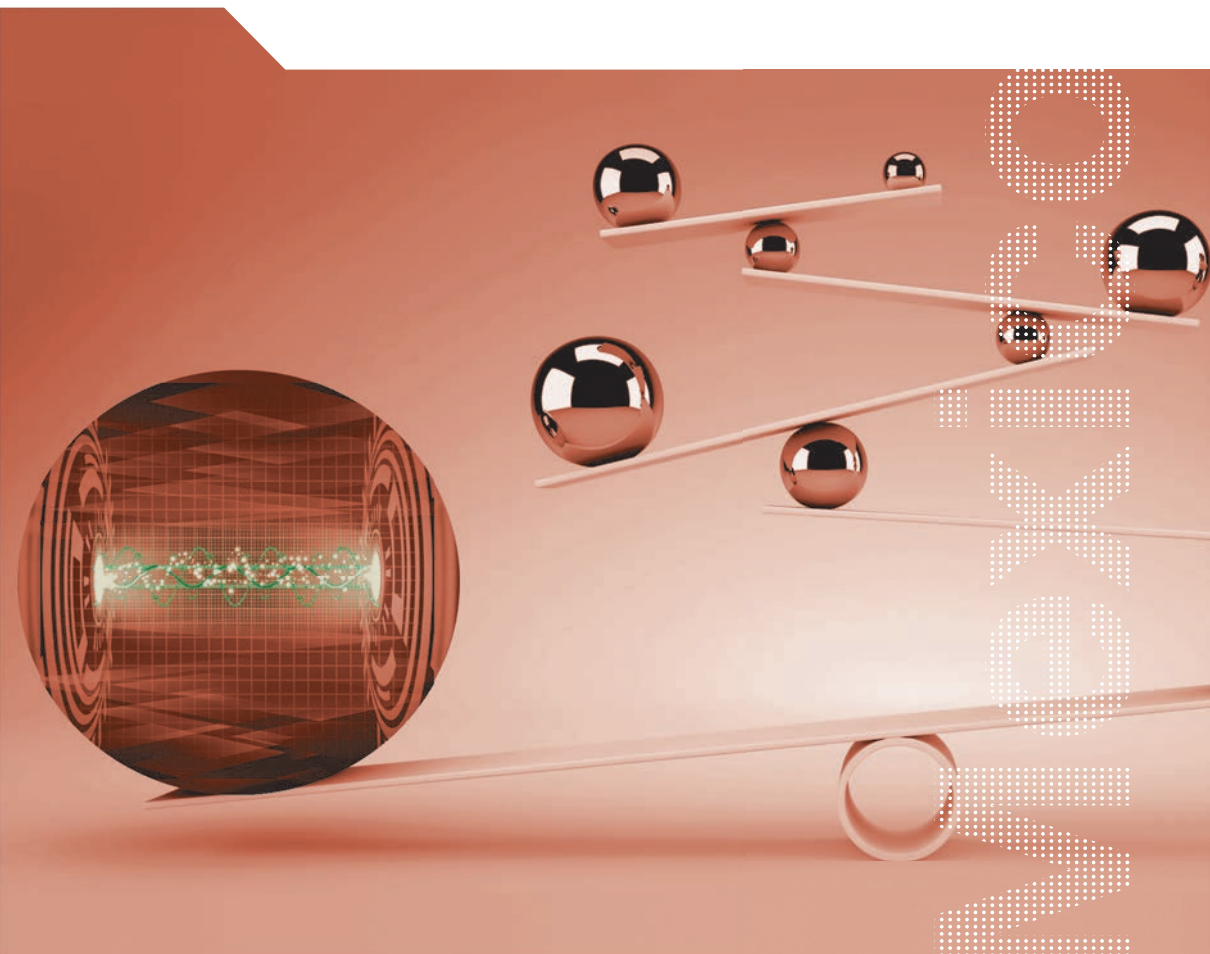


The Governance of Regulators

Driving Performance at Mexico's National Hydrocarbons Commission



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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 National Hydrocarbons Commission (CNH) and has been conducted in parallel to the reviews of the Agency for Safety, Energy and Environment (ASEA) 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 the CNH 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 harmonising and co-ordinating indicators related to core activities.

Synergies and joint actions need to build on specific reforms within each regulator. The review finds that the CNH has built trust and a successful track record in the early phases of implementation of the reform. It is particularly important that the CNH now enhance internal processes that can further support its performance over the long term and in line with the timing of the contracts that it is administering. In particular, the review recommends strengthening strategic planning to align it with key deliverables and using it as a tool for steering and management. There is also a need for robust and transparent financial and human resources processes as well as a management structure that allows the governing council to be more focussed on strategic decision-making.

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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Table of contents

Acronyms and abbreviations	9
Executive summary	11
Assessment and recommendations	15
<i>Chapter 1. Methodology</i>	47
Analytical framework.....	48
Performance indicators.....	51
Approach.....	52
References.....	54
<i>Chapter 2. Sector context</i>	55
Institutions.....	56
Institutional and regulatory reform of the energy sector.....	60
References.....	67
<i>Chapter 3. Internal governance of the National Hydrocarbons Commission</i>	69
Role and objective.....	70
Input.....	80
Process.....	88
Output and outcome.....	99
Notes.....	103
References.....	104

Tables

1. Results of Mexico’s Round 1	16
2. CNH annual budget comparative in MXN million (2009-2016).....	25
3. Total workforce by supporting and professional staff (2012-17).....	26
1.1. Criteria for assessing regulators’ own performance framework.....	50
3.1. Match of the legal and internal strategic objectives	72
3.2. CNH functions.....	75
3.3. CNH powers.....	77
3.4. CNH annual budget comparative in MXN million (2009-16).....	81
3.5. Starting budget allocations for staff in the different administrative units	83
3.6. Total workforce by supporting and professional staff (2012-17).....	85
3.7. Share of professional staff by job family.....	86
3.8. Organisational structure before and after the Energy Reform.....	95

Figures

1. CNH strategic planning and implementation framework.....	18
2. Input-process-output-outcome framework for performance indicators....	42
1.1. The OECD Best Practice Principles on the Governance of Regulators	50
1.2. Input-process-output-outcome framework for performance indicators.	51
2.1. Timeline of the implementation of the energy reform, 2013-19	64
2.2. Areas of influence and legal status of energy sector institutional actors, post-2013	66
3.1. National Hydrocarbon Commission.....	70
3.2. CNH role and functions.....	73
3.3. CNH strategic planning and implementation framework.....	74
3.4. CNH starting annual budget for 2016 in percentages.....	80
3.5. Formula to build CNH budget.....	81
3.6. Organisational chart of the CNH.....	94
3.7. Types of statistical reports found on CNH’s data portal	101

Acronyms and abbreviations

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

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

Executive summary

The National Hydrocarbon Commission (CNH) is a technical regulator overseeing hydrocarbon exploration and extraction in Mexico. Established in 2008, the CNH has substantially broadened its remit since the 2013 energy reform that opened up the hydrocarbon sector to competition. Current responsibilities include administering the auctioning of access to hydrocarbon reserves, as well contracts and entitlements, regulating and supervising activities undertaken by operators and assisting the Ministry of Energy (SENER) with energy policy. As part of the reform, the CNH has also acquired technical, operational and managerial autonomy.

The CNH has successfully navigated the early phases of implementation of the reform and is seen as a professional and trusted regulator. It is urgent to build on this trust and track record to enhance internal processes that can further support the performance of the CNH and fully reap the benefits of autonomy. The CNH should take advantage of the synergies and joint solutions offered by the establishment of an integrated energy regulators' system with the two other regulators overseeing the energy sector, the Agency for Safety, Energy and Environment (ASEA) and the Energy Regulatory Commission (CRE).

Role and objectives of the regulator

The CNH has started a vision/planning exercise that has led to the identification of six core strategic objectives and actions to be implemented over one-year. However, the CNH has not yet fully developed a strategic plan where objectives can be aligned to budgetary programmes and priorities as well as internal roles and functions.

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.

- Broaden the planning horizon of the operational plan, for example by aligning it with key deliverables such as the five-year auction plan and the management of potential future contracts and entitlements, and streamline actions.
- Set up internal mechanisms for developing and overseeing the implementation of the strategy for achieving the medium-term objectives and the annual operational plans.

Input

Financial resources management can be cumbersome and slow down operations. The CNH is funded through the federal fiscal budget and the regulator's own income. Every year the CNH issues a list, approved by the Ministry of Finance and Public Credit (SHCP), of fees, duties and entitlements, which then go into a trust fund. The law sets a ceiling for the trust fund of three times the amount of the fiscal budget of the previous year. The main source of funding is currently provided by the database for the hydrocarbon sector, the National Centre for Hydrocarbon Information (CNIH), which sells information for exploration and extraction use to the regulated sector.

There is currently no established recruitment mechanism. This can create a perception of unfairness and undermine the capacity of the CNH to attract and retain talent over time. It is also important to develop ways of diversifying recruitment to avoid any perception of closeness to industry and the ministry. Currently, most of the personnel that work in the CNH come from oil and service companies as well as from government entities.

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.
- Develop robust internal financial management mechanisms to identify spending needs linked to priority actions.
- Develop a competitive recruitment process and training system to attract and retain staff, including through periodic performance evaluations and promotion procedures.

Process

The governing council is composed of seven Commissioners, of whom one serves as the President Commissioner. Commissioners are involved in daily decision making and the President Commissioner is also CNH's chief executive officer. There is no designated operational co-ordinator supporting the President Commissioner in the management of the organisation.

The regulatory process builds on internal and external quality control mechanisms. However, some of the internal mechanisms are still in the early stages of development. For example, there is no standard procedure to inform the work of the advisory councils that conduct "early-stage" consultation on regulatory proposals.

The CNH has established safeguards to avoid conflict of interest through a code of conduct and declarations of interest for Commissioners and senior management. Minutes, resolutions and technical support documents of the governing council meetings are published on the CNH website and the meetings are streamed live and archived on the Internet.

Like all federal entities, the CNH is accountable to Congress. The CNH is required to prepare annual reports on activities and the President Commissioner can be called to appear in Congress, but hearings do not happen systematically.

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.
- Allow the governing council to be more focussed on strategic decision making by creating the post of Chief Operations Officer, who would be in charge of daily operations and co-ordination of the professional units.
- Create an internal regulatory committee to oversee the rule-making process and enhance the use of regulatory management tools, including transparent standards for the advisory councils.

Output and outcome

The vision exercise conducted by the CNH would provide an initial basis for monitoring CNH performance; however, the planning exercise did not produce details on timelines, milestones and budget requirements.

The CNH collects a wealth of data on exploration and extraction through CNIH. This information can be accessed through a dedicated platform (portal.cnih.cnh.gob.mx).

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 comprehensive set of indicators that track not only actions and inputs but also outputs and provide regular updates to the governing council and senior management on progress.
- Evaluate information needs and collect data that will be useful in supporting the performance of the hydrocarbon sector (especially on measurement of production and extraction).

Assessment and recommendations

This assessment focuses on the internal governance arrangements of the National Hydrocarbons Commission (*Comisión Nacional de Hidrocarburos*, CNH). It is the result of a review of the agency led in parallel with reviews of Mexico's Agency for Safety, Energy and Environment (*Agencia de Seguridad, Energía y Ambiente*, ASEA) 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), which focuses on co-ordination and relations with other federal actors and sector stakeholders. The internal governance reviews of ASEA 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 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 CNH.

Role and objectives of the regulator

The CNH is a technical regulator who regulates and oversees the upstream process in the hydrocarbon exploration and extraction sector. CNH was established in 2008 as a technical regulator responsible for regulating and supervising the exploration and extraction of hydrocarbons by the state-owned *Petroleos Mexicanos*, PEMEX. Following the reform and the opening up of the hydrocarbon sector to competition, it continues to focus on the upstream sector of the value chain and is responsible for administering the auctioning of access to hydrocarbon reserves, administering contracts and entitlements, regulating and supervising activities undertaken by operators and assisting SENER in energy policy.

These changes have caused a substantial increase in the regulator’s responsibilities.

The CNH has ministry-level status granted by the Law of the Co-ordinated Energy Regulators (*Ley de los Órganos Reguladores Coordinados en Materia Energética, LORCME*) and the *Organic Law of the Federal Public Administration*. As part of the 2013 constitutional reform, the CNH has acquired technical, operational and managerial autonomy. Furthermore, it is the Hydrocarbons Act of 2014 that defines the basis in which state-owned companies and private companies can explore, extract and commercialise hydrocarbon reserves in the subsoil. This reform opens a market that had been closed for over 70 years in Mexico.

Entrusted with the responsibility of running a novel process for Mexico – the auctioning of the access to oil resources – CNH has successfully managed the launch of the first round of auctions. CNH has gone through a learning process, benefitting also from international advice and support. For the first three auctions, CNH was supported by two international firms (KPMG* and EY†) for the financial analysis, thus facilitating learning and enhancing the perception of professionalism. While the first auction did not lead to a successful bid, auctions have been increasingly successful. For example, all fields were sold in the third bidding process as seen in Table 1 below.

Table 1. Results of Mexico’s Round 1

Bidding process	Date	Title	Blocks assigned
1	15 July 2015	Exploration in shallow waters	2/14 (14%)
2	30 September 2015	Extraction in shallow waters	3/5 (60%)
3	15 December 2015	Extraction in mature fields	25/25 (100%)
4	5 December 2016	Exploration and Extraction in deep waters	8/10 (80%)
PEMEX Partnership	5 December 2016	Pemex partnership 1	1/1 (100%)

Source: Information provided by CNH (April 2017) and <http://rondasmexico.gob.mx/r01-licitaciones>.

*. <https://goo.gl/nIwCSz>.

†. <https://goo.gl/AFPks1>.

CNH is increasingly perceived as a professional and trusted regulatory agency. It is urgent to further enhance this perception and the actual practices of the organisation with robust internal processes supporting the performance of the CNH. This perception is in part the result of a conscious effort to be transparent on the CNH's activities. For example, the CNH has introduced in the early phases of its existence a code of ethics to safeguard the regulator from undue influence from industry and government. These efforts have built a capital of credibility that now needs to be invested in building the internal processes and administrative units that are crucial to support the CNH's performance over time. This investment needs to start with the development of a comprehensive strategy to steer CNH's activities.

