016, leading to an increase of the budget allowing for hire of 150 additional persons, as well as for contracting external support for most urgent regulatory activities. Currently it is generally felt that the level of resources available for the Agency is adequate for it to carry out its functions.

### *Management of financial resources*

ASEA depends on SEMARNAT for its budgetary processes and does not hold financial autonomy. ASEA submits its budget proposal to SEMARNAT (June-July), which includes it in the sectoral budget submitted to the Ministry of Finance (September). The SEMARNAT budget including specific ASEA attributions is approved by Congress in November. Budget for Human Resources is fixed and dependent upon the previously authorised headcount. Modifying the headcount requires going through a cumbersome amendment process with the Ministry of Public Function.

Once the annual operational budget is approved, ASEA is relatively autonomous in managing it. Additional approvals are needed in case of new activities or request for more funds (SEMARNAT); international staff travel (Minister of Environment); and social communication expenditures (Ministry of the Interior).

The annual budget is prepared based on submissions by the different units. It is not structured according to the Strategic Objectives of the Agency, but according to three budgetary lines corresponding to federal practice (M, G, and P budget categories). This lack of results-based budgetary and financial planning hinders integrated monitoring and evaluation of ASEA operations.

An annual procurement plan is prepared on the basis of the annual budget. It is approved by the SEMARNAT procurement board, which also has to approve documents relative to market consultations and open tenders. ASEA can award contracts directly under 310 000 MXN (approximately 15 000 EUR), has to proceed to a market consultation of three providers for contracts between 310 000 and 1 900 000 MXN (92 000 EUR) and has to publish an open tender for contracts above 1 900 000 MXN.<sup>1</sup> These processes overall and respectively take approximately two weeks, one month and five days, and between 45 and 60 days.

### *Human resources*

Overall ASEA headcount, approved by the Ministry of Finance and Public Credit and the Ministry of Public Administration, has fluctuated in line with budgetary cuts. An initial proposal for 512 employees was made in December 2014. Instead, following revision by the Ministry of Finance, a workforce of 312 was implemented in March 2015, which was further cut in December 2015 to 294. Following discussions with SEMARNAT and SHCP 2016, whereby ASEA resource limitations have been recognised, this was increased by a significant 50% to 430 persons by August 2016.

Table 3.6. ASEA workforce 2015-16

Year	Number of supporting staff	Number of professional staff	Total workforce
2015	49	256	305
2016	89	370	459
2017	89	370	459

*Source:* Information provided by ASEA, 2017.

Table 3.7. ASEA professional staff by job family

Job family/profession	Share of total professional staff (not including supporting staff)
Accounting	13
Communication	3
Economics	8
Chemical Engineering	80
Legal	85
Managerial	9
Environmental engineering	24
Biology	25
Other (please specify international relations, psychology, geology, etc.)	123
<b>Total</b>	<b>370</b>

Source: Information provided by ASEA, 2017.

Table 3.8. ASEA professional staff by gender

	Female	Male	Total
Senior management	5	35	40
Professional staff	142	188	330

Source: Information provided by ASEA, 2017.

The Executive Director can freely appoint and remove members of the ASEA leadership team (Heads of Units). ASEA does not apply the *Servicio profesional de carrera*, and vacancies are not openly advertised. Between March and October 2015, during which time ASEA filled over 300 posts, members of the leadership team identified potential candidates who were directly approached by the Human Resource team. When possible, three candidates were interviewed, but this practice was mostly not possible given the lack of qualified interviewees. The interview process included an interview with a team of psychologists, psychometric tests and a technical interview.

The level of remuneration offered by ASEA follows the salary grid of the federal government (*tabulador de sueldos*), which divides every level for a particular grade of professional staff into three bands (A, B, C). While it would be customary for staff to enter an organisation at A-band, due to the sector context, ASEA are able to appoint staff at C-band, representing an

approximate 30% increase in salary. However, it is felt that this will not be sufficient to compete with the industry once more private entities enter the market and oil prices increase.

