



The Governance of Regulators

Driving Performance at Peru's Transport Infrastructure Regulator



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Foreword

Economic regulators oversee the functioning of markets to ensure quality and delivery of public services and to provide stability for investors. In order to fulfil their role, they need to make and implement impartial, objective and evidence-based decisions that will inspire trust in the public administration. The model of independent economic regulation, based on strong technical capacity, transparency, autonomy and constructive engagement with stakeholders, helps reinforce the legitimacy and integrity of the regulator. This, in turn, builds confidence and supports high-level policy objectives that contribute to better outcomes for the economy and society at large.

The OECD has developed a framework to assess and strengthen the organisational performance and governance structures of economic regulators. The framework analyses regulators' internal and external governance, including their organisational structures, behaviour, accountability, business processes, reporting and performance management, as well as role clarity, relationships, distribution of powers and responsibilities with other government and non-government stakeholders. The OECD Performance Assessment Framework for Economic Regulators (PAFER) draws on the *OECD Best Practice Principles on the Governance of Regulators*, which propose an overarching governance framework to drive performance improvements of regulators. This report applies the PAFER methodology to Peru's Transport Infrastructure Regulator (*Organismo Supervisor de la Inversión en Infraestructura de Transporte de Uso Público*, OSITRAN). The review builds on knowledge gathered by the OECD Secretariat during the reviews of Peru's regulators of the telecommunications sector (*Organismo Supervisor de la Inversión Privada en Telecomunicaciones*, OSIPTEL) and of the energy and mining sectors (*Organismo Supervisor de la Inversión en Energía y Minería*, Osinergmin), published by the OECD in 2019.

OSITRAN has a unique mandate in Peru. Its core function is to oversee private investment in public-use transport infrastructure by supervising compliance with concession contracts awarded by the Peruvian state. The review finds that stakeholders recognise the technical capacity of the regulator, which has been entrusted with supervising an increasing number of sectors over the years: the total volume of contracts rose from USD 3.1 billion in 2006 to USD 15.2 billion in 2018. However, the regulator operates in a national complex environment where rebuilding trust in public institutions is a key challenge. The review underlines the importance of creating a renewed strategic framework that can strengthen the regulator's internal culture and common sense of purpose and that can form the basis of renewed relations with external partners. It further recommends bolstering performance reporting, implementing a consolidated integrity strategy, and increasing the efficiency of supervision, enforcement and inspections activities. Finally, the review recommends that Peru's four economic regulators work together more effectively to share best practices and address common challenges.

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 that support sustainable economic and social development.

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Abbreviations and acronyms

AFIN	Association for the Promotion of National Infrastructure (<i>Asociación para el Fomento de la Infraestructura Nacional</i>)
APN	National Port Authority (<i>Autoridad Portuaria Nacional</i>)
ATEE	National Authority of the Electric Transport System of Lima and Callao (<i>Autoridad Autónoma del Sistema Eléctrico de Transporte Masivo de Lima y Callao</i>)
ATU	Urban Transport Authority for Lima and Callao (<i>Autoridad de Transporte Urbano para Lima y Callao</i>)
CEPLAN	National Centre for Strategic Planning (<i>Centro Nacional de Planeamiento Estratégico</i>)
CGR	Comptroller General of the Republic of Peru (<i>Contraloría General de la República del Perú</i>)
CODECO	Commission for Consumer Defence and Regulators of Public Utilities (<i>Comisión Defensa del Consumidor y Organismos Reguladores de los Servicios Públicos</i>)
CPP	Peruvian Political Constitution (<i>Constitución Política del Perú</i>)
GAJ	Legal Advisory Department (<i>Gerencia Asesoría Jurídica</i>)
GAU	User Protection Department (<i>Gerencia de Atención al Usuario</i>)
GPPM	Planning, Budget and Modernisation Department (<i>Gerencia de Planeamiento, Presupuesto y Modernización</i>)
GRE	Regulation and Economic Studies Department (<i>Gerencia de Regulación y Estudios Económicos</i>)
GSF	Enforcement and Supervision Department (<i>Gerencia de Supervisión y Fiscalización</i>)
Indecopi	National Institute for the Defence of Competition and Intellectual Property (<i>Instituto Nacional de Defensa de la Competencia y Protección de la Propiedad Intelectual</i>)
LMOR	Framework Law on Regulatory Agencies for Private Investment in Public Utilities (<i>Ley Marco de los Organismos Reguladores de la Inversión Privada en los Servicios Públicos</i>)
LOGR	Organic Law of Regional Governments (<i>Ley Orgánica de Gobiernos Regionales</i>)
LOM	Organic Law of Municipalities (<i>Ley Orgánica de Municipalidades</i>)
LOPE	Organic Law of the Executive Power (<i>Ley Orgánica del Poder Ejecutivo</i>)
MEF	Ministry of Economy and Finance (<i>Ministerio de Economía y Finanzas</i>)