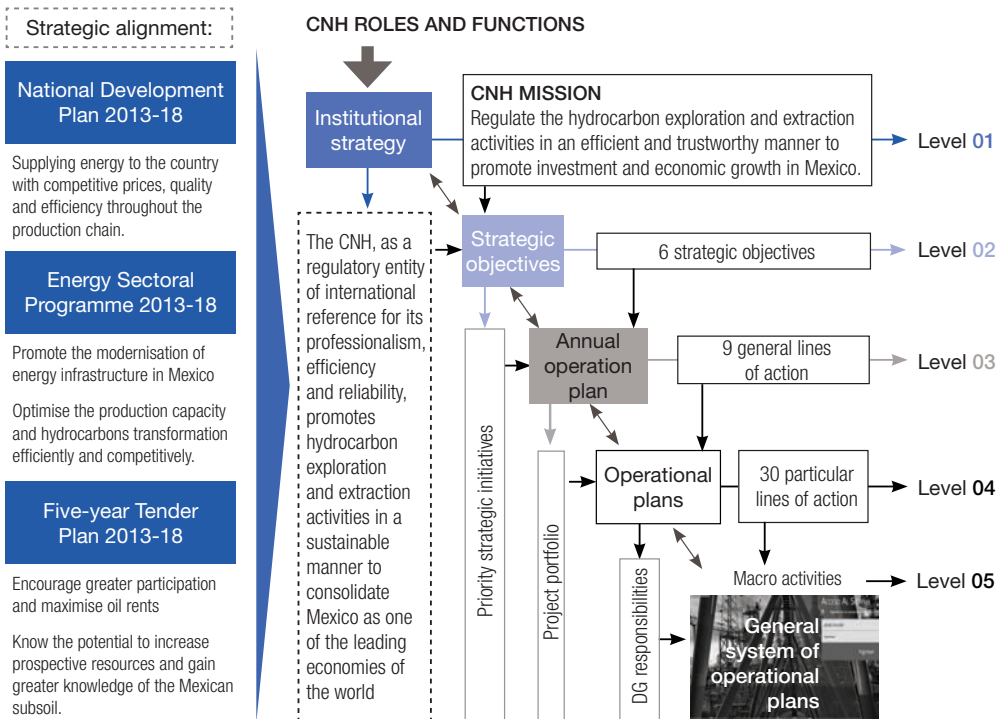
Administrative and operational demands have been particularly intense for staff, leaving limited space to consolidate and focus on more analytical strategic planning. The different roles and functions of the CNH (i.e. public biddings, signing and managing of contracts, administrate the National Centre for Hydrocarbon Information and the National Core Repository, quantification of reservoirs, develop the country's petroleum potential, authorisations of geophysical and geological exploration activities, and advising SENER) have an important time-consuming administrative component which consumes a large share of the personnel's efforts. The latter situation coupled with the lack of priorities reduces human and financial resources that could otherwise be focused on technical, analytical and regulatory areas like deciding oil fields to be auctioned, or monitoring exploration and extraction entitlements and contracts.

The Commission has not fully developed a strategic plan where objectives can be aligned to budgetary programmes and priorities, as well as to internal roles and functions. As a federal agency, the CNH follows monitoring mechanisms and guidelines for budgetary purposes overseen by the Ministry of Finance and Public Credit (*Secretaría de Hacienda y Crédito Público*, SHCP), and human resources as well as an institutional risk map to comply with obligations set and overseen by the Ministry of Public Administration (*Secretaría de la Función Pública*, SFP). However, these mechanisms cannot be the substitute for an internal planning process that needs to provide the regulator and its senior management with the tool to prioritise objectives assigned to the regulator, align resources with these priorities and monitor progress on their achievements (and make the necessary adjustments during implementation).

CNH has started a vision/planning exercise that has led to the identification of six core strategic objectives, stemming from the objectives assigned in CNH's enabling legislation, as well as general, specific and operational actions to be implemented over a one-year

horizon. There isn't yet a medium-term operational plan to set priorities for the achievement of the core strategic objectives. The core strategic objectives include: i) Promote knowledge of the subsoil and evaluate oil potential; ii) Increase response capacity, efficiency and transparency of the bidding process for hydrocarbon exploration and extraction contracts; iii) Have a robust and transparent system to manage entitlements and contracts; iv) Have efficient regulation, adhering to international best practices and verifying their compliance; v) Support the correct and most convenient choice of (exploration and extraction) areas, the efficient management of biddings, entitlements and contracts, and the efficient evaluation of exploration and extraction plans to foster the increase of production and reserves; vi) Consolidate the entity with efficient, systematised processes and a defined organisational structure. The six core strategic objectives have informed nine general actions, to be implemented through 30 specific actions (see Figure 1).

Figure 1. CNH strategic planning and implementation framework



Source: Information provided by CNH (May 2017).

https://www.gob.mx/cms/uploads/attachment/file/214112/plan_anual_de_trabajo_pat_2017_cnh.pdf

As per the law, the CNH has the responsibility to enforce regulation issued in the sector and verify compliance through inspections, the latter being an area with an ample margin for improvement. The first two years of existence of the regulator have been dedicated to understanding its function of setting the basis for the entitlements and contracts of exploration and extraction of hydrocarbons. The following years will need to address not only the bidding processes but also the management and supervision of the stated entitlements and contracts.

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"> • Prioritised issue resolution approach for the day • Greater transparency and alignment across the NEB • Provide advice and recommendations to CEO/DH
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"> • Greater transparency and alignment across the NEB • Provide advice and recommendations to CEO/DH
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"> • Greater transparency and alignment across the NEB • Provide advice and recommendations to COO

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
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"> • Ensures the standardisation and consistency of NEB data collection, storage and management supporting the availability and usage by all internal and external stakeholders. • Provide advice and recommendations to COO
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"> • Ensure materials presented to the BMs are sufficiently prepared, researched and appropriate for presentation.
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"> • Honest exchange of ideas and consideration of different perspectives to allow individual VPs to incorporate an enterprise-first perspective into decisions. • EMC is not a decision-or recommendation-making body

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

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 CNH

- ***Broaden the planning horizon of the operational plan, for example by aligning to key CNH deliverables (e.g. five-year auction plan, management of potential future contracts and entitlements).*** In order to foresee what future demands will be, and the measures to address them, it is important to complement the current annual plan with a medium to long-term operational plan done in agreement between the commissioners and senior management. For knowledge sharing purposes rely on the Energy Regulators' Group to discuss and report on progress regarding the priorities set out in the medium-term objectives and annual action plans (Box 2).

Box 2. Corporate strategy and annual forward work programme of OFGEM in the United Kingdom

In light of its statutory duties, OFGEM has developed a corporate strategy that sets out, amongst other things, OFGEM's mission, outcomes, regulatory approaches, priority activities (OFGEM, 2014). OFGEM has also separately published regulatory stances, which are principles which it had regard to in developing policy within the limits of its statutory duties (OFGEM, 2016a). These regulatory stances are:

- Promoting effective competition to deliver for consumers
- Driving value in monopoly activities through competition and incentive regulation
- Supporting innovation in technologies, systems and business models

Box 2. Corporate strategy and annual forward work programme of OFGEM in the United Kingdom (*cont.*)

- Managing risk for efficient and sustainable energy
- Protecting the interests of consumers in vulnerable situations

In the context of its corporate strategy, OFGEM establishes an annual forward work programme. OFGEM initially publishes a draft forward work programme, and then seeks submissions on this work programme, which then considers finalising the forward work programme (for example, OFGEM’s draft Forward Work Program for 2017-18 was released for consultation on 19 December 2016, with submissions due on 15 February 2017, and the final work program due to be released in March 2017 (OFGEM, 2016b).

The draft forward work programme for 2017-18 sets out key initiatives, within which the draft forward work programme identifies specific pieces of work that OFGEM considers will deliver the greatest benefit to consumers given its resources. The initiatives in OFGEM’s draft forward work programme for 2017-18 are (OFGEM, 2016b):

- Enabling a better functioning retail market
- Facilitating the energy transition
- Learning from the first RIIO framework and setting RIIO-2 up for success
- Introducing competition in monopoly areas
- Becoming an authoritative source of quality analysis

The forward work programme also sets out OFGEM’s budget for the period, and includes regulatory and e-serve performance indicators and deliverables for each of the pieces of work under the initiatives.

Source: OFGEM (2014), “Our Strategy”,

https://www.ofgem.gov.uk/sites/default/files/docs/2014/12/corporate_strategy_0.pdf (accessed 4 April 2017), OFGEM (2016a), “OFGEM’s regulatory stances”, <https://www.ofgem.gov.uk/publications-and-updates/ofgems-regulatory-stances> (accessed 4 April 2017), OFGEM (2016b), “Forward Work Programme 2017-18”, https://www.ofgem.gov.uk/system/files/docs/2016/12/draft_forward_work_programme_2017-18.pdf (accessed 4 April 2017).

- ***Set short to medium-term priorities by weighting sector and organisational risks.*** CNH has started identifying some risks related to the activities it carries out. This exercise is carried to fulfil a reporting requirement to the federal government. However, risks are not weighted nor is there an assessment of their probability. Beyond this requirement, the CNH should assess the risks faced by the organisation more systematically. It should distinguish between the oil and gas sector and organisational/corporate risks, and use this

risk mapping to identify priority actions to be put in place to mitigate these risks. This mapping would also help CNH streamline actions and focus on those that are more urgent. Once the priorities are agreed upon among commissioners and senior management, the CNH should develop a communication strategy to align the whole workforce in the same vision and goals. Achieving the strategic objectives should be seen as a long-distance runner exercise and not as a sprint.

- ***Set up internal mechanisms for developing and overseeing the implementation of the strategy/medium-term objectives and annual operational plans.*** Monitoring and Planning functions should be clarified within the CNH and possibly located in an administrative unit with an overall view of the work of the organisation, and with the readiness to meet enterprise-wide strategic and operational needs. Following the development of the annual operational plan, the CNH should ground co-ordination and quarterly reporting exercises on progress, in working plans of the different units and general directorates including timelines, milestones and indicators to monitor and adjust implementation.

Input

Financial resources

The CNH is funded through two sources of revenue; one source stemming from the federal fiscal budget and the other from their own income based on fees, taxes and duties. As a ministry-level entity, the CNH submits their budget proposals directly to SHCP. The consolidated federal budget is presented by the SHCP to Congress in September, and following a two-month period of discussion and amendments, is approved in November. The federal budget is earmarked for financing the operating costs of CNH, whereas income from fees, taxes and duties currently finance projects like the establishment of the information database for the hydrocarbon sector.

LORCME foresees that by 2019, the CNH should be funded with fees and duties from the regulated sector relying on their own income. Every year the CNH issues a list, approved by SHCP, of fees, duties and entitlements to finance their operation and priority projects. The list currently in force contains 25 types of fees which go into the Trust Fund. However, the law sets a ceiling for the Trust Fund at three times the amount of the fiscal budget of the previous year.

Table 2. CNH annual budget comparative in MXN million (2009-2016)

Year	Government budget	Fee from Pemex	Public Trust Fund	CNH budget
2016	320	N/A	1 050	MXN 1 370
2015	350	N/A	N/A	MXN 350
Energy Reform: LORCME + Hydrocarbon Act				
2014	75	325	N/A	MXN 400
2013	63	330	N/A	MXN 393
2012	97	301	N/A	MXN 398
2011	68	0	N/A	MXN 68
2010	59	0	N/A	MXN 59
2009	22	0	N/A	MXN 22

Notes: N/A: Not applicable. The table is in MXN million.

Source: Information provided by CNH (January 2017).

The CNH collects relevant detailed information for exploration and extraction use that is sold to the regulated sector, providing a means of income to the National Hydrocarbon Commission. This has been the main funding source for CNH (outside the federal budget). Companies can verify the information before acquiring data packs on a given area. Information includes specialised data on geology, geophysics, oil wells, rock and oil samples, among other things.

Management of financial resources can be cumbersome and slow down operations and the strategic expenditure of budget. As stated before, the CNH receives funds from fees and duties, paid into a Trust Fund. Access to these funds is not automatic and transfers require approval of the SHCP. Currently, the CNH cannot make use of the Trust Fund's budget until the third month of the year, which underlines the necessity of releasing that constraint or of financing the Commission for this three-month period with the fiscal budget past the year 2019. These processes can represent a high transaction cost and undermine effective and autonomous operations.

Financial planning and management is not results-oriented. The lack of a medium to long-term strategic plan and performance evaluation hinders the Commission's capacity to prioritise in the most efficient manner.

Human resources

There is currently no established recruiting mechanism to fill in vacancies. There are basically two options to fill out the increasing work demand after the energy reform. The first is simply that the direct manager hires someone from the existing job bank; the second, mostly for Heads of

Unit and Director Generals, can be done through a screening process of CVs followed by a panel interview. However, the latter is not compulsory. The LORCME foresees the establishment of a professional career service for regulators. However, little has been done to put in place such a career service. This can create a perception of unfairness and undermine the capacity of CNH to attract and retain talent over time.

Currently, most of the personnel that work in the CNH come from service and oil companies (e.g. Schlumberger, PEMEX), as well as from government entities (e.g. Mexican Petroleum Institute, Ministry of Energy). There is the need to diversify sources of recruitment to broaden expertise and dispel any perception of being too close to either industry or government. This brings the needed expertise to CNH and it is to be expected in the early phases of implementation of the reform as these organisations and institutions have been the key actors of the hydrocarbon sector. However, as the “new” CNH gets established, it is important to develop ways of diversifying recruitment to avoid any perception of closeness to industry and the ministry, and in order to retain talent. As such, the level of expertise and technical knowledge of the National Hydrocarbon Commission is substantial. Moreover, the workforce in the CNH has grown 620% from 2012 to 2017; the Commission went from having 61 to 387 employees.

Table 3. **Total workforce by supporting and professional staff (2012-17)**

Year	Number of supporting staff	Number of professional staff	Total workforce
2017	131	256	387
2016	122	258	380
2015	17	197	214
2014	17	134	151
2013	6	75	81
2012	6	55	61

Source: CNH information.

Retaining qualified staff is a challenge for regulators with the constraints of the federal salary scale. The CNH needs more autonomy and flexibility not only to determine the size of the organisational structure they need, but also to determine how to attract and retain talent. All federal entities have to submit the number and level of employees for approval by the SHCP and the SFP respectively. These cannot be modified without a formal approval by the SFP, which can slow down effective management decisions when needs for a larger workforce will be exponential according to the function of the regulator.