### *Managing human resources*

Finding and retaining qualified staff is a major challenge for ASEA. Given previous sector structure, there are few skills available in the joint area of industrial safety and environmental protection, and hydrocarbon sector expertise has mostly been concentrated within PEMEX. ASEA is implementing a variety of strategies to tackle this. Training programmes have been set up with national (*Instituto Mexicano de Pétroleos*) or international actors (Bureau of Safety and Environmental Enforcement, BSEE, United States; and Bureau of Ocean Energy Management, BOEM, United States; and Britain’s Health and Safety Executive, HSE). ASEA is also investing in other staff training and certification programmes for its inspectors, who are usually paired up in senior/junior teams for on-the-job-training and mentoring.

ASEA has set up a number of tools to guide the management of human resources in a very short time, including a human resource policy and a competences framework for technical staff. The one for managerial competences is under preparation, as is an extensive analysis of requirements for promotions between levels. These have yet to be operationalised in a comprehensive staff performance evaluation system. Performance evaluation outcomes will not, however, result in promotions or bonuses. The Agency does not count with a policy that would promote gender equality within its staff of leadership team.

## Process

### *Decision making and governing body*

The Agency has technical independence; regulatory and operational decisions are taken by the Executive Director, with the support of the leadership team. The Executive Director of the Agency is directly appointed and can be freely removed by the President of Mexico. Most decisions linked to the technical work of the Agency or its management are made by its Executive Director.

### *Technical Council (Consejo técnico)*

The constitution of the ASEA Technical Council and its functions are set out in the ASEA Act; it is to approve the annual work plan and annual reports, agree upon any matters linked to industrial and operational security

and environmental protection presented to it, oversee the functioning of the ASEA Trust Fund, approve the Agency's code of conduct, and contribute technical elements to the design and formulation of national policies. Led by the Minister of Environment, representatives at minimum Director General level from the following institutions participate in the Council: Ministries of Interior, Finance and Public Credit, Energy, Communications and Transport, Labour and Social Provision, Health, the Navy, CRE, CNH, National Water Commission, National Commission for Protected Natural Areas, and the National Institute of Ecology and Climate Change. It is to meet at least once a year. Its rules of operation are found on the ASEA website.<sup>2</sup>

The Technical Council was instated at its first meeting in May 2015. In 2016, it met once (in September), when it approved the 2015 annual report of the Agency. Rules of operation state that the Council has to hold at least one Ordinary Session per year and can hold Extraordinary Sessions at the request of the President. The minutes of the meetings are sent to the members for their signature. They are considered public information but the rules of operation approved by the Technical Council do not state that they have to be published, and these are not proactively made available. Procedures for decision-making by the Council, or how it makes its contributions to national policy processes, have yet to be developed. ASEA is keen to develop more advanced procedures and to organise more frequent meetings of the Technical Council.

### *Scientific Committee (Comité científico)*

The Scientific Committee supports the Executive Director in his decision-making when required by the technical complexity of the issue at hand. Members of the Committee come from different areas of expertise, are nominated by the Executive Director for mandates of a duration of one year and carry out their duties on an honorary basis. The Committee can commission external studies if considered necessary for their decision-making processes. The membership of the Committee is public. No specific rules govern potential conflicts of interest in the case of Committee members.

The Scientific Committee was installed on 16 December 2015, and for 2015 was composed of experts in the areas of soil and water management, energy law, biodiversity, industrial safety and environmental protection, and transparency. In its first meeting, the Executive Director set the work priorities for 2016. In 2016, the Committee did not meet due to a lack of quorum and the mandates of the Committee members were not formally renewed.



### *Transparency and accountability*

As a federal entity, ASEA is accountable to Congress. While the Agency head can be called to appear before Congress, there is no formal or structured mechanism for carrying out reporting or outreach activities. Both chambers of Congress include ordinary commissions for energy, and the lower chamber includes a Special Commission of the Co-ordinated Energy Regulators, created in April 2016. The Special Commission has been fully operational since December 2016 and includes all three energy regulators in its remit, and aims to oversee the implementation of the energy reform. So far, there is no pre-defined working programme, public minutes or initiatives.