MINJUS	Ministry of Justice and Human Rights (<i>Ministerio de Justicia y Derechos Humanos</i>)
MTC	Ministry of Transport and Communications (<i>Ministerio de Transportes y Comunicaciones</i>)
NER	Network of Economic Regulators
OCI	Institutional Control Body (<i>Órgano de Control Institucional</i>)
OSINERGMIN	Supervisory Agency for Investment in Energy and Mining (<i>Organismo Supervisor de la Inversión en Energía y Minería</i>)
OSIPTEL	Supervisory Agency for Private Investment in Telecommunications (<i>Organismo Supervisor de Inversión Privada en Telecomunicaciones</i>)
OSITRAN	Supervisory Agency for Investment in Public Transport Infrastructure (<i>Organismo Supervisor de la Inversión en Infraestructura de Transporte de Uso Público</i>)
PAFER	Performance Assessment Framework for Economic Regulators
PCM	Presidency of the Council of Ministers (<i>Presidencia del Consejo de Ministros</i>)
PEDN	National Strategic Development Plan (<i>Plan Estratégico de Desarrollo Nacional</i>)
PEI	Strategic Institutional Plan (<i>Plan Estratégico Institucional</i>)
POI	Operational Institutional Plan (<i>Plan Operacional Institucional</i>)
ProInversión	Agency for the Promotion of Investment (<i>Agencia de Promoción de la Inversión Privada</i>)
REGO	OSITRAN General Rules (<i>Reglamento General del OSITRAN</i>)
REMA	Regulation of Access to Public Transport Infrastructure (<i>Reglamento Marco de Acceso a la Infraestructura de Transporte de Uso Público</i>)
RETA	OSITRAN General Regulation of Tariffs (<i>Reglamento General de Tarifas de OSITRAN</i>)
RIA	Regulatory Impact Assessment
RIIS	Incentives, Infringements and Sanctions Regulations (<i>Reglamento de Incentivos, Infracciones y Sanciones, RIIS</i>)
RQA	Regulatory Quality Assessment
SERVIR	National Civil Service Authority (<i>Autoridad Nacional del Servicio Civil</i>)
SINAPLAN	National System of Strategic Planning (<i>Sistema Nacional de Planeamiento Estratégico</i>)
SUNASS	National Superintendence of Sanitation Services (<i>Superintendencia Nacional de Servicios de Saneamiento</i>)
SUTRAN	Superintendence of Land Transportation of People, Cargo and Merchandise (<i>Superintendencia de Transporte Terrestre de Personas, Carga y Mercancías</i>).
TAA	Administrative Affairs Tribunal (<i>Tribunal de Asuntos Administrativos</i>).
TSC	Controversies Settlement Court (<i>Tribunal de Solución de Controversias</i>).