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 CNH

- ***Strengthen the recruitment process and incentives to retain personnel.*** Develop a competitive recruitment process able to attract and retain staff, building on the recommended regulatory career service, including a prospective number of future job posts needed and periodic performance evaluations alongside promotion procedures. Senior management positions should be advertised publicly and recruited also through the use of independent selection panels and the use of assessment centres to attract diverse talent with different experiences. Include in the strategy a dedicated recruitment process for young professionals and recent graduates, with clear career paths and opportunities for development, to diversify the recruitment sources alongside mid-career and senior officials with experience in the industry or in public administration.
- ***Develop robust internal financial management mechanisms to identify spending needs linked to priority actions.*** Consider a multi-annual budget settlement in Congress that can provide financial stability and facilitate long-term planning, in line with the medium-term strategic planning, while preserving the agencies from any undue influence and pressure.
- ***Consider having an annual training and skills development programme to stay up-to-date with new and innovating methods.*** The programme should consider both internal and external expertise to be shared among CNH's staff. For example, there is ample margin for improvement on acquiring regulatory (legal and

economic) capacities in technical units and *vice versa*. The Commission could take advantage of their own expertise to cross-fertilise and have knowledge-sharing workshops. The programme would also help units understand what the other parts of CNH do and break the silo effect.

Box 4. The Spanish Programme of Regulatory Excellence (staff exchange with other regulators)

In 2008 the Telecoms Market Commission, (*Comisión del Mercado de las Telecomunicaciones*, CMT), the Spanish telecoms' regulator, (which was subsequently integrated into the CNMC in 2013), launched the Spanish Program of Regulatory Excellence as a way to exchange regulatory experiences with Latin-American telecoms' regulators in the framework of the regional association, REGULATEL.

The Spanish Program of Regulatory Excellence is inspired by the EU Seconded National Experts program, in which CNMC's staff has participated in the past and continues to do so at present. In application of this program, EU institutions define and announce temporary positions (from six months to a maximum of four years) to be covered by experts of EU member states working for public institutions. The aim of the program is exchanging experiences and mutually learning in different areas. The Seconded National Expert continues maintaining their working legal relationship with the sending member state institution and receives a per diem, financed by the EU, to cover extra expenditures linked to their international displacement.

Similarly, every year the Spanish Program of Regulatory Excellence offers an opportunity to Latin-American telecoms' regulatory experts to share experiences at CNMC. Every year, CNMC, after an internal consultation with the units that take part in the programme, makes a public call describing positions to be covered by Latin-American regulatory experts at CNMC and other Spanish collaborative institutions (the Spanish Secretary of State of Digital Agenda and the public entity Red.es). This call defines the required profile for each position, and is published on CNMC's and REGULATEL's (*Foro Latinoamericano de Entes Reguladores de Telecomunicaciones*) web pages and is widely diffused among REGULATEL members.

After receiving the applications, selection is entrusted to a technical board that takes into account the adequacy of candidates to the offered profiles, as well as regional equilibrium.

Accepted candidates enjoy a five-month working and learning experience at CNMC or within collaborative institutions' units. Participants continue maintaining their working legal links with their entities of origin, whereas CNMC or the Spanish collaborative institutions provide a per diem to cover allocation and health insurance extra cost, associated to the expert displacement.

**Box 4. The Spanish Programme of Regulatory Excellence
(staff exchange with other regulators) (cont.)**

This programme is highly appreciated not only by Latin-American regulatory institutions but also by CNMC's and collaborative institutions' participant units. It is perceived as a way to transfer knowledge and experience not only from the receiving institution to the expert, but also from the expert to the participant unit.

Based on this experience, CNMC is planning to develop, starting in 2017, through multilateral or bilateral agreements, new expert exchanges in its different areas of competence.

Source: Information provided by the CNMC.

Process

The governing council is made up of seven Commissioners of whom one serves as the President Commissioner. They are all proposed through a process where the President of the Republic presents a shortlist of three candidates and the Senate chooses following a hearing. The candidates are proposed for the short list based on specific requirements set out in LORCME. The Commissioners are appointed for a period of seven years and can be ratified for a period of seven more years and are currently on staggered terms. Commissioners are very much involved in the everyday decision-making of the Commission, leaving limited space for strategic management and foresight.

The President Commissioner acts both as chairman of the governing council but also as the chief executive officer of the CNH. Currently, there is no designated person acting as operational co-ordinator, supporting the President Commissioner in the daily management of the organisation. Cumulating these functions without such a co-ordination role within the administration appears to burden the agenda of the President Commissioner with operational matters, leaving a narrow margin for strategic thinking and representation. This particular status makes him directly responsible for both representing the Commission externally and managing the professional body internally. After the energy reform, the CNH reviewed its internal organisational structure, adding six heads of units responsible for co-ordinating the main functions and responsibilities of the agency. The heads of units are hierarchically above director-generals who head the different divisions composing each unit. There is an Executive Secretary who provides support to the governing council. The Executive Secretary and the heads of units report directly to the President Commissioner.

Transparency and accountability

As all federal entities, the CNH is accountable to Congress and Audit Institutions. However, there is no regular reporting and interaction with relevant bodies in Congress. The CNH is required to prepare annual reports on their activities and results for which the President Commissioner can be called to appear in Congress to report on their activities and results submitted, but this does not happen systematically. Both Chambers of Congress include Ordinary Committees for Energy and a Special Committee for Monitoring the Co-ordinated Energy Regulators.

In the case of Audit Institutions, the CNH is audited by entities from both the legislative and executive branches: the Superior Audit Office (Congress) and the SFP (executive). For the latter, CNH incorporates within their internal structure Internal Audit Offices (*Órgano Interno de Control*, OIC) that are part of and report to SFP. The purpose of these Internal Audit Offices is to support the performance of the entity, to prevent non-compliance by staff and to handle complaints against public servants.

The CNH has set safeguards to avoid conflict of interest such as an internal Code of Conduct and the issuance of a yearly declaration of conflict of interest from Commissioners, Heads of Unit and General Directors. The code of conduct asserts principles of transparency and integrity; and strictly regulates contact with industry representatives (it defines different categories of meetings with specific requirements for participation and for the recording of information). CNH board members and senior management sign a declaration of interest that discloses any relevant professional or personal history that is published on the CNH website.

CNH has also been transparent in making information on its decision-making processes available. Minutes, resolutions and technical support documents of the governing council meetings are published on the CNH website, and the meetings are streamed live and archived on the Internet.

Regulatory quality tools and stakeholder engagement

The regulatory process builds on internal and external quality control mechanisms, including stakeholder engagement and regulatory impact assessment. However, some of the internal mechanisms are either ad hoc or still in the early stages of development. The internal mechanism is comprised of ‘early stage’ consultation through Advisory Councils without set systematic and standard procedures but done on an ad hoc basis. The external mechanism consists in the elaboration of a

regulatory impact assessment overseen by the Federal Commission for Regulatory Improvement (*Comisión Federal de Mejora Regulatoria*, COFEMER) which publishes it for consultation for an average period of 30 days. CNH is also establishing an internal process to ensure the quality of regulatory proposals and decisions. The Executive Secretariat and the Legal Unit provide a quality check on draft regulatory proposals submitted to the governing council.

Appeals

Regulated entities can appeal decisions from the regulator via the *juicio de amparo* (and not through administrative recourses), which is a highly specialised trial that works as a constitutional guarantor. While this ensures a more robust legal review, a judgment against the regulator in court can have significant consequences as it rules a decision of the regulator to be unconstitutional. Decisions in these instances can be appealed in second instance to the *tribunal colegiado de circuito*; decisions made in second instance can then be appealed to the Supreme Court (*Suprema Corte de Justicia de la Nación*, SCJN). With regard to exploration and extraction contracts, CNH and operators can resort to international arbitration to address alleged contract breaches.

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

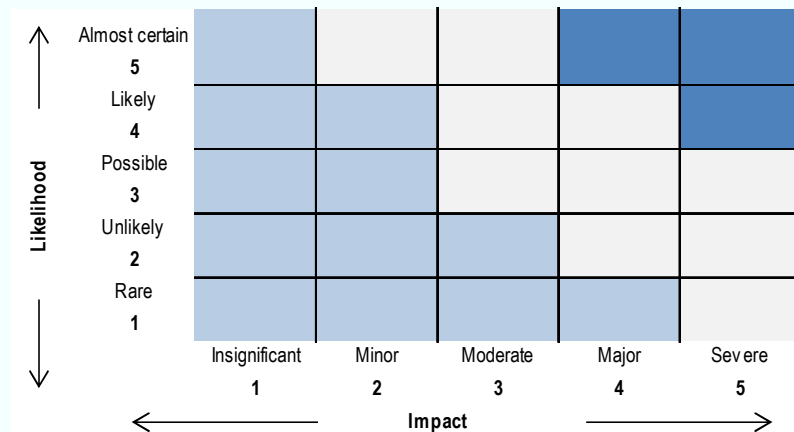
The Water Industry Commission for Scotland has a risk management strategy ran by a dedicated Audit and Risk Committee that meets regularly to discuss new or emerging issues and risks and their evaluation, decisions required and by whom, mitigating actions, actions owners, timescales and review points, 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 CNH

- ***Align contract and entitlement administration and supervision with the internal regulatory functions.*** A Regulatory Committee should be installed where the technical units, the legal unit and the supervision unit can be aware and provide inputs for the rule-making process since it is the management units which will be in charge of enforcing compliance on the regulations issued.
- ***Allow the governing council to be more focused on strategic decision-making by alleviating the burden of the President Commissioner.*** This can be achieved by enhancing the role of a Chief Operating Officer (COO), in charge of everyday operations and who can also serve as a co-ordinator of the professional body of units.

Box 6. Role of the Chief Operating Officer (COO) of the National Energy Board of Canada

The National Energy Board of Canada has a Chief Operating Officer (COO) whose purpose is to report to the Chief Executive Officer (CEO). The COO is responsible for the Board's day-to-day operations, overall capability and readiness to meet enterprise-wide strategic and operational needs.

The Chief Operating Officer (COO) leads an executive team whose role is to develop, promote and implement a shared vision; think and act strategically, set priorities and manage financial, material, data, information and human resources; demonstrate the Public Service Values and Ethics; evaluate human and organisational performance, build and develop teams and their members; lead continual improvement; implement management operating systems; manage relationships with federal government departments and agencies; make decisions and take action that delivers results; represent the NEB in relationship-building and decision-making situations with external stakeholders; and develop a culture of high performance and learning.

Key activities

- Provide effective leadership to align the operations of all business units and groups with NEB's core responsibilities, in accordance with the NEB Management System, and manage asset, data, financial and information resources efficiently and effectively.
- Lead the Executive Team, providing direction, coaching and support that enable integration and alignment, establishes accountability, and stimulates a high performance culture throughout the organisation.

Box 6. Role of the Chief Operating Officer (COO) of the National Energy Board of Canada (cont.)

- Lead the development and monitoring of the NEB’s performance and business plan, assigning accountability for goals, ensuring that business plans align with the Departmental Results Framework, and ensuring mechanisms are in place to provide relevant and accurate information about organisational performance in relation to the business plan.
- Proactively and reactively solve problems and enable action on issues related to corporate vision, operational and regulatory matters, budgeting and planning, structure and policy; apply the appropriate decision-making framework i.e. policy, law, regulation and systematic problem-solving.
- Direct and monitor the implementation of major programs and regulatory decisions of the Board; ensure that these are consistent with law, government policy and regulations.
- Identify key stakeholders and foster communication with them to increase their understanding of the NEB’s role and requirements. Establish positive working relationships with senior leaders that enable decision-making and facilitate the work of other employees of the NEB. These stakeholders include but are not limited to: Central Agencies and departments; NGO’s; Indigenous groups; and landowners.
- Lead and direct staff interaction with and support to Board Members in the execution of their roles and responsibilities.

Results expected

- Deliver decisions relative to the management of internal resources, people and plans that directly impact all Business Units, groups and staff.
- Leverage personal networks of senior level contacts in government and industry organisations, NGO groups and other regulatory bodies to facilitate communication among stakeholders with shared interests.
- Collaborate with the Chair and CEO to determine needed facts and information from stakeholders, and to advise regarding internal NEB decisions and objectives.
- Communicate directly with Business Units to clarify expectations, monitor individual and Business Unit performance, ensure the implementation of Board decisions and the achievement of planned results.
- Chair meetings, make formal presentations and speeches, fill out standard business forms and prepare formal original correspondence.

**Box 6. Role of the Chief Operating Officer (COO)
of the National Energy Board of Canada (cont.)**

- Communicate corporate policies, guidelines and procedures surrounding NEB’s vision, mission and mandate, and regarding programs and organisational change.
- Update knowledge through formal training up to four times a year, and do/encourage extensive reading of material related to management, leadership, the energy industry and government regulation.

Source: Information provided by the NEB.

- ***Create an internal Regulatory Committee to oversee the rule-making process and embed regulatory management tools.*** The Regulatory Committee could be in charge of tools like stakeholder engagement through the Advisory Councils, administrative simplification inside the CNH, regulatory impact assessments to be presented to COFEMER, and, *ex post* evaluation of regulations issued; the objective would be to avoid overwhelming the sector with administrative burdens while safeguarding public interest. The Regulatory Committee would also be in charge of assessing the creation, modification or abolishment of regulations within the CNH.
- ***Consider having diverse ways of engaging with stakeholders that are not the “usual ones” and facilitate the involvement of new small companies in the business.*** The Regulatory Committee should be in charge of setting transparent standards for the Advisory Council process (e.g. permanent list of members, transparency of participants and possibility of presenting comments even if the stakeholder is not part of the Advisory Council.)

Output and outcome

The CNH hosts the National Centre for Hydrocarbon Information (Centro Nacional de Información de Hidrocarburos, CNIH) that receives all the wealth of data provided by the regulated sector, including PEMEX. The CNIH developed a dedicated platform where information regarding the exploration and extraction of hydrocarbons can be accessed (portal.cnih.cnh.gob.mx). The CNIH contains relevant information on geology, geophysics, oil wells, entitlements, contracts and bidding packs, amongst other things, that provide an overview of the sector. Moreover, the CNIH has recently signed covenants with an array of universities to produce and share knowledge on the sector.