As opposed to the Energy Commissions, which are ordinary commissions, the Commission of the Co-ordinated Energy Regulators has a special status which in practice means that it can only issue recommendations to the ordinary commissions, but these are not binding. Its first activities have consisted in transmitting concerns from stakeholders regarding changes brought about by the reform (i.e. changes in requirements for oil station permits with ASEA, oil liberalisation prices with CRE).

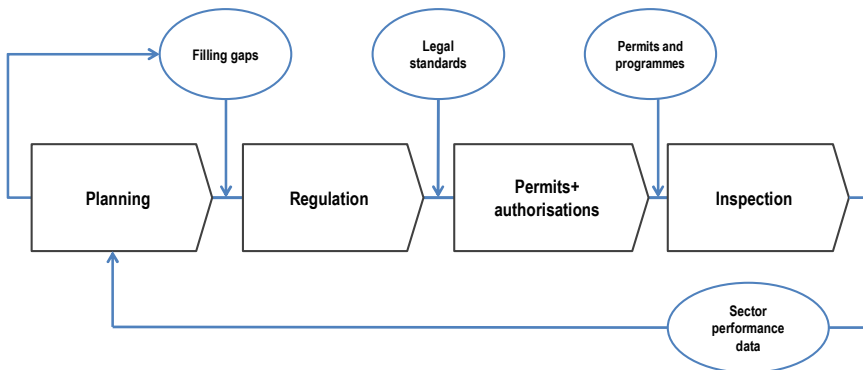
Contact with the industry is strictly regulated by the ASEA Act and the Agency's Code of Conduct. Upon soliciting a meeting with ASEA staff, regulated entities communicate proposed areas of discussion, which allow for categorisation of the meeting into an *audiencia* (discussion of an ongoing procedure) or working meeting (general information request). An *audiencia* can only be granted by the Executive Director or Head of Unit, has to include at least two ASEA officials, take place on ASEA premises, an audio or video recording of the meeting has to be preserved (but not made public) and a record of the meeting must be published on the ASEA website (attendance, date). A similar record of a working meeting is to be published on the website. These records are available for consultation on the ASEA website.<sup>3</sup>

The ASEA Act stipulates that the Executive Director cannot have held shares or worked in regulated entities during one year prior to his appointment, or have first-degree relatives in this situation. No rules govern post-ASEA employment for the Executive Director, and no specific rules exist for any other ASEA staff. By federal law, all ASEA staff undertake a statement of assets upon entering the organisation, update this yearly and again upon leaving the organisation. Moreover, the Federal Law on the Liabilities of Public Officers stipulates that public officers shall not use in their own profit, or that of third parties, any information that is not in the public domain for up to a year after they have concluded their duties.<sup>4</sup> The application of the federal laws is supervised by the Ministry of Public Administration (*Secretaría de la Función Pública*).

### *Internal organisational management*

The structure of ASEA is governed by secondary legislation (*reglamento interno*) that is approved by SEMARNAT. The *reglamento interno* was reviewed a first time following budget cuts at the end of 2015, and is being reviewed again to take into account a decision to re-increase ASEA resources. The Agency is structured into the office of the Executive Director that oversees various units (*Unidades*) focused on Management of Permits, Inspections, Regulations and Legal Standards, Planning, Administration, and Legal Affairs. The units are composed of directorate generals (*Direcciones Generales*). The organisational structure is fairly hierarchical and centralised: decision-making, activity planning and monitoring take place within the leadership team, led by the Executive Director. The 2015 *reglamento interno* has not been officially amended, while the organisation and responsibilities it describes have in practice been modified. It is planned that once the ASEA-specific *reglamento* has been finalised early 2017, the *reglamento interno* will be amended in May 2017.

Figure 3.3. ASEA management model



Source: ASEA, 2016.