Executive summary

OSITRAN (*Organismo Supervisor de la Inversión en Infraestructura de Transporte de Uso Público*), Peru's transport infrastructure regulator, was created in 1998. It supervises compliance with concession contracts in several transport infrastructure sectors (airports, ports, railways, roads and waterways). Over the past 20 years, OSITRAN has supported the implementation of projects of strategic economic importance in Peru. Today, like many other Peruvian public bodies, OSITRAN operates in a highly complex environment marked by major corruption scandals and political instability. Its leadership needs to successfully reform the identity of the regulator to address these challenges and to build relationships with external stakeholders that are based on trust and predictability. OSITRAN can leverage its institutional maturity to achieve these goals and has the opportunity to lead by example within the Peruvian public administration at this challenging time.

Role and objectives

Over the years, OSITRAN has been entrusted with a growing portfolio of contracts. The regulator has a good technical reputation among stakeholders. However, OSITRAN has been scarred by recent corruption scandals involving infrastructure investments, and its identity and internal culture have suffered in consequence.

OSITRAN supervises obligations of thirty-two concession contracts, overseeing the construction of infrastructure, delivery of investment and service quality. More recently, it has strengthened its focus on empowering users. While all of these activities are relevant to the overall performance of transport infrastructure, there may be scope for a more targeted use of resources on outcomes.

OSITRAN carries out *ad hoc* operational co-ordination with other public agencies, but there is a lack of system-wide formal co-ordination mechanisms.

Key recommendations

- Revise the mission, vision and strategic framework of OSITRAN in a participatory manner that inspires and unifies staff, and consolidate a strategy for revitalising the regulator's internal culture.
- Implement a clear strategic focus on outcomes for the sector and society. This will allow a more targeted use of the regulator's resources.
- Advocate for more structured and collaborative relationships with other public entities and seek to create opportunities to share good practices with other regulators in Peru, as well as internationally.

Input

OSITRAN is mostly funded by resources received from the regulated sector. By law, the regulator is financially autonomous, but in practice, its budget autonomy is limited by fiscal rules. For example, since 2017, public entities are required to transfer surplus funds to the Treasury if not executed in a given fiscal year. This results in the attribution of fees from regulated entities towards funding general government activities. In addition, the regulator's budget is capped by law rather than defined according to cost-recovery principles.

Staff salaries and benefits are governed by three parallel regimes that may undermine staff motivation. Moreover, salary caps set by central government may reduce the capacity to attract staff. OSITRAN is implementing strategies to face these challenges, such as the talent management plan and the internship programme.

Key recommendations

- In light of funding uncertainty, ensure adequate prioritisation of activities during the budgeting phase and introduce principles of cost-recovery of regulatory activities.
- Share the direct impacts of fiscal measures that affect the regulator's funding model and advocate with other Peruvian regulators for a review of legal constraints on resources.
- Reduce disparities among the different employment regimes and continue implementing HR measures to make OSITRAN an attractive place to work.

Process

The Board of Directors leads decision making, but its resources are insufficient to fulfil its broad mandate. The President of the Board holds a full-time position, while the other four Board members only serve on a very limited part-time basis. Part-time members have few opportunities to provide strategic input.

OSITRAN has implemented a number of ambitious integrity, anti-bribery and ethics policies, but the stated strategic importance of these measures is undermined by an apparent lack of a unified strategy and communication on results.

Regarding the use of good regulatory practices, OSITRAN was a pioneer in the Peruvian administration in implementing regulatory impact assessments (RIAs). Moreover, OSITRAN's User Councils are effective stakeholder engagement mechanisms for dialogue with users.

Finally, OSITRAN supervises multiple obligations and devotes a high percentage of its resources to inspections. The optimisation of supervision and enforcement activities is one of the regulator's strategic objectives; nevertheless, it lacks a clear strategy to prioritise activities.

Key recommendations

- Ensure that Board members have sufficient time, resources and information to engage in decision making and strategic planning.
- Consolidate the various integrity initiatives under one umbrella with clear objectives and targets, and develop a dedicated code of conduct as well as a comprehensive communications and training strategy.
- Maintain momentum towards the implementation of the RIA system and continue efforts to improve regulations on an on-going basis.