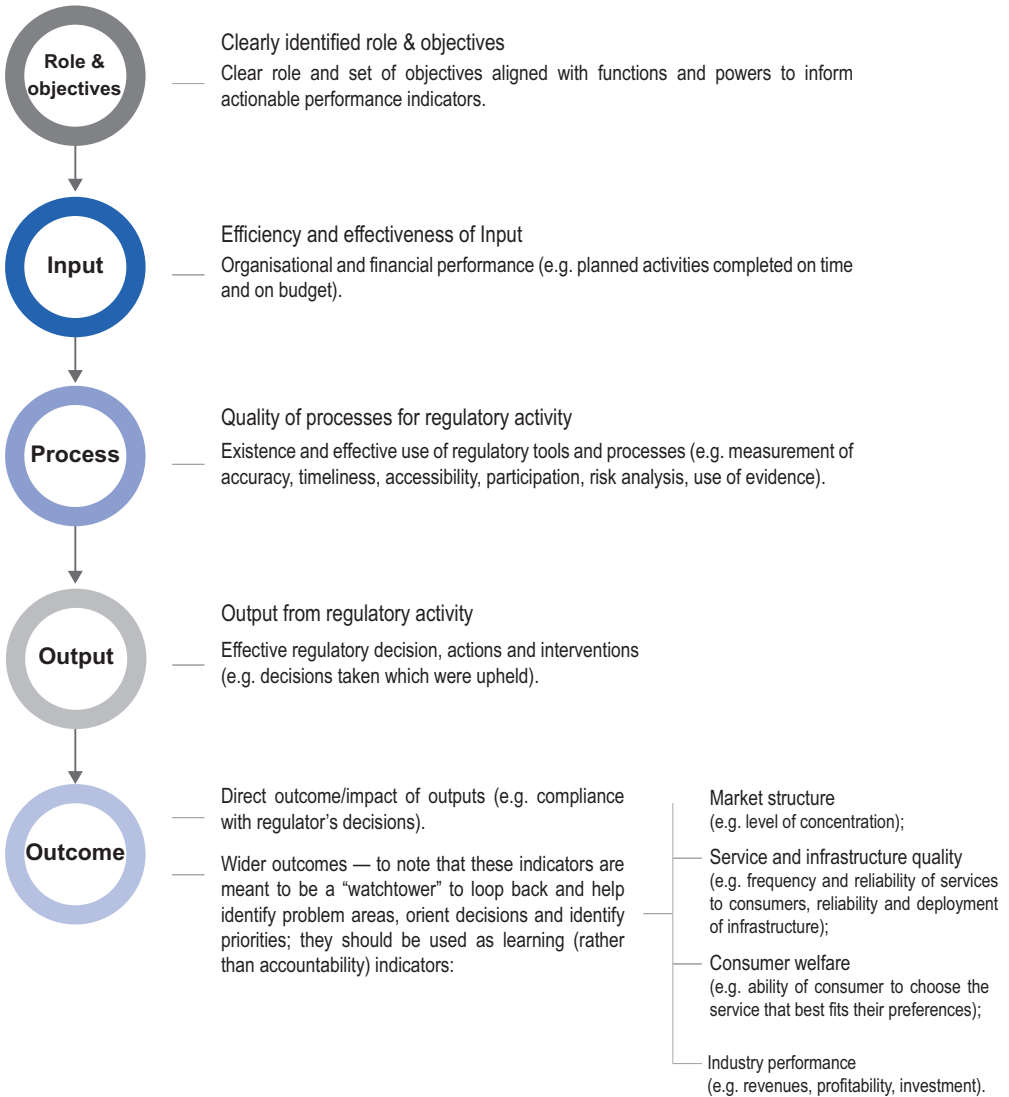
In 2016, the CNH carried out a process to define their vision and set high-level objectives that would allow monitoring their performance, however, the planning exercise did not produce granularity on timelines, milestones or budget requirements to attain the six core objectives. They are currently defining macro processes and their corresponding actions and milestones that will enable them to monitor and evaluate performance in the medium and long-term.

The LORCME mandates the Commission to issue quarterly gazettes to inform on the regulated sector, as well as on internal activities. So far, there are eight gazettes posted on their website (www.gob.mx/cnh/documentos/gacetas-informativas). The content of the gazettes includes a wide array of topics ranging from Commissioner’s opinions on the energy reform to the status of the auction processes, regulation issued and generic sector information.

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 2) should be used to develop these measures.

Figure 2. **Input-process-output-outcome framework for performance indicators**



Notes: 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>.

- 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.

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, 2017). 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.

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.)

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).

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, 2017), "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 (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.
- ***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 CNH

- ***Develop a comprehensive set of indicators that track not only actions and inputs but also outputs from CNH's regulatory activities as well as direct and wider outcomes.*** The current monitoring framework is heavily focused on inputs and tracking the delivery of specific actions. These input indicators, for the most part, would need to be complemented by additional indicators that also track the regulatory outputs of CNH's interventions, and the wider trends in the regulated sectors. These indicators could also feed into the information newsletter which is currently produced by CNH.

- ***Advocate for a formal engagement mechanism for the CNIH that can help the management and development of data.*** As expressed in the External Governance report of the Energy Regulators, establishing an Advisory Council similar to the Common Data Access Limited (CDA) in the United Kingdom can engage with stakeholders for them to provide their perspective on: i) management of data; and, ii) development of new data (OECD, 2016). This exchange of information could also enhance this particular source of revenue for the CNH.
- ***Evaluate information needs and aim at collecting fit-for-purpose data that will be useful to support the performance of the hydrocarbon sector (especially on measurement of production/extraction).***
- ***Assess internal information needs and develop the mechanisms to produce, share and use information.***
- ***Develop a dashboard – with regular updates and information for the leadership team and the governing council – on tracking progress of the objectives and activities of CNH.*** This should also include information on major trends and risks in the hydrocarbon sector (on which CNH might have necessarily direct control), but could serve as a “reality check” and a watchtower on key trends in the sector CNH is overseeing and of which the leadership team and the governing council should be aware of.

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).

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

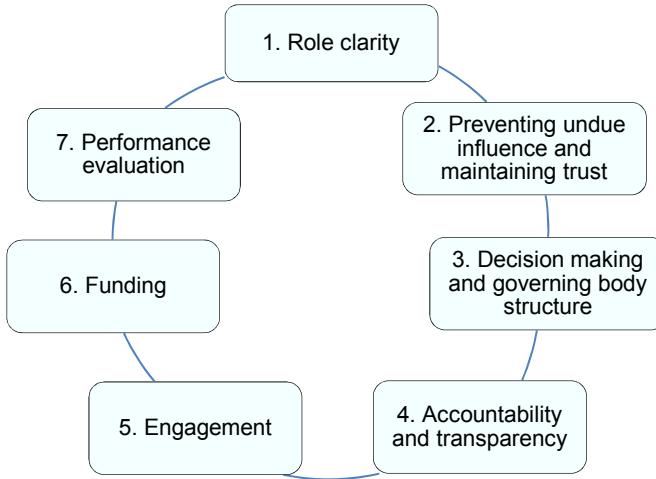
- Step I. Input: indicators include for example the budget and staff of the regulatory oversight body.
- Step II. Process: indicators assess whether formal requirements for good regulatory practices are in place. This includes requirements for objective setting, consultation, evidence-based analysis, 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>.

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).

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).

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>.

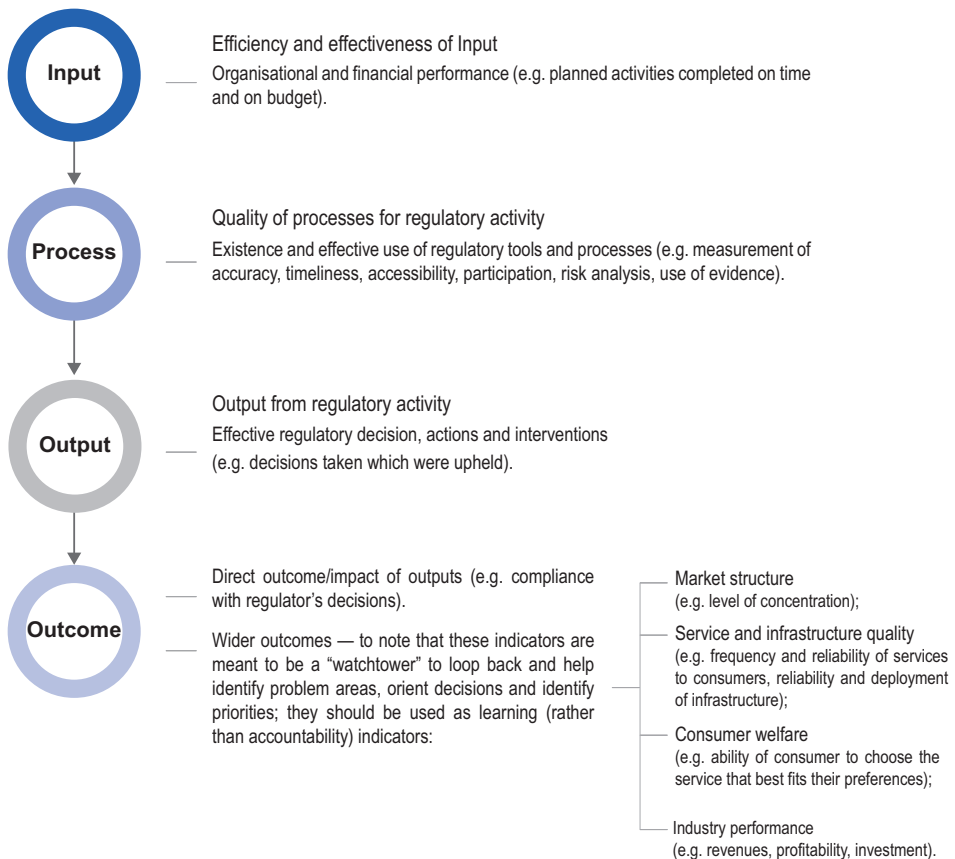
Table 1.1. Criteria for assessing regulators’ own performance framework

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

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**



Notes: 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 CNH 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, and 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:

- **Questionnaire and desk review:** the CNH completed a detailed questionnaire which informed a desk review by the OECD Secretariat, including a review of existing legislation and CNH documents, to collect information on the *de jure* functioning of the Agency and to inform the basis of the fact-finding mission. This questionnaire was tailored to CNH, based on the methodology already applied by the OECD to Colombia’s Communications Regulation Commission (OECD 2015a), and to Latvia’s Public Utilities Commission (OECD, 2016b).

- **Fact-finding mission:** the mission was conducted by the OECD Secretariat staff on 23-27 January 2017 in Mexico City, and was the key tool to collect and complete the *de jure* information with the 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 CNH's features.
- **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 senior management of ASEA, 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).^{*} 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. -Mar. 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 Logística'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 & envt 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.ieej.or.jp/file/2017/6/7/APEC+Overview+2016.pdf> (accessed 13 June 2017).

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Chapter 3

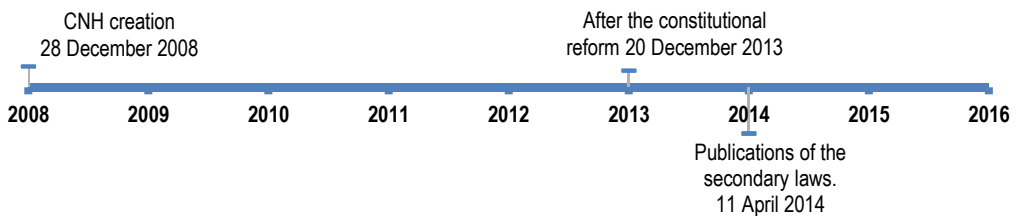
Internal governance of the National Hydrocarbons Commission

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-outcome-output framework. This chapter applies the framework to the internal governance of Mexico's National Hydrocarbons Commission (CNH) and reviews the existing features, the opportunities and challenges faced by the regulators in developing an effective performance assessment framework.

Role and objective

The CNH is a technical regulator responsible for regulating activities in the upstream segment of the hydrocarbon sector: hydrocarbon exploration and extraction contracts, from the point of production up to the integration into the transport system. The Commission, which was created on 28 December 2008 by the Hydrocarbon Act, reports to the Ministry of Energy (*Secretaría de Energía*, SENER). CNH became operational on 20 May 2009 after a five-commissioner governing body was established.

Figure 3.1. National Hydrocarbon Commission



Source: Information provided by CNH (January 2016).

However, following the energy reform and its constitutional amendment, the Commission acquired a different status and in 2013 it was granted ministry-level status by the Law of the Co-ordinated Energy Regulators (*Ley de los Organos Reguladores Coordinados en Materia Energética*, LORCME), with a corresponding reform of the Organic Law of the Federal Public Administration (*Ley Orgánica de la Administración Pública Federal*). The reform allows the CNH to have legal, technical and budgetary autonomy. Under this new status, CNH has run three rounds of auctions (Box 3.1).

Box 3.1. The opening of the energy market: Bidding rounds for hydrocarbons in Mexico

In 2013, the Mexican government launched a reform that restructured the oil and gas industry and 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), 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. Equally important, the national energy system was further opened up to private competition in order to reduce electricity costs, facilitate the transition to renewable sources of energy and extend electricity coverage.

Box 3.1. The opening of the energy market: bidding rounds for hydrocarbons in Mexico (*cont.*)

Furthermore, it is the Hydrocarbons Act of 2014 that defines the basis in which state-owned companies and private companies can explore, extract and commercialise hydrocarbon reserves in the subsoil. This reform opens a market that had been closed for over 70 years in Mexico.

After the bidding processes – Round 0 assigning entitlements only to PEMEX, Round 1 with four bidding processes and Round 2 with three bidding processes – the CNH has signed a total of 39 contracts for extraction, shallow water extraction and exploration, deep water extraction and exploration activities, all made public on the CNH website: rondasmexico.gob.mx.

Bidding process	Date	Title	Blocks assigned
1	15 July 2015	Exploration in shallow waters	2/14 (14%)
2	30 September 2015	Extraction in shallow waters	3/5 (60%)
3	15 December 2015	Extraction in mature fields	25/25 (100%)
4	5 December 2016	Exploration and Extraction in deep waters	8/10 (80%)
* PEMEX Partnership	5 December 2016	Pemex Partnership 1	1/1 (100%)

Source: Information provided by CNH (April 2017), www.rondasmexico.gob.mx and OECD (2017), *Driving Performance of Mexico's Energy Regulators*, The Governance of Regulators, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264267848-en>.

Strategy

The governing body carried out a strategic planning exercise that defined the mission, vision and strategic objectives.