The ASEA management model is based on processes, exchange of information and fluid workflows between units: the Planning Unit identifies gaps in regulation through risk analysis; the Normativity Unit bridges these gaps by proposing new regulations (in collaboration with other areas); the Management Unit implements these legal standards through permits and authorisations; the Inspections Unit supervises the implementation of standards during operations and following incidents, and receives and analyses data on sector performance, which feeds into sector risk analysis by the Planning Unit. In practice, this model has yet to be fully operationalised.

The Planning Unit has designed a sophisticated workflow model that describes processes, sub-processes and procedures according to *Arquitectura Institucional* software that maps these out and provides links to relevant documents. Socialising the use of this sophisticated tool, and thus ensuring its value, will require significant resources and buy-in from management and staff, and might be challenging until the structure and size of the organisation have stabilised following the latest change in resources. On the other hand, it will be important to build its use into working culture as early as possible, before other habits are formed.

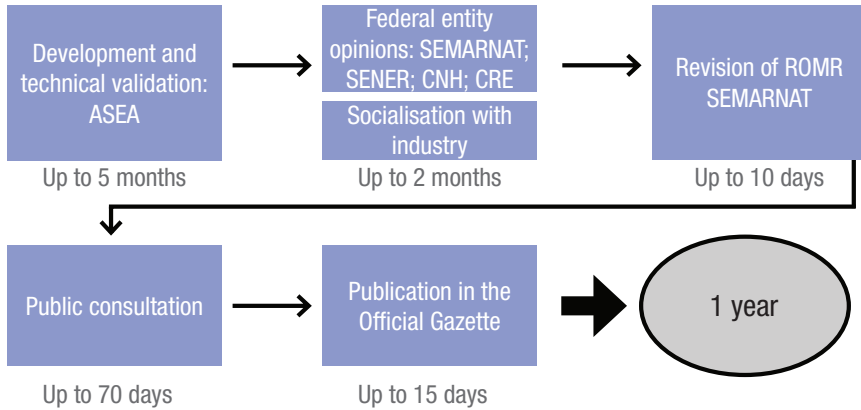
### ***Stakeholder engagement***

New regulation emitted by ASEA is submitted via SEMARNAT to COFEMER, along with the RIA, and is published for public consultation by COFEMER for 30 days. During this time, a public consultation can be initiated by a private individual, company, or organisation, which will be answered by further documents provided. A public meeting can be further requested if this information is deemed insufficient. The process is public and open to all.

In the case of regulations (*lineamientos*), in addition, ASEA has voluntarily included early stage consultation with industry in the regulatory process. This phase (*socialización con la industria*) is carried out at the same time as the consultation with other government entities and before the formal and obligatory public consultation managed by COFEMER. This can take an average of 15 business days. The consultation consists of a meeting where ASEA invites industry representatives (collective bodies), presents the draft regulation and shares it in writing with industry. Any comments received are not binding, and industry can make the same comments again during the COFEMER public consultation phase. The participants list of the socialisation meeting and the written comments are kept on record by ASEA, but they are not pro-actively made public.

While ASEA is endowed with technical independence, following the above industry consultation, it also submits draft regulation for comments by the Ministry of Finance, the Ministry of Environment, the Ministry of Energy, CRE and CNH, before finalising the draft law and submitting it to COFEMER (through SEMARNAT) for public consultation. Comments made by these entities are not binding, but ASEA has modified texts in line with comments received. They are archived by the Agency. ASEA sees this step as a useful tool for quality control and co-ordination, rather than a mechanism to exert influence over ASEA regulatory activities.

Figure 3.4. ASEA steps for developing new regulations including stakeholder engagement: one year



Source: Information provided by ASEA, October 2016.