- Share the Users Councils' experience and good practices with other regulators in Peru and internationally.
- Improve the efficiency of inspections by adopting a compliance-driven and risk-based strategy; improve transparency with regard to their outcomes; and continue standardising consistent criteria.

Output and outcome

OSITRAN collects a vast amount of information from regulated entities and produces statistical reports. The regulator lacks the relevant IT tools for better data management and does not appear to turn the collected information into evidence for decision-making.

OSITRAN has defined a four-year strategic plan (2019-2022) with indicators focused mainly on the implementation, rather than the outcome, of activities. Monitoring is carried out twice a year but it may be under-utilised for accountability purposes. OSITRAN thus misses an opportunity to link its performance to sector performance -- and assess the impact of OSITRAN activities on the quality of services. Although it is not required to do so by law, OSITRAN prepares and submits an annual report to Congress.

Key recommendations

- Adopt a comprehensive approach to data management and use the wealth of information gathered to engage with concessionaires, as well as to formulate evidence for improving regulation.
- Develop outcome-focused indicators for the new strategic framework that capture the quality of activities and their impact on sector performance.
- Continue monitoring the indicators twice a year and use the results for accountability purposes, while continuing to report to Congress.

Assessment and recommendations

This Performance Assessment Review looks at the external and internal governance arrangements of the Supervisory Agency for Investment in Public Transport Infrastructure of Peru (*Organismo Supervisor de la Inversión en Infraestructura de Transporte de Uso Público*, OSITRAN), and presents policy recommendations that aim to improve the performance of the regulator.

OSITRAN is one of four economic regulators created in the 1990s to oversee Peru's transition to a liberalised economy. OSITRAN delivers on its mandate of overseeing private investment in the transport sector by supervising concession contracts awarded by the Peruvian state. The technical capacity of the regulator is recognised by stakeholders, and OSITRAN has been entrusted with the responsibility of supervising an increasing number of sectors over the years on account of its reputation to deliver (the total volume of contracts supervised by OSITRAN has evolved from USD 3.1 billion in 2006 to USD 15.2 billion in 2018). As many public entities in Peru, OSITRAN operates today in a highly complex environment due to recent corruption scandals that have rocked the Peruvian state and society, and have eroded overall confidence in public institutions. The regulator's leadership has put in place a number of measures to address the need to rebuild trust internally and with stakeholders. For these efforts to bear fruit, the bar needs to be set high in order to successfully reset the identity and internal culture of a focused and high performing regulator and to foment a relationship based on confidence, predictability and stability with all stakeholders. The institutional maturity of Peru's regulators in general is an opportunity for the achievement of these goals and may also be a chance to lead by example within the Peruvian public administration at this challenging time.

Role and objectives

Status and mandate

OSITRAN shares the same legal framework as three other sector regulators created in the 1990s that places some limits on its autonomy. At its creation in 1998, OSITRAN was granted with technical, administrative, economic and financial autonomy but the regulator was placed under the Ministry of Transport instead of being created as an arms-length agency. In 2000, Law No. 27332 (Framework law on regulatory agencies for private investment in public utilities, *Ley marco de los organismos reguladores de la inversión privada en los servicios públicos*, LMOR) recognised the technical, administrative, economic and financial autonomy of all four Peruvian economic sector regulators¹ and placed them under the Presidency of the Council of Ministers (*Presidencia del Consejo de Ministros*, PCM). These sector regulators, while autonomous to a degree, depend on the PCM for approval of internal procedures such as changes to internal organisation or staff travel.

OSITRAN was created in 1998 to oversee private investment in transport infrastructure for public use and the sectors under its purview have expanded over the past twenty years. At its creation, the regulator was given a mandate in four sectors (airports, ports, railways, roads) and granted powers to supervise concession contracts, set and review tariffs and provide non-binding technical opinions on transport infrastructure of national scope. In 2011, the supervision of passenger public services in the Lima

and Callao Electric Transport System (the Lima metro) was added to OSITRAN's portfolio. The latter is the only sector in which it regulates the provision of services, but without the ability to set and review passenger tariffs, a ministerial competence. In 2017, the supervision of the country's first waterway, the Amazonian Waterway, was added to OSITRAN's portfolio.