- *Mission:* Regulate in an efficient and trustworthy manner hydrocarbon exploration and extraction activities in order to promote investment and economic growth in Mexico.
- *Vision 2025:* The CNH, as a regulatory entity of international reference for its professionalism, efficiency and reliability, promotes hydrocarbon exploration and extraction activities in a sustainable manner to consolidate Mexico as one of the leading economies of the world.

Internal strategic objectives:

- Promote knowledge of the subsoil and evaluate oil potential;
- Increase response capacity, efficiency and transparency of the bidding processes for hydrocarbon exploration and extraction contracts;
- Have a robust and transparent system to manage entitlements (*asignaciones*) and contracts;
- Have efficient regulation, adhering to international best practices and verifying their compliance;
- Support the correct and most convenient choice of (exploration and extraction) areas, the efficient management of biddings, entitlements (*asignaciones*) and contracts, and the efficient evaluation of exploration and extraction plans to foster the increase of production and reserves;
- Consolidate the entity with efficient, systematised processes and a defined organisational structure.

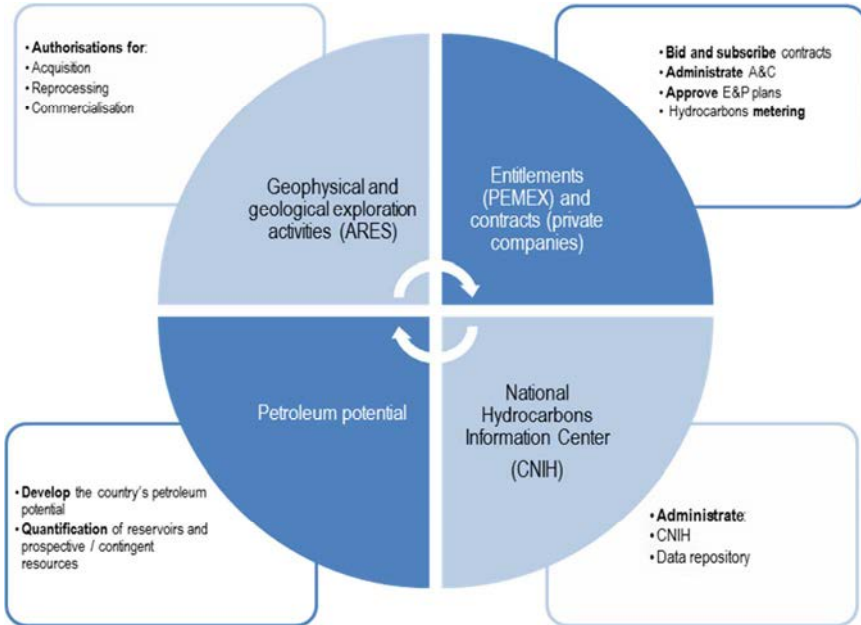
The strategic objectives stem from the statutory objectives assigned to CNH in the LORCME (Table 3.1).

Table 3.1. **Match of the legal and internal strategic objectives**

Legal statutory objectives – LORCME	Internal strategic objectives
Regulating and supervising the recognition, exploration and extraction of hydrocarbons, including its collection from the well head and to the transportation system and storage	Have efficient regulation, adhering to international best practices and verifying their compliance
Manage, from a technical perspective, the contracts subscribed	Have a robust and transparent system to manage entitlements and contracts
Co-ordinate and carry out public bidding processes and subscribe exploration and exploitation contracts.	Promote knowledge of the subsoil and evaluate oil potential Support the correct and most convenient choice of (exploration and extraction) areas, the efficient management of biddings, entitlements and contracts, and the efficient evaluation of exploration and extraction plans to foster the increase of production and reserves Increase response capacity, efficiency and transparency of the bidding process for hydrocarbon exploration and extraction contracts
Technical advisory to SENER	Support the correct and most convenient choice of (exploration and extraction) areas, the efficient management of biddings, entitlements and contracts, and the efficient evaluation of exploration and extraction plans to foster the increase of production and reserves
	Consolidate the institutions with efficient processes and a defined organisational structure

Source: LORCME and information provided by CNH (January 2017).

Figure 3.2. CNH role and functions

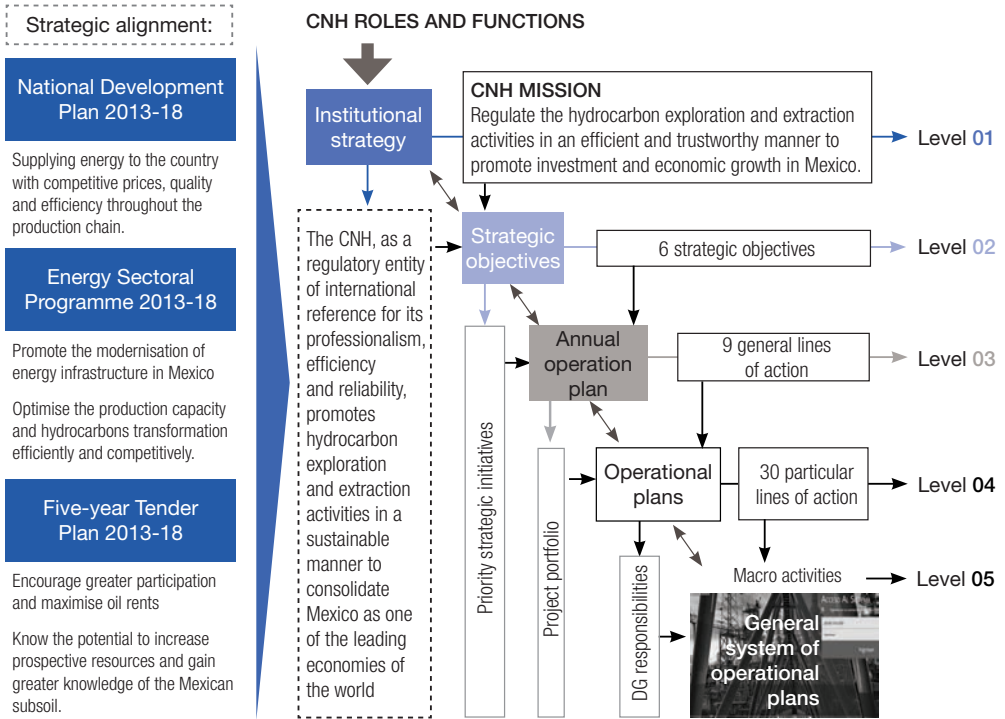


Source: Information provided by CNH (March 2016).

The stated internal objectives stem from their legal mandate – LORCME and the Hydrocarbons Act – and frame the CNH's everyday activities. Currently, there are no indicators to monitor the strategic objective's compliance, or a pre-established process to review, evaluate and update these internal objectives within the CNH.

Stemming from the strategic planning exercise, the CNH constructed the 2017 operational plan which aligns the strategic objectives with operational lines of actions. The institutional strategy has a strategic alignment with the National Development Plan and the Sectoral Programmes. The lines of actions are presented in a digital dashboard that will allow for monitoring progress towards meeting the six strategic objectives. The operational plan breaks down the six strategic objectives into nine general lines of action, and 30 particular operational actions for each of the Administrative Units which they co-created. Finally, the particular operational actions become individual actions that allow measuring institutional performance and alignment (see Figure 3.3).

Figure 3.3. CNH strategic planning and implementation framework



Source: Information provided by CNH (April 2017),

https://www.gob.mx/cms/uploads/attachment/file/214112/plan_anual_de_trabajo_pat_2017_cnh.pdf

Furthermore, the CNH defines and elaborates an institutional risk map as an obligation stemming from the Ministry of Public Administration (*Secretaría de la Función Pública*, SFP). As part of the recent strategic planning exercise, the operational lines of action are also coupled with a specific risk to be taken into account which then feeds the institutional risk map.

Functions and powers

Key functions include:

- Regulating and supervising the recognition and superficial exploration;

- The authorisation of hydrocarbon exploration and extraction (soil, shallow waters, deep waters and non-conventional methods), regardless of the activities being carried out by Mexican Petroleum (*Petroleos Mexicanos*, PEMEX) through entitlements or by private companies, which are granted a contract through a bidding process;
- Gathering, using, managing, updating and publishing geological, geophysical, petrophysical and petrochemical information, as well as any other information related to exploration, extraction and reconnaissance activities;
- The administration of entitlements (PEMEX) and the contracts that the CNH signs, in representation of the Mexican state with private companies that carry out exploration and extraction activities concerning hydrocarbons.

Table 3.2. **CNH functions**

CNH functions
Quality standards for service provision
Defining technical / industry and service standards
Setting incentives for efficient investment
Promoting innovative technologies
Information and data gathering
Monitoring of service delivery performance
Analysing operators' investment plans / business plans
Carrying management audits on operators

Source: Information provided by CNH (August 2016).

The CNH has the power to issue regulation to fulfil its mandates and objectives. The governing body can issue regulation in the form of Agreements, Guidelines, Administrative Provisions, Official Mexican Norms, Resolutions, Directives, Bases, Circulars, Formats, Criteria, Methodologies, Instructions, Rules, Manuals, and any of a nature analogous to the previous that are necessary for its functions (see Box 3.2). The scope of the regulation mentioned above is intended for anyone wishing to carry out exploration and extraction activities regarding hydrocarbons. The Commission can also propose to the Legal Counsel of the Presidency to update any given regulation and participate in doing so. To implement the energy reform, CNH has already issued 11 pieces of regulations and plans to issue more in 2017-18 (Box 3.3).

Box 3.2. Types of secondary regulation that the CNH issues

Depending on the scope of application, two types of regulations exist, making these either internal or general. Internal regulations are aimed at CNH civil servants, limiting the application scope to CNH itself. On the contrary, regulations of general applicability are directed at all persons, natural or legal, subject to the regulation.

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 aim at regulating a specific situation. They can be administrative, legislative or judicial. The decrees issued by the executive power are administrative.

Technical standards: Technical regulations are issued by the public administration and aim at regulating goods or services produced within the country. They can have a mandatory or voluntary character. This category also includes emergency standards (*normas emergentes*) that are issued in case of emergency and are valid for six months.

Agreements and resolutions: A determination or decision made after voting by the CNH governing body, normally used to issue regulation, approval or denial of applications or requests, or other substantive issues.

Guidelines and administrative provisions: Regulations issued by the CNH government body, applicable to the activities of hydrocarbon exploration and extraction, and published in the Official Gazette of the Federation.

Official Mexican norms (technical standards): Mandatory technical regulation that ensure that materials, products, processes and services are harmonised and standardised.

Manuals: Internal regulation that describes the way a process should be managed.

Formats: Application forms filled out and submitted to the CNH as part of an administrative process.

Criteria, methodologies, rules, instructions: Regulation of internal or general application that normally regulates how a provision should be applied.

Circulars: Internal or general regulation that address a specific situation regarding the operations or management of a government department or agency.

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

Table 3.3. CNH powers

Issue guidelines or codes of conduct
Investigate cases of breaches in laws or regulations
Audit operators in the hydrocarbon sector
Enforce compliance with standards and regulation
Impose or ban a particular technology
Impose fines or other financial sanctions
Collect information from regulated entities through compulsory process
Veto the investment exploration and extraction plans of operators
Issue and revoke licenses
Mediate to resolve disputes

Source: Information provided by CNH (August 2016).

Box 3.3. Regulation issued by the CNH

The CNH must issue a minimum of regulations according to both the Hydrocarbon Act and the Law of the Co-ordinated Energy Regulators; 10 regulations have been issued already. As part of the requirement of having a forward planning agenda mandated by COFEMER, the CNH has published the list of the remaining regulations expected to be issued in 2017 and 2018.

Regulations issued: Contract bidding process

1. CNH internal bylaw and rules of procedure
2. Authorisations for shallow hydrocarbon exploration (ARES)
3. Quantification and certification of reserves and related contingent resources
4. Use of the information contained in CNIH
5. Measurement of hydrocarbons
6. Hydrocarbon exploration plans and development extraction plans
7. Use of associated natural gas
8. Historical information transfer
9. Drilling of wells
10. Administrative provisions on tenders regarding exploration and extraction of hydrocarbons
11. Guidelines that establish requirements and procedures for Alliances and Partnerships

Box 3.3. Regulation issued by the CNH (cont.)

Forward planning regulatory agenda for 2017 and 2018:

1. Inspections
2. Secondary and improved recovery
3. CNIH internal bylaw and rules of procedure
4. Rules of procedure for the technical and advisory normalisation committees
5. Rules of procedure for the Advisory Council
6. Hydrocarbon collection
7. Prospective resources

Source: Hydrocarbon Act and Law of the Co-ordinated Energy Regulators (LORCME) www.ordenjuridico.gob.mx/documentos/federal/pdf/wo98027.pdf and CNH Biennial Regulatory Programme.

Inspection and quality control

Inspections and quality control are a quintessential part of the responsibilities within the portfolio of the CNH. So far, the agency has only conducted two inspections. The first was based on an anonymous report of a non-reported accident. A group of inspectors visited a platform in December 2014 to verify the reports in the logs regarding the accident, and conducted interviews with the staff of the platform. This case file was delivered to ASEA for follow-up.

The second inspection was carried out 3 November 2016 on Contract Area 7, called “*Cuichapa Poniente*”, through Resolution CNH.E.059.001/16 from the Governing Council, in order to verify the operating conditions. This inspection was derived from a request of a contractor to recognise the source of unforeseeable circumstances or force majeure. This procedure was resolved 10 November 2016 by Resolution CNH.E.062.001/16, in which the Governing Council declared the request of the contractor unfounded.

Strategic objective No. 4 states: “Have efficient regulation, adhering to international best practices and verifying their compliance”. Consequently, the CNH is currently bidding an outsourcing mechanism to hire third-party inspections as part of an annual inspection strategy that matches needs from both Exploration and Extraction Units, and the Technical Administration of Entitlements and Contracts Unit who are in charge of inspections.

Co-ordination with other government and non-government bodies

The attributions to regulate and oversee the energy sector lie only within the purview of the federal government; therefore, the CNH does not necessarily co-ordinate with the subnational level. Conversely, the energy reform mandates SENER, SHCP, FMP and the CNH to co-ordinate, to publish, carry out and manage the bidding process to allocate exploration and extraction contracts. For that reason, the CNH has entered into co-operation agreements with these bodies. The agreements define dates, type of information and technical assistance.