In the case of defining new norms, drafts are proposed and developed by the National Consultative Committee for Normativity of Industrial Safety and Environmental Protection in the Hydrocarbons Sector (CONASEA), which brings together representatives of ASEA, other public entities, industry, and academics. CONASEA celebrated its opening session in April 2015 and is composed into three sub-committees: distribution and retail, exploration and extraction, and industrial processes, transport and storage. The current membership of CONASEA can be consulted on ASEA’s official web page: [www.asea.gob.mx/cms/wp-content/uploads/2016/05/cmn-directorio-del-conasea-090516.pdf](http://www.asea.gob.mx/cms/wp-content/uploads/2016/05/cmn-directorio-del-conasea-090516.pdf).

### Box. 3.2. Types of secondary regulations in Mexico

**Bylaws (*reglamentos*):** The purpose of bylaws is to further detail the situations contemplated in a law. They are applicable to any person that falls under the category foreseen by the regulation, which may relate to different matters such as labour, environment, business or trade, among others. The executive issues them in order to implement a law.

**Decrees:** Administrative orders issued by the public administration aimed at regulating a specific situation. They could be administrative, legislative or judicial. The decrees issued by the executive power are administrative.

### Box. 3.2. Types of secondary regulations in Mexico (*cont.*)

**Technical standards:** Technical regulations issued by the public administration aiming at regulating the characteristics of a good or service that are produced within the country. They could have a mandatory or voluntary character. This category also includes emergency standards (*normas emergentes*) that are issued in cases of emergency and are valid for six months.

**Circulars:** Internal documents of the public administration that intend to clarify, guide, inform or interpret regulation from a superior to its subordinates. Circulars aim at establishing the conduct that should be followed in regard to an act or service of the public administration. This category includes for example *oficios* or *dictámenes*.

*Source:* OECD (2014), *Regulatory Policy in Mexico: Towards a Whole-of-Government Perspective to Regulatory Improvement*, OECD Publishing, <http://dx.doi.org/10.1787/9789264203389-en>.

### *Appeals*

Various levels of appeals against decisions by ASEA are available to regulated entities. The first step is an appeal (*recurso revision*) directly with ASEA, in the interest of resolving the issue amicably, without resorting to judicial proceedings. In this case, the review is managed by the Legal Unit and the concerned technical unit. The process lasts three months, and a public version of the exchange can be consulted upon finalisation and upon request.

Companies may choose to initiate legal proceedings via a *juicio contencioso administrativo* or *juicio de amparo* before federal courts. Following this, appeals in second instance can be presented to the *tribunal colegiado de circuito*. In May 2016, in second instance, ASEA obtained an important ruling upholding operator responsibility for damages in cases of clandestine siphoning of oil by organised crime. Decisions made in second instance can be appealed to the Supreme Court (SCJN).

Citizens are able to file complaints (*denuncias*) about non-compliance or incidents directly to ASEA. As at December 2016, ASEA had received 675 complaints, of which 228 were transferred from PROFEPA during the stabilisation phase. When a complaint is received, and ASEA has competence in the subject matter, it investigates and informs the concerned party.

Table 3.9. **Appeals (*Juicios de Amparo*)**

Up to December 2016

Year	Received	Upheld	Pending	Comment
2015	45	34	11	7 in first instance 4 in second instance
2016	84	36	48	38 in first instance 10 in second instance

Source: Information provided by ASEA, 2017.

Table 3.10. **Appeals (*Juicios Contenciosos Administrativos*)**

Up to December 2016

Year	Received	Upheld	Pending
2015-16	160	52	108

Source: Information provided by ASEA, 2017.

### ***Regulatory quality tools***

ASEA undertakes several steps to ensure regulatory quality internally. First, analysis by the Planning Unit based on regulatory gaps or sector risks feeds into decisions to draft new regulations. Second, the Legal Affairs Unit supports the Normative Unit in the analysis of risks linked to constitutional appeals. Third, as described above, new regulation goes through an early stage stakeholder consultation process as per Figure 3.4.

Finally, ASEA systematically undertakes regulatory impact assessments (RIA) for all activities that impose new processes on regulated entities. The RIA can be simple or enhanced according to risk level (moderate or high). The RIA always includes a cost-benefit analysis, which ASEA carries out internally or with the support of external experts depending on the scope of the regulatory activity.