Agreements subscribed by the CNH:

- 2014 Agreement for collaboration, co-ordination and technical assistance entered between the Bank of Mexico, through the Mexican Petroleum Fund, Ministry of Finance and Public Credit, Ministry of Energy, Tax Administration Service and the CNH.
- 2015 Coordination and Administrative Collaboration Covenant: Agreed among the Ministry of Finance and Public Credit, the Ministry of Energy and the CNH to exchange information in order to comply with the mandatory provisions of the Law of Income Hydrocarbons and Hydrocarbons Law, and their respective regulations.
- 2015 Basic Coordination Covenant subscribed by the CNH and the ASEA has as its main purpose to carry out the transfer of information, procedures, records and documents held by the CNH, and to be corresponded to ASEA because of its creation and powers which ended in December 2015 (Sixth Transitory Law of ASEA).
- 2015 General Cooperation Agreement between CNH and the Mexican Geological Survey (hereinafter “SGM”). It was held for the SGM to transfer to the CNH all the information related to potential associated gas in deposits of coal.

The CNH participates in the Co-ordination Council for the Energy Sector (OECD, 2017). It also participates in the Advisory Council for the Promotion of Oil Industries. The main purpose of this Advisory Council is: the creation and implementation of policies, criteria and methodologies; the diagnosis of products, goods and services offered in the Mexican market; the national industry’s promotion; the creation and development of regional and national production chains; and the development of human resources, innovation and technology in the oil and gas industry. The Advisory Council met for the first time in January 2015.

The CNH has subscribed agreements with national universities to, amongst other things, share information for research purposes, including the exchange, analysis and interpretation of technical information. Moreover, they have also signed technical co-operation agreements with sectoral agencies from other countries like the National Agency of Petroleum, Gas and Biofuels (ANP) from Brazil and the National Hydrocarbon Agency from Colombia.

Input

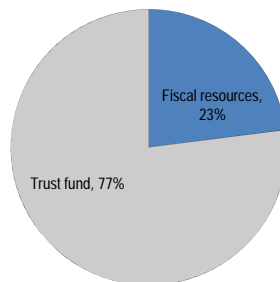
Financial resources

Sources of funding

Having appropriate resources is fundamental for the correct functioning of regulators. Funding can determine if the regulator will be able to meet its functions and safeguard the regulator's independence. The CNH has two main sources of funding to fulfil its mandate, which come from i) the fiscal budget, and ii) a Trust Fund made up of fees, taxes, royalties and fines. For 2016, the CNH is funding its operating costs with proceeds from two sources:

- Fiscal resources: MXN 320 million,¹ authorised by Congress in terms of what the law foresees for the first five years of existence of the agency.² This budget increases while fees, duties and royalties are paid throughout the year, with a corresponding authorisation from the Ministry of Finance and Public Credit.
- Trust Fund: MXN 1 050 million as a provision of resources created at the end of 2015 through surpluses from exploitation (fees, royalties and fines). Currently, the funds stem only from fees and royalties, which are mainly data and information packages that companies buy from the National Centre for Hydrocarbon Information.

Figure 3.4. CNH starting annual budget for 2016 in percentages



Source: information provided by CNH (January 2017).

Table 3.4. CNH annual budget comparative in MXN million (2009-16)

Year	Government budget	Fee from Pemex	Public Trust Fund	CNH budget
2016	320	N/A	1 050	1 370
2015	350	N/A	N/A	350
Energy reform: LORCME + Hydrocarbon Act				
2014	75	325	N/A	400
2013	63	330	N/A	393
2012	97	301	N/A	398
2011	68	0	N/A	68
2010	59	0	N/A	59
2009	22	0	N/A	22

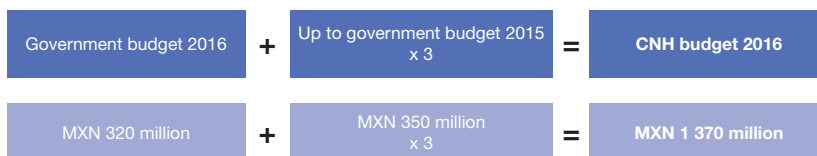
Note: N/A: Not applicable.

Source: Information provided by CNH (January 2017).

Prior to the Energy Sector Reform of 2013, resources (2012-14) came only from the government budget and fees charged to PEMEX. Since 2015, the first year of budgeting after the reform, resources have come from two sources: government budget, plus fees and fines from operators. In 2015, the annual budget came from the following sources: MXN 350 million from government budget; and MXN 2 654 million from fees.

The legal framework establishes that by the end of the year, and only once, the CNH is able to transfer resources to the Trust Fund, limited to three times its government budget from the current year to use in the next year.³ For example, in 2015 the CNH received MXN 2 654 million from operator fees and no resources from fines, and it was able to transfer MXN 1 370 million (three times the 2015 initial government budget), and not the totality of the amount collected from operators (see Figure 3.5). The CNH had to transfer the rest of the resources from 2015 (MXN 1 604 million) to the Ministry of Finance (SHCP) at the beginning of the following calendar and fiscal year.

Figure 3.5. Formula to build CNH budget



Fees are determined through a process in which the CNH proposes to the SHCP their calculation each year prior to the budgeting negotiations (see external governance review) and the Ministry of Finance approves the regulatory fees for operators based on a cost recovery methodology and international standards. The variables considered include:

- Fix, variable and indirect incremental costs
- Number of services estimated for the year
- Time percentage that the unit will dedicate for service delivery.

Managing financial resources

The Commission's budget expenditure hinges on the source of the funding it uses; that being the fiscal budget or that coming from the Trust Fund. Regarding the fiscal budget, the expenditure is subject to national guidelines. Mexico's budgetary system obliges federal agencies to align their functions and powers with the objectives and goals pointed out in the National Development Plan as well as the corresponding Sectoral Programmes. This process is carried out every year by means of the annual budget (*Presupuesto de Egresos de la Federación para el ejercicio Fiscal 2016*, PEF).⁴

The PEF allocates resources based on a programmatic structure; the mechanism consists of linking the Responsible Units of the CNH with their corresponding budgetary programmes. Consequently, an agreement must be met with the SHCP, to create an array of indicators for each budgetary programme. Together, both entities create a matrix of indicators for each budgetary programme,⁵ which comprises setting goals for activities, components, aims and purposes, and whose monitoring and update is done every three months. The Commission proposes the indicators to monitor and the Ministry of Finance approves them – the indicators are mostly output and input-oriented.

For the fiscal budget, the Chamber of Deputies determines what the budget is used for. At the moment CNH can use the fiscal budget only for staffing purposes. For 2016, the fiscal budget covered wages, per diem and travel expenses, training and basic services for 225 public officials, and the remaining personnel was paid with the income received through fees, duties and royalties. Table 3.5 presents the allocation of resources by administrative units. The CNH provides a register of its annual expenditure to SHCP with the following items:

- Technical administration for entitlements and contracts
- Hydrocarbon evaluation and verification studies

- Support activities for public administration
- Hydrocarbon promotion and regulation
- Administrative support

Table 3.5. Starting budget allocations for staff in the different administrative units

Administrative unit	Budget 2016 ^{1,2}
Governing Body	77.2
Presidency of the Governing Body	17.6
Executive Secretariat	16.9
Legal Unit	34.2
Exploration Technical Unit	34.8
Extraction Technical Unit	38.0
Technical Administration of Entitlements and Contracts Unit	16.9
National Centre for Hydrocarbons Information	26.4
Chief Administrator	45.1
Internal Audit Office	12.4
Total	319.5

Notes: 1. Federal budget for the year 2016 (*Presupuesto autorizado para el ejercicio fiscal 2016*).
2. Approximate figures in MXN million.

Source: http://dof.gob.mx/nota_detalle.php?codigo=5419745&fecha=11/12/2015.

Concerning the resources that stem from fees, taxes, royalties and fines, which make up the Trust Fund, there is no internal regulation or defined process for the use of these resources. In practice, these funds are used mainly to finance prioritised investment and operational projects like the CNIH, the National Mineral Collection Centre, and the National Media and Tape Library. However, even when the LORCME foresees budgetary autonomy for the use of the resources in the Trust Fund, it requires approval from SCHP in certain cases like outsourcing contracts.

Box 3.4. Composition of the Public Trust Fund of the CNH

The Public Trust Fund of the CNH is supported by a Technical Committee composed of five representatives:

- Three representatives of the CNH, with the Commissioner President as chair
- A representative of the Ministry of Energy
- A representative of the Ministry of the Treasury.

Other participants of the Technical Committee that assist although without voting rights, include:

- A representative of the CNH's Internal Audit Office (OIC),
- A representative of the Legal Unit of the CNH,
- The Delegate and Public Commissioner of the Energy Sector of the Ministry of Public Administration,
- A representative of the Trustee.

Source: Information provided by the CNH (March 2017).

The CNIH has three licence user models to share raw data for exploration and extraction activities; this information is acquired by companies, investment banks and/or universities reflecting the largest source of income for the CNH. The three existing models are as follows:

- **LUI-LUC:** 25-year licence where users can request any type of information available at CNIH.
- **LUE:** Licence for academic uses that stems from an agreement between the CNIH and universities or research centres.
- **LUA:** Annual licence that allows access to oil well data, comprised of a group of wells related to a previously selected zone.

Human resources

Following the Energy Reform there was a necessity to increase the number of staff in the CNH; consequently, in 2016, SHCP and the Ministry of Public Administration (SFP) approved an increase of the workforce. Prior to the approval, the governing body drafted new internal regulations to cover the new functions. Consequently, it was submitted to SHCP for approval and the new organisation structure was registered at SFP (see Table 3.6).

Table 3.6. Total workforce by supporting and professional staff (2012-17)

Year	Number of supporting staff	Number of professional staff	Total workforce
2017	131	256	387
2016	122	258	380
2015	17	197	214
2014	17	134	151
2013	6	75	81
2012	6	55	61

Source: CNH information

Staff profile and recruitment

There are no standard criteria or pre-defined homogenous recruitment processes in the CNH. When a position becomes vacant or there is the need to create a new position, there are mechanisms through which it gets filled. The first mechanism relies on the CNH job bank, which is an open-access tool on the CNH website,⁶ via which interested people may register their personal data and career information. Nonetheless, vacancy announcements are not compulsory. The second mechanism relies on internal applications from current CNH employees.

The senior management selection is under the purview of the President Commissioner and is done according to the candidate's profile and the technical requirements for the position. The President Commissioner also has the authority to dismiss any staff under specific circumstances. CNH has recently created a career advancement council, integrated by the Commissioners, the Executive Secretary and the Budget Director, which convenes to approve the Senior Management Team (Heads of Units and General Directors). The new Heads of Unit were vetted by this council. However, regardless of this new mechanism, the Units or General Directorates can make use of internal promotions to fill their available positions, although this is seldom used. In a nutshell, there are two ways to select the candidate:

- When a position is to be filled by means of an open announcement, candidates are interviewed by the career advancement council, which deliberates over the candidates at the end of the evaluation process and decides upon designation of the fittest candidate.

- When a position is not subject to an open process or it involves a support position, the decision is left to the direct hierarchical boss, with no further procedure.

Currently, most of the personnel that work in the CNH come from services and oil companies (e.g. Schlumberger, PEMEX), as well as from government entities (e.g. The Mexican Petroleum Institute and the Ministry of Energy). The largest share of professional staff has a technical/specialised background related to the oil sector, followed by lawyers (Table 3.7).

Table 3.7. Share of professional staff by job family

Job family / profession	Share of professional staff (not including support staff)
Accounting	9
Communication	4
Economics	16
Inspection	0
Legal	51
Managerial	22
Modelling/forecasting	0
Statistician	1
Strategy	0
Technical (engineers)	89
Geophysicist engineers	14
Geologist Engineers	32
Other	18
TOTAL	256

Source: CNH information.

The workforce in the CNH has grown 620 % from 2012 to 2017; the Commission went from having 61 to 387 employees. Moreover, the CNH has the possibility of hiring specific professional services through third parties with the resources from the Trust Fund, if required.

Remuneration

The Ministry of Public Administration (SFP) and the Ministry of Finance and Public Credit (SHCP) issue the federal salary scale (*Manual de Percepciones de los Servidores Públicos de las dependencias y entidades de la Administración Pública Federal*)⁷ each year to standardise salaries across

the federal government. The CNH, as part of the federal administration, is subject to the specificities and limits set by the federal salary scale.

The federal salary scale is approved by the Chamber of Deputies in the PEF for each year. The CNH is not free to set wages, the salary scale emitted by SHCP and SFP rules the minimum and maximum a public servant could earn, based upon their level of responsibility, which can only be compared to other job families in other federal government institutions. For that reason, CNH promotes training and professional development within the organisation as tools for attracting and retaining talent. No remuneration information is available from the private sector that would allow estimating the average wage gap in the oil sector compared to that of CNH.

Managing human resources

The CNH is currently developing a strategic mechanism to manage human capital. In 2017, the Commission will start with the description of a professional career service that will improve personnel entry and permanence processes, as well as the definition of an organisational architecture according to international standards. Additionally, CNH is working on training and certification to ensure that each of the different job families meets the roles and standards described in their job profiles. As part of the reconstruction of the strategy, some areas in particular will receive more focus, for example:

The inspection function is being revamped with new ways to face the challenge that constitutes increasing operations, alongside constant training. Currently, there are six personnel assigned to inspection functions from the Technical Administration of Contracts and Entitlements Unit.

Geophysicists and geologists have also been selected to be exposed to state-of-the-art methodologies, tools and new ways of transmitting information for decision-makers at CNH.

The Information Technology Directorate is currently dedicated to solving administrative IT problems whereas the function will also include designing IT solutions, especially for their repository of data – the National Centre for Hydrocarbon Information.

Likewise, the Units for Exploration, Extraction and Technical Administration of Contracts and Entitlements will go through the process of creating multi-disciplinary teams with more technical expertise.

Process

Decision making and governing body

The decision-making body of the CNH is the governing council, consisting of one President Commissioner and six Commissioners. The governing body adopts decisions and issues regulation as well as administrative acts, which are binding to the sector operators.

Nomination and appointment

The CNH governing council is appointed by the Senate upon proposals made by the executive. In other words, the hiring process for CNH's President Commissioner and Commissioners is conducted through a short-list of three candidates proposed by the President of the Republic to the Senate, which chooses one of them following hearings and a vote. The shortlist is based on specific requirements stipulated in Article 6 of LORCME and is established by the executive through informal internal consultations. Requirements to be a Commissioner include being Mexican, having a good public reputation, having a Bachelor's Degree and having a minimum of five years work experience in energy-related fields, among others.