There is currently no requirement or plan for *ex post* evaluation of ASEA regulatory activities. *Normas oficiales* have to be reviewed maximum every five years for relevance, but higher level regulations or laws do not have this requirement.

### Box. 3.3. Regulation issued by ASEA, up to December 2016

- 13 May 2016: Safety and Environmental Management Systems (SEMS)
- 23 June 2016: Minimum insurance requirements for industry operators
- 23 June 2016: Extension of emergency standard NOM-EM-001-ASEA-2015 relative to the design, maintenance and operation of petrol stations
- 29 July 2016: Authorisation, approval and performance assessment of third parties
- 4 November: Incident and accident reporting
- 7 November: Petrol stations
- 14 November: Vapour recovery systems
- 24 November: Storage and distribution terminals
- 9 December 2016: Surveying, exploration and extraction of hydrocarbons

## Output and outcome

### *Assessing the performance of regulated entities*

As per the SEMS, regulated entities are requested to submit information linked to all areas of operations and performance to ASEA on a yearly basis. These include: Objectives and targets; Competences and training; Communication and consultation; Document records; Controls and changes; Mechanical integrity and quality insurance; Contractor security (including performance evaluation results of contractors and corrective measures in case of lags); Monitoring, verification and evaluation; Emergency preparedness; Audits; Investigation of incidents and accidents (including indicators of frequency and gravity). ASEA has not emitted manuals for the compilation of this information nor has it prescribed specific overall performance indicators, which may complicate analysis of sector-wide data. Regulation as to the obligations of the regulated entities with regard to SEMS was issued in May 2016 and ASEA will begin to receive information from the industry at the end of 2018.

Based on this information, ASEA prepares an annual report on sector performance (ASEA will not publish information relative to the performance of specific operators). The first report of this nature can be expected in 2019.

### *Assessing the performance of the regulator*

ASEA submits its annual reports to the Technical Council. The report is prepared by the Planning Unit of the Agency. The 2015 report was approved by the technical Council at its meeting in September 2016. The report is made available on the ASEA website.<sup>5</sup> The report is not systematically presented to Congress.

### *Performance indicators*

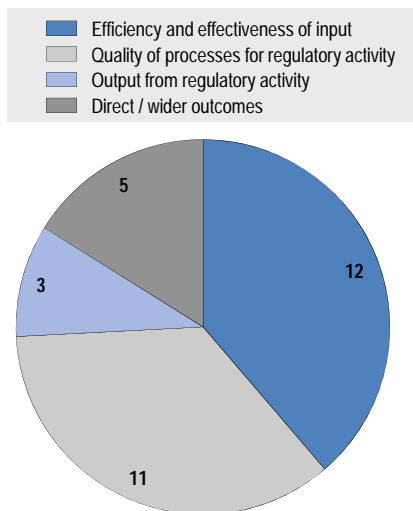
For regulators, performance indicators need to fit the purpose of performance assessment, which is a systematic, analytical evaluation of the regulator's activities, with the purpose of seeking reliability and usability of the regulator's activities. Performance assessment is neither an audit, which judges how employees and managers complete their mission, nor a control, which puts emphasis on compliance with standards (OECD, 2004). Accordingly, performance indicators need to assess the efficient and effective use of a regulator's inputs, the quality of regulatory processes and identify outputs and some direct outcomes that can be attributed to the regulator's interventions. Wider outcomes should serve as a "watchtower", which provides the information the regulator can use to identify problem areas, orient decisions and identify priorities.

The nine strategic objectives retained for the first planning period seem to focus mostly on intermediate management goals rather than looking at the ultimate performance and results of the regulator's work. This may be a consequence, on the one hand, of a deliberate management decision to focus on establishing solid procedures and organisational governance structures during the first years of the Agency's operations, as well as of using the Balance Scorecard methodology which is a management tool developed primarily for the private sector, rather than the measurement of public policy goals.

ASEA has developed 31 indicators to measure the achievement of the seven SOs selected for the first planning period (2016-2018). For some of them, quarterly targets for 2015-2016 exist, although 2015 is outside of the programming period. Targets for the full three-year period have yet to be set. The indicators refer either to results (R – *resultado*) or trends (T – *tendencia*), with T as a kind of intermediate measure where progress is easier to see, and R as something more medium term. However, both seem to be proposed for quarterly reporting.



Figure 3.5. ASEA indicators as per the input-process-output-outcome framework



In January 2017, ASEA’s leadership team agreed to align indicators to the input-process-output-outcome sequence. The Planning Unit expects that indicators will be aligned to this methodology by February 2017. Currently, the indicators focus on performance linked to input and process, rather than output and outcome (Figure 3.5), as per the framework presented in Chapter 1 (Figure 1.2).

Table 3.11. ASEA strategic objectives and indicators 2015-18

Strategic objective and implementation strategy	Indicator	Measure	Type of indicator
1. Implement risk-based planning and management	(R) Frequency of accidents	Accidents per a million worked man-hours (PEMEX indicator)	Wider outcome
Strategy: Identify and characterise risk on the hydrocarbons value chain based on international best practices	(R) Gravity of accidents	Days lost per million worked man-hours (PEMEX indicator)	Wider outcome
	(R) Fatality of accidents	Death per million worked man-hours (PEMEX indicator)	Wider outcome
	(T) Number of accidents	Total number of accidents during period	Wider outcome
	(T) Number of accidents with RCA	Total number of accidents with RCA during the period	Wider outcome

Table 3.11. ASEA strategic objectives and indicators 2015-18 (cont.)

Strategic objective and implementation strategy	Indicator	Measure	Type of indicator
2. Propose risk-based regulation	(R) Regulatory framework for risk-management	N of regulations emitted for risk-management	Process (risk analysis)
Strategy: Implement a regulatory framework for risk management in the hydrocarbon sector	(T) Preliminary projects	N of preliminary projects for risk-management	Process (risk analysis)
3. Improve the performance of industrial and operational safety and protection of the environment by an effective management of licensing and records	(T) Transferred processes	N of transferred processes attended to / N of total transferred processes	Process (timeliness)
	(T) New processes 2015	N of new processes attended to / N of total new processes	Process (timeliness)
Strategy: Optimise decisions that contribute to minimising risks	(T) Effective operation of licensing and records	N of permits and records resolved within legal period / N of new permit and record applications	Process (timeliness)
4. Reduce number and impact of accidents via inspection of critical risks	(R) Accomplishment of the Inspection Program	Inspections conducted / N of total inspections planned	Process (timeliness)
	(R) Collection of RCA	RCA collected within legal period / RCA with deadline	Process (timeliness)
Strategy: Carry out inspection focused on critical risk	(T) Monitoring to administrative procedures	N of administrative procedures closed / N of total administrative procedures	Process (timeliness)
	(T) Compliance of non-programmed inspections	Total of Non-programmed inspections	Process (timeliness)
5. Operate based on a model of institutional architecture (IA)	(R) Operations according to IA	N of projects developed under IA / Total n of approved projects	Input
Strategy: Install a governance model that includes processes, systems and infrastructure for digital operations	(R) Development of Macro Processes	N of macro processes developed / N of macro processes designed.	Input
	(T) Design of processes	N of processes designed	Input
	(T) Development of processes	N of processes developed	Input
	(T) Operation by processes	N of implemented processes	Input
	(R) Digital Operation	N of digitalised systems currently operating	Input

Table 3.11. ASEA strategic objectives and indicators 2015-18 (cont.)