Box 3.5. Appointment process after the energy reform

The appointment mechanism was also modified after the energy reform. One of the main changes was that the governing council went from having five to seven Commissioners, and the appointment of the Commissioners to be made by the Senate upon proposal of a tern of candidates by the President of the Republic. The new mechanism has therefore been put in practice on three occasions:

- The first occasion was in September 2014, with the appointment of Commissioners Héctor Acosta Félix (until 2019) and Sergio Pimentel Vargas (until 2020). Both of them have the possibility to repeat their term for a period of seven years.
- The second time was in April 2016 with the appointment of Commissioner Alma América Porres Luna (until 2022) for a second term. She was proposed in April 2015 to the Senate with two other candidates, but the Senate did not pronounce in any sense, which is why the President was allowed to name directly under the terms of the LORCME
- The third occasion was in April 2016 with the appointment of Commissioners Gaspar Franco Hernández (until 2022) and Hector Moreira Rodriguez (until 2018). Both of them in substitution of running terms and with the possibility to repeat in the position for a seven-year period.

So far, no council members have been dismissed.

Source: Information provided by the CNH (January 2017).

The governing council then appoints an Executive Secretary, with the guidance of the President Commissioner. The Commissioners are appointed for a period of seven years with the possibility of serving an additional seven-year mandate. Their mandates are staggered and can only be removed for severe causes listed in LORCME.

Preventing conflict of interest

The requirements that LORCME establishes for the Commissioners' posts state that they have to refrain from holding any job, role or directive function in companies linked to the energy sector prior to taking their functions as Commissioners. On the other hand, a *cooling-off* period of one year before working for a sector-related company is explicitly stipulated in the Federal Law of Administrative Responsibility of Public Servants (*Ley Federal de Responsabilidades Administrativas de los Servidores Públicos*).⁸

The law of the regulator – LORCME – mandates the CNH to issue an institutional Code of Conduct, establishes the minimum content and sets the institutional values of the co-ordinated regulators as uprightness, honesty, justice, respect and transparency. The CNH board approved the Code of Conduct in December 2014 (updated in March 2016).

Furthermore, staff of the CNH is obliged to follow the Code of Conduct⁹ which addresses the prevention of conflict of interest. Section 5 of the aforementioned Code defines conflict of interest, and sets out a series of prohibitions for CNH staff: such as accepting any kind of invitation to events organised by the regulated sector without the approval of the Ethics Committee; having shares of stock or investment funds related to any company of the regulated sector; or, establishing negotiations, conversations or actions with representatives of the regulated sector destined to requesting or receiving a job offer.

Article 15 of LORCME allows CNH to establish an internal Ethics Committee and foresees that its functions and rules of procedures be established by the internal Code of Conduct under the purview of SFP. The Ethics Committee has legal attributions to hear, investigate, recommend and deliberate over any issue related with compliance to the Code of Conduct and is formed by eight members at minimum – the Chief Administrator as permanent head and seven temporary members composed of one Head of Unit, one Director General, one deputy Director General, one Area Director, one deputy Director, one Department Chief and an Analyst. The Internal Audit Office (OIC) and the Commissioners are permanent invitees to the Ethics Committee.

Transparency and accountability

In terms of transparency, the CNH has made an effort to make use of information technologies to improve the transparency of the decision-making body after the issuance of LORCME. All ordinary and extraordinary sessions of the governing council have a live transmission and can be consulted in a digital public registry found on their website.¹⁰ Likewise, whenever a Commissioner carries out a hearing with companies or institutions from the regulated sector, the minutes are uploaded on the dedicated website stated before.

Box 3.6. The CNH's transparency group

In October 2016, the Natural Resource Governance Institute (NRGI) presented the report on “International Best Practices for Transparency in Contract Management: Recommendations to the National Hydrocarbons Commission of the Government of the United Mexican States” that reviews and evaluates the transparency of the CNH website.

Based on methodology presented in the report, the CNH created a transparency group made up of NGO representatives and academic institutions. The objective was to enhance participation and facilitate stakeholder monitoring that would allow incorporating and addressing their own concerns, information needs and recommendations to strengthen transparency in bidding processes, and contract management.

The interaction with this group has allowed CNH to identify gaps in transparency matters and to carry out actions to improve processes and make relevant, clear and accessible information available to society.

Participants include the following:

- Greenpeace México
- Center Rice University México
- Transparencia Mexicana
- FUNDAR
- IMCO
- Métrica Ciudadana
- Instituto de Investigaciones Económicas-UNAM
- Instituto de Geología-UNAM
- CESPEDES-CCE

Box 3.6. The CNH's transparency group (*cont.*)

- ENERGEA
- PROJECT PODER
- Cartocrítica
- NRGI.

Source: <https://resourcegovernance.org/sites/default/files/documents/international-best-practices-contract-management-english.pdf> (accessed May 2017).

CNH Commissioners sign a declaration of interest, specifying whether they have previously worked in companies linked to the hydrocarbon sector, acted as counsellors, assessors or suppliers of any sector economic agent, or have any kinship or parentage connections to employees of companies operating in the hydrocarbons sector. These declarations are posted on the CNH website and will be updated every year. The CNH Code of Conduct requires that Senior Management also sign this declaration. CNH was the first federal entity to undertake this transparency exercise.

The resolutions of the governing council containing annexes with technical opinions are published, including the formal opinion requests from SENER and SHCP. In practice, these resolutions and technical opinions have a delay of two months approximately before they are published. Likewise, the decisions of the Commissioners must be available to the public, including their separate votes and the record of sessions. Regardless of the transparency obligations, and in line with the rest of the federal public administration, the CNH is subject to the Freedom of Information Act which allows citizens to request public information.

Concerning accountability, the CNH has diverse mechanisms depending on the authority it is being accountable to. These mechanisms are as follows:

Executive power: As part of the federal administration, periodic information is sent to the Office of the Presidency including the documentation utilised in the Annual Report of the President presented 1 September of each year.

Legislative power: The CNH is required to prepare annual reports on their activities and results but there is no formal mechanism for their discussion in Congress. While there are no formal channels or systematic mechanisms for the accountability of the CNH to Congress, the President Commissioner can be called to appear in Congress to report on activities and results. This, however, does not happen systematically. 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, 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. Furthermore, as opposed to the Energy Commission which is an ordinary commission, the Commission of the Co-ordinated Energy Regulators has a special status, which in practice means that they can only issue recommendations to ordinary commissions but these are not binding. Its first activities have consisted in transmitting concerns from stakeholders regarding the changes contained in the reform (i.e. changes in requirements for oil station permits with ASEA and oil liberalisation prices with CRE).

Box 3.7. CNH's accountability process with Congress

In April 2017 the President Commissioner participated in the 4th Ordinary Session of the Special Commission of the Co-ordinated Energy Regulators.

The topics included:

- The CNH functions
- The CNH institutional strengths
- Conclusions of the historical information transfer process from Pemex and the Mexican Petroleum Institute to the National Centre for Hydrocarbon Information
- Success Indicators from the Energy Reform
- Update on the Round 2 Bidding Process.

Source:

www.canaldelcongreso.gob.mx/vod/reproducir/0_00oehj6/comision_especial_del_sector_energetic (accessed May 2017).

Audit institutions: As any federal entity, the CNH can be audited by the Superior Audit Office that reports directly to Congress, as well as by the Ministry of Public Administration that reports to the President. In that sense, they can be directly audited by and are accountable to both Congress and the Federal Executive. These audits focus on administrative and financial aspects. In the case of relations with SFP, all federal entities include an *Órgano Interno de Control* (Internal Audit Office), which responds directly to the SFP. The purpose of these Internal Audit Offices is to support the performance of the entity, to prevent non-compliance by staff and handle

complaints against public servants. They are also responsible for supervising and enforcing the Federal Law on the Liabilities of Public Officers (*Ley Federal de Responsabilidades Administrativas de los Servidores Públicos*).

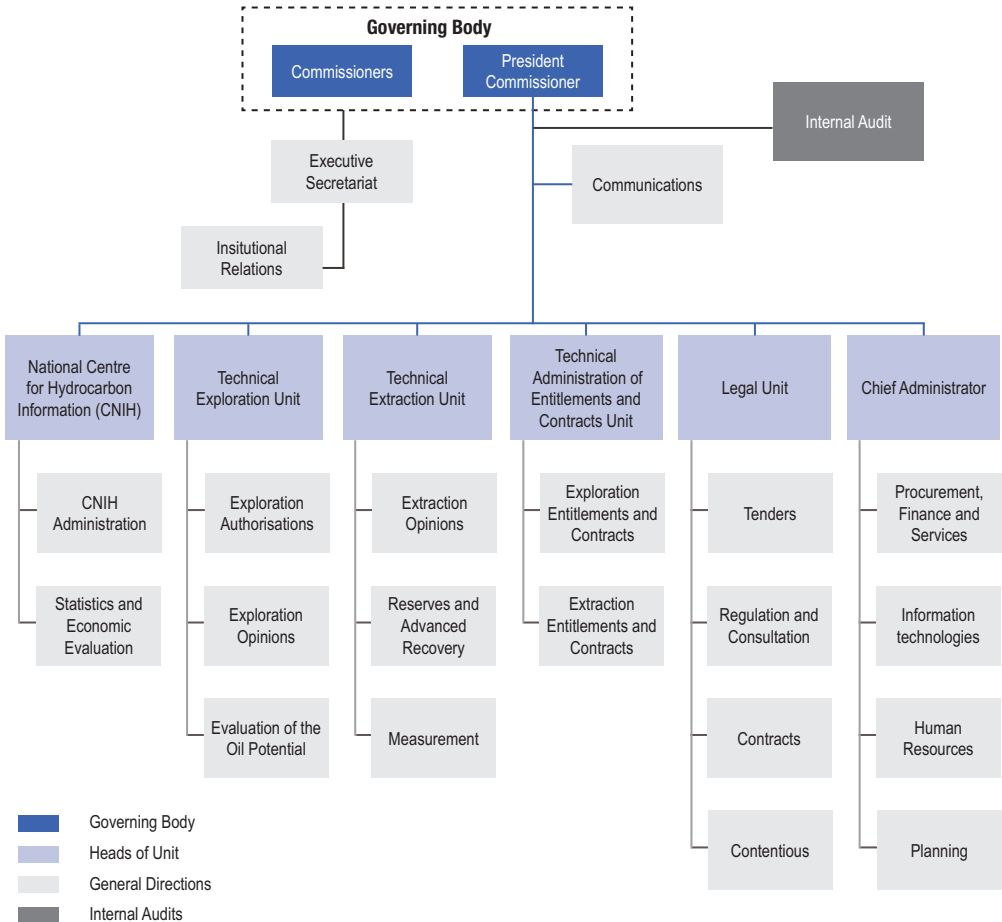
- *Budgetary audit*: Other accountability mechanisms within the executive branch include the assessment of the alignment of the budget of federal entities with their mandates and objectives, in line with the SHCP’s budgeting best practices. Each year through the “*Presupuesto de Egresos de la Federación*” (PEF) resources are allocated to agencies based on a programme structure; each programme has a corresponding set of Key Performance Indicators within a results matrix (*Matriz de Indicadores para Resultados*, MIR). They report on these quarterly to SHCP.
- *Citizenship*: As instructed by LORCME, the CNH publishes a quarterly newsletter that summarises activities and results. Moreover, the CNH has introduced formal mechanisms that encourage the transparency and accountability to citizens, such as live feeds of the bidding processes and the compilation of White Books for each of the tender processes of Round 1, including data ranging from the beginning of the bid up until the signature of contracts. The latter, once reviewed by SFP, will be made available on the CNH website.

Internal organisational management

The organisational structure of the CNH is based on its internal regulation approved in 2014. There are two main structures: the governing body, in which the Commissioners and their advisors are found, and the Executive Secretariat along the Units and Directorates. The latter is divided into areas of specialisation, such as:

- Executive Secretariat
- Technical Administration of Entitlements and Contracts Unit
- Legal Unit
- Exploration Technical Unit
- Extraction Technical Unit
- National Centre for Hydrocarbon Information
- Chief Administrator

Figure 3.6. Organisational chart of the CNH



Source: information provided by CNH (March 2017).

The President Commissioner acts as chairman of the board but also as the chief executive officer of the CNH. It is within the responsibility of the President Commissioner to oversee the everyday management and administration of the Commission. The decisions in the governing body are made via a simple majority vote where the President Commissioner holds the casting vote.

Concerning daily work, the Executive Secretary is responsible for managing the different affairs that the CNH must resolve, and for monitoring their progress in order to comply with deadlines and time

responses. In most cases, each of the ‘external’ affairs (i.e. the presentation and approval of an oil field development plan by a company, or the approval of an exploration plan) is randomly assigned to a “sponsor” Commissioner responsible for overseeing the process with the different Heads of Unit acting as facilitators for their corresponding affair. The “sponsor” Commissioner is then charged with presenting the resolution, made by the units, to their Commissioner peers in order to vote the resolution.

Table 3.8. **Organisational structure before and after the Energy Reform**

Previous organisational chart ¹	Current organisational chart ²
Governing Body	Governing Body
Presidency	Presidency
Executive Secretariat	<ul style="list-style-type: none"> • General Directorate for Communication
Exploration General Directorate	Executive Secretariat
Extraction General Directorate	<ul style="list-style-type: none"> • General Directorate for Institutional Relations
Regulation General Directorate	Legal Unit
Supervision General Directorate	<ul style="list-style-type: none"> • General Directorate for Tenders • General Directorate for Contracts
Planning General Directorate	<ul style="list-style-type: none"> • General Directorate for Regulation and Consultation
Administration General Directorate	<ul style="list-style-type: none"> • General Directorate for Litigation
Internal Audit Office	Technical Exploration Unit
	<ul style="list-style-type: none"> • General Directorate for Exploration Authorisations • General Directorate for Exploration Opinions • General Directorate for Evaluation of Oil Potential
	Technical Extraction Unit
	<ul style="list-style-type: none"> • General Directorate for Extraction Opinions • General Directorate for Reserves and Advanced Recovery • General Directorate for Measurement
	Technical Administration of Entitlements and Contracts Unit
	<ul style="list-style-type: none"> • General Directorate for Exploration Entitlements and Contracts • General Directorate for Extraction Entitlements and Contracts

Table 3.8. **Organisational structure before and after the Energy Reform** (*cont.*)

Previous organisational chart ¹	Current organisational chart ²
	Centro Nacional de Información de Hidrocarburos <ul style="list-style-type: none"> • General Directorate for the Administration of the National Centre for Hydrocarbon Information • General Directorate for Statistics and Economic Evaluation Chief Administrator <ul style="list-style-type: none"> • General Directorate for Procurement, Finance and Services • General Directorate for Human Resources • General Directorate for Planning • General Directorate for Information Technologies Internal Audit Office

Notes: 1. Internal ruling of the CNH 2012, www.dof.gob.mx/nota_detalle.php?codigo=5253552&fecha=12/06/2012.