Strategic objective and implementation strategy	Indicator	Measure	Type of indicator
6. Operate with regulatory certainty Strategy: Guarantee regulatory certainty via modern and efficient decisions ( <i>actos de autoridad</i> ) that strengthen risk-management in the hydrocarbons sector	(R) Solutions oriented towards risk-management in controversies	Resolutions that mitigate technical risks / N of controversies	Process
	(R) Regulatory criteria oriented towards risk-management	Regulatory criteria / Re-interpretation following appeal	Output from regulatory activity
	(T) Decisions aligned with ASEA regulatory criteria	Decisions that follow ASEA regulatory criteria / Total n of decisions	Output from regulatory activity
	(T) Appeals ( <i>recursos de revisión</i> )	Decisions confirmed in appeals / Appeals admitted	Output from regulatory activity
7. Manage talent efficiently Strategy: Develop a competency model for a highly specialised team and guarantee its permanency	(R) Solutions oriented towards risk-management in controversies	Resolutions that mitigate technical risks / N of controversies	Process
	(R) Trained personnel	N of staff received training / N of total staff	Input
	(R) Certifications in substantive areas	N of certified staff / N of total staff in substantive areas	Input
	(R) Performance evaluation	N of staff with outstanding or satisfactory evaluation / Total evaluated staff	Input
	(R) Staff survey on work environment and culture	2015 survey vs. 2016 survey	Input
	(T) Human capital module / strategy	Phases executed / Phases planned	Input
(T) Culture and leadership module / strategy	Phase executed / Phases planned	Input	

*Notes:* This table refers to the seven SOs that were “activated” for monitoring by ASEA for 2016-18 in 2015. The decision to add a further two SOs was taken in January 2017 and indicators were being defined at the time of finalisation of this report.

## Notes

1. Exchange rate 27 May 2016, MXN 1 = EUR 0.0484. MXN 310 000 = EUR 15 011. MXN 1 900 000 = EUR 92 015.23.
2. [www.gob.mx/asea/documentos/lineamientos-de-operacion-del-consejo-tecnico-de-la-asea#](http://www.gob.mx/asea/documentos/lineamientos-de-operacion-del-consejo-tecnico-de-la-asea#).
3. [www.gob.mx/asea/documentos/audiencias-asea](http://www.gob.mx/asea/documentos/audiencias-asea).
4. (In English) Article 9: [www.banxico.org.mx/disposiciones/marco-juridico/otras-disposiciones-aplicables-al-banco-de-mexico/disposiciones-en-materia-de-responsabilidad-admini/leyes-y-reglamentos/%7b53dc7c5a-549d-a50b-f29d-4fc49b875fff%7d.pdf](http://www.banxico.org.mx/disposiciones/marco-juridico/otras-disposiciones-aplicables-al-banco-de-mexico/disposiciones-en-materia-de-responsabilidad-admini/leyes-y-reglamentos/%7b53dc7c5a-549d-a50b-f29d-4fc49b875fff%7d.pdf)
5. [www.gob.mx/asea/documentos/primer-informe-anual-de-labores](http://www.gob.mx/asea/documentos/primer-informe-anual-de-labores).

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## The Governance of Regulators

# Driving Performance at Mexico's Agency for Safety, Energy and Environment

As “market referees”, regulators need to be constantly alert, monitoring trends as well as assessing the impact of their decisions. What should be measured? Is it possible to attribute impacts to regulators' decisions? How to make effective use of what is measured? How should the organisational structure and governance be optimised? Addressing these questions effectively can ultimately determine whether trains will run on time, there is clean water in the tap, lights switch on, the telephone and internet work and there is cash in the ATM machines. To help regulators in their quest to better evaluate their performance, the OECD has developed a Performance Assessment Framework for Economic Regulators (PAFER) that looks at the institutions, processes and practices that help regulators improve their organisational impact, based on the premise that governance matters for the performance of regulators.

This report applies the PAFER to Mexico's Agency for Safety, Energy and Environment and assesses its functions, practices and behaviour. It focuses on internal governance, including structures and processes for decision making, managing financial resources, attracting and retaining talent, managing data and assessing performance. The review identifies a number of challenges and opportunities for improvement, and is a companion to reviews of the internal governance of two other Mexican energy regulators, the National Hydrocarbons Commission and the Energy Regulatory Commission, and the review of the external governance of the country's energy sector, *Driving Performance of Mexico's Energy Regulators*.

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