2. Internal ruling of the CNH 2014 (*in force*), www.diputados.gob.mx/LeyesBiblio/regla/n225.pdf.

Source: CNH information.

Stakeholder engagement

Formal stakeholder engagement during public consultation is managed by COFEMER, following submission of draft regulation by the agencies. In addition to this, the regulators have instated “early stage” mechanisms to engage with industry in order to solicit their feedback and hear their concerns.

In addition to several types of formal meetings that can be organised with the regulated industry, and that are governed by rules included in the Code of Conduct as foreseen by Article 28 of LORCME, the board of CNH is obliged to convene Advisory Councils for the discussion of each developed regulation. Once the board has approved the list of industry representatives who will participate, a meeting is summoned and regulated entities have the opportunity to make comments for the duration of the consultation phase of the draft regulation. Pending on the discussion of the regulation at hand, the Advisory Councils in practice can last, on average, between one and six weeks, although the LORCME does not establish a specific time for the process carried out in Advisory Councils.

Appeals

As specified in LORCME, decisions by the CNH and CRE can only be appealed to the federal courts via *amparo indirecto*, which examines the constitutionality of the decision. With regard to exploration and extraction contracts, CNH and operators can resort to International Arbitration to address alleged contract breaches.

Regulatory quality tools

The CNH has a specific process to issue regulation based on the legal mandate. The governing body approves the agenda composed of regulation to be issued during the year. Consequently, the regulation is proposed by CNH staff and submitted to public consultation. Consultation is compulsory and carried out through Advisory Councils made specifically for each regulation; the Advisory Councils are composed of both entities of the public and private sector convened by the CNH (cf. Box 3.3 above for a list of regulations issued by the CNH).

Box 3.8. Advisory Council for the regulation on technical provisions for the use of associated natural gas in the exploration and extraction of hydrocarbons

The process of drafting the regulation carried out by the CNH includes a public consultation procedure which comprises the installation of advisory councils proposed by the Governing Council of the CNH. The Advisory Council is a forum whose purpose is to contribute to the public consultation process through the opinions of the interested sectors and thus to improve the content of the regulation.

For the elaboration of the technical provisions for the use of associated natural gas in the exploration and extraction of hydrocarbons (issued by the CNH and published in the Official Gazette 7 January 2016) an Advisory Council was created with representatives of leading institutions in the energy and academic sectors, and associations that group assignees and contractors, among others, in order to discuss the preliminary draft.

Representatives of energy sector institutions including ASEA, the Under Secretariat of Hydrocarbons of the Ministry of Energy and the Mexican Petroleum Institute, the Mexican Association of Hydrocarbons Companies (AMEXHI), the Mexican Union of Engineers Associations, and the Confederation of Employers of the Mexican Republic (COPARMEX) participated. Regarding the academic sector, the National Autonomous University of Mexico (UNAM), the National Polytechnic Institute (IPN), the National Council of Science and Technology (CONACYT), the College of Engineers of Mexico and the Mario Molina Center participated.

Box 3.8. Advisory Council for the regulation on technical provisions for the use of associated natural gas in the exploration and extraction of hydrocarbons (cont.)

Two sessions were held: the first on 19 June 2015 and the second on 1 September 2015. In the first meeting, representatives of the CNH explained the purpose and the criteria of the regulation. Participants analysed the draft and sent comments 30 June 2015. The CNH analysed them and compiled a list with all the comments. At this stage the CNH received 133 observations divided into 96 opinions of a legal nature, and 37 of a technical nature.

During the second meeting, representatives of the CNH informed the participants how their comments were received, as well as the reasons for those that were not received.

In this way, the Advisory Council allows for CNH to know and take into account the opinion of sectors interested in the regulation, to strengthen the technical aspects and to strengthen the process of transparency in the issuance of regulations.

Source: Information provided by CNH (March 2017).

Following the process stated above and after having a draft regulation, the preliminary version is submitted to a second public consultation that is carried out by the Federal Commission for Regulatory Improvement (*Comisión Federal de Mejora Regulatoria*, COFEMER) with the possibility of modifications according to the Federal Law of Administrative Procedure (*Ley Federal de Procedimiento Administrativo*, LFPA). The draft regulation is accompanied by a regulatory impact assessment based on a pre-defined methodology. COFEMER is then responsible for regulatory quality oversight for the CNH and the entire federal administration. Subsequently, the CNH submits the regulation for the approval of the governing body and the regulation is published in the Official Gazette. The regulation issued can be found in the Official Gazette as well as on the CNH's website.¹¹

There are no systematic requirements to carry out *ex post* assessments or regulations. *Normas oficiales* have to be reviewed after their first year of implementation for relevance, but no other normative requirement exists for other categories of regulations.

Box 3.9. Ensuring correct assessment of cost and benefit, RIA in Mexico

In Mexico, the use of RIA was formalised through amendments to the Federal Law of Administrative Procedure in 2000. RIA became compulsory for all types of legal measures of general application that create compliance costs, from formats to major implementation rules. They have to be submitted to COFEMER, except for the subjects that the law explicitly excludes, like those of a fiscal nature, or acts by sub-national administrations (states or municipalities). Ministries and regulatory agencies are responsible for elaborating RIAs, while COFEMER is responsible for reviewing them. RIAs include a discussion of the problem to be addressed, objectives, obligations to be imposed, alternatives considered, potential costs, benefits, plus other relevant impacts, risk and competition analysis, mechanisms of implementation, monitoring and evaluation, and the results of public consultation.

Regulatory impact assessments are reviewed by the Federal Regulatory Improvement Commission (COFEMER), and if they are unsatisfactory, for example, by not providing specific impacts, COFEMER can request the RIA to be modified, corrected or completed with more information. If the amended RIA is still unsatisfactory, COFEMER can ask the lead ministry to hire an independent expert to evaluate the impact and the regulator cannot issue the regulation until it has COFEMER's final opinion.

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

Output and outcome

Assessing the performance of regulated entities

The CNH requires the regulated entities to submit performance information for contracts and entitlements on a regular basis, on seven different topics:

- Oil activities (monthly and annually) in terms of the Guidelines for the presentation of exploration and production plans
- Health, safety, security and environment status. The periodicity is defined by ASEA
- Discoveries (five working days following Discovery)
- Commerciality (60 days after completion of the evaluation)

- Drilling and results (upon completion of drilling)
- Geological and geophysical studies and results (no timeframe)
- Budget (monthly).

In practice, the information that is sent by the regulated sector is validated by the Unit of Entitlements and Contracts, after being sent to the Technical Exploration and Extraction Units in order to assess the performance of the regulated entities. After the Units validate this information, the National Centre for Hydrocarbons Information (CNIH) serves as CNH's information outlet. The CNIH makes public a wide array of information concerning the regulated sector on their dedicated website.¹²

LORCME provided for the transfer of historical digital data that was previously under PEMEX and the Mexican Petroleum Institute to CNH. This transfer was completed in August 2016. Within CNH, the CNIH is the unit responsible for the collection, safeguarding, administration and publication of the information obtained from the activities of recognition and surface exploration, as well as exploration and extraction of hydrocarbons. The CNIH is the national data repository for digital information comprising geological, geophysical, well-associated information, and any other information stemming from hydrocarbon exploration and extraction activities.

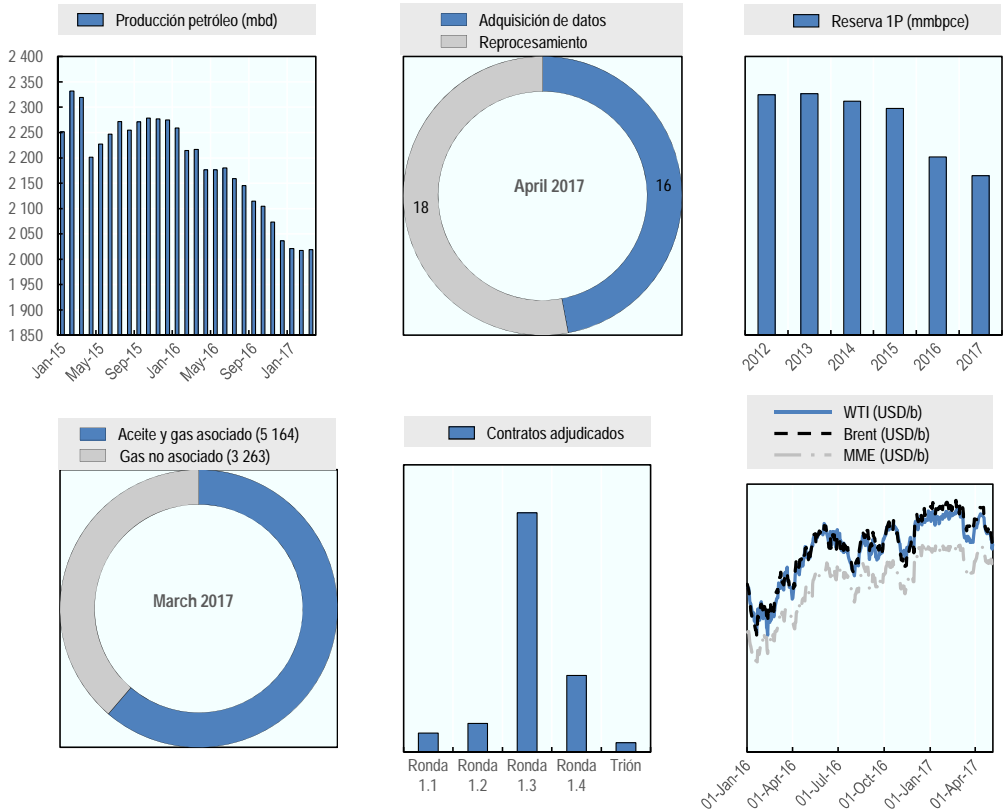
In the interest of transparency, the data portal publishes regular statistical information on a wide array of matters like:

- Hydrocarbon production
- Follow-up of the larger oil fields
- Exploration and extraction activities
- Gas flaring and venting
- Hydrocarbon resources and reserves
- Biddings and contracts
- Development plans and budget for oil contracts
- Permits for shallow water exploration (ARES).

Most reports have a monthly frequency, however, there are specific cases that have other periodicities; for example, information on oil reserves is updated annually, while ARES, companies or tenders are updated as soon as new information is generated.

Additionally, CNH publishes fact sheets on its website that present national exploration and production indicators, information on spills, leaks, gas flaring and venting, gas shale and price statistics, and annual reserve reports to demonstrate the performance of the sector (Figure 3.7).

Figure 3.7. Types of statistical reports found on CNH's data portal



Source: Information taken from CNH data portal <http://portal.cnih.cnh.gob.mx/estadisticas.php> (accessed 15 April 2017).

Assessing the performance of the regulator

For now, the CNH does not report on performance indicators for the six internal strategic objectives or for policy objectives set by SENER in the Sectoral Programme or the National Development Plan. The CNH has carried out polls with sector participants to obtain their opinion with regards to data packages given to them in the bidding rounds in order to fine-tune the information being processed and given to companies.

Performance indicators

Performance indicators exist for the percentage of the budget that stems from the federal government, as mandated by the Ministry of Finance. The indicator's matrix includes objectives, indicators and goals for each of the three budgetary programmes. The outcome and progress of the indicators is used to make internal decisions for the administrative units responsible for each budgetary programme, as that information is subject to audit by the audit office. Quarterly reports on progress are presented to the Ministry of Finance.

The 2017 operational plan includes indicators to monitor progress towards implementing the specific lines of actions.

Mechanisms for the systematic collection and *ex post* analysis of CNH's decisions have not yet been established.

Notes

1. EUR 1 = MXN 21.82 Official exchange rate from the Bank of Mexico (7 February 2017).
2. Starting budget for the first four years established in the Federal Law of Budget, *Ley Federal de Presupuesto y Responsabilidad Hacendaria (Disposición Transitoria Sexta)*
https://www.gob.mx/cms/uploads/attachment/file/122496/Ley_Federal_de_Presupu+esto_y_Responsabilidad_Hacendaria.pdf.
3. Article 31, Law of the Co-ordinated Energy Regulators.
www.diputados.gob.mx/LeyesBiblio/pdf/LORCME_110814.pdf.
4. Federal budget for the year 2016 (*Presupuesto autorizado para el ejercicio fiscal 2016*),
http://dof.gob.mx/nota_detalle.php?codigo=5419745&fecha=11/12/2015.
5. Objectives matrix for the year 2016 (Matriz de objetivos, indicadores y metas para el Ejercicio Fiscal 2016),
http://pef.hacienda.gob.mx/work/models/PEF/2016/docs/46/r46_oimpp.xls.
6. CNH job bank: <http://trabajaen.cnh.gob.mx/home/site/registraDatos.aspx>.
7. Federal Salary Scale (*Manual de Percepciones de los Servidores Públicos del año 2016*)
www.dof.gob.mx/nota_detalle.php?codigo=5439346&fecha=31/05/2016.
8. Federal Law on the Liabilities of Public Officers:
www.secretariadoejecutivo.gob.mx/docs/pdfs/normateca/Leyes/ley_federal_responsabilidades.pdf.
9. Code of Conduct: http://transparencia.cnh.gob.mx/home/wp-content/uploads/2016/04/codigo_conducta_2016.pdf.
10. Public registry of the CNH, www.gob.mx/cnh/es/acciones-y-programas/concentrado-de-sesiones-de-organo-de-gobierno?idiom=es.
11. Regulation Issued by the CNH, www.gob.mx/cnh/acciones-y-programas/regulacion-emitida-por-la-cnh?idiom=es.
12. CNIH web portal: <http://portal.cnih.cnh.gob.mx/>.

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The Governance of Regulators

Driving Performance at Mexico's National Hydrocarbons Commission

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 National Hydrocarbons Commission 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 Agency for Safety, Energy and Environment 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*.

www.oecd.org/gov/regulatory-policy/ner.htm

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