OSITRAN has an important role in the supervision of the Public-Private Partnerships (PPP) that govern most of Peru's transport infrastructure but contracts are written and awarded by other actors. Contracts are awarded by the Ministry of Transport and Communications (*Ministerio de Transportes y Comunicaciones*, MTC) and written by ProInversión, in co-ordination with MTC. These contracts may be co-financed by the state or self-sufficient relying solely on private investments. Since 2018, a new design process of PPP contracts allows OSITRAN to emit opinions on initial versions of contracts; previously, this has only been possible *ex post* once contracts had been negotiated and finalised. The OSITRAN Board of Directors must issue a prior technical opinion on concession contracts at the request of ProInversión, as well as on any contract amendments at the request of the MTC. While these opinions are not binding, the regulator reports that its opinions are mostly taken into account. By law, OSITRAN holds the exclusive power to interpret contracts in case of dispute. Generally, tariffs are set by concession contracts and therefore principally by ProInversión and MTC, but in a few cases contracts assign this function to OSITRAN during implementation (for example, in the case of three road concession contracts, OSITRAN defines the level of tolls).

In delivering on its mandate, OSITRAN covers many functions which may spread its resources too thin. In carrying out its mandate supervising concession contracts, OSITRAN supervises the efficiency of public works (in the case of co-financed investments) and is responsible for monitoring the delivery of investment and the quality of services. More recently, it has also strengthened its focus on empowering and better informing users of transport infrastructure, as evidenced by its current strategic framework (Figure 1). While all of these activities are relevant to the overall performance of transport infrastructure, there may be scope for a more strategic focus and targeted use of OSITRAN's specialised resources on outcomes (i.e. investment and quality of service). This is even more relevant in a context of restricted resources and central government austerity measures.

OSITRAN counts with a good technical reputation but its identity has been scarred by serious corruption scandals involving infrastructure investments in Peru over the past decades. Serious and far-reaching corruption scandals have rocked Peru since 2018 regarding contracts awarded by the state. Many of these have involved the transport sector. These scandals has implicated the highest levels of government and some cases have directly involved OSITRAN, although final investment decisions have not been taken by the regulator. The untangling of the massive webs of corruption in Peru and across the Latin American continent has eroded trust in public institutions and has also impacted OSITRAN's identity and internal culture. The regulator has begun addressing gaps in staff morale but more needs to be done to bring staff together behind a common sense of purpose. The creation of a proud and united institution that counts with ambitious pro-integrity and anti-corruption measures can elevate OSITRAN above the blows it has been dealt over the years and form the basis for rebuilding trust with external stakeholders.

Recommendations

- **Revise** the mission and vision of OSITRAN in a participatory manner for a more inspiring, uplifting and unifying future for the regulator. This opportunity can be used to launch a "new beginning" for the agency and form the basis for both a strengthened internal culture and more effective and trust-based relations with external stakeholders. This revision will need to be headed in a unified manner by the leadership and senior management of OSITRAN and solicit an empowered participation of staff from all levels of the organisation.

- **Consolidate** a strategy that aims to boost OSITRAN internal culture and identity. This will include continuing initiatives such as “Diagnóstico Cualitativo y Cuantitativo de brecha Cultural” and “Plan de Alineamiento Cultural en OSITRAN” but also bringing them under one coherent policy that is easy to understand by staff, easy to monitor and that will be reported on to staff in a transparent manner, focusing as much as possible on impact and outcomes (changes in attitude or behaviour) rather than on input (number of trainings, etc.).
- **Devise and implement** a communications strategy and plan for the new vision, mission and strategic framework of OSITRAN, with distinct activities and goals for internal and external stakeholders. The strategy will need a dedicated budget and resources for implementation.
- **Implement** a clear strategic focus of OSITRAN’s activities on outcomes for the sector, economy and society. This will include a more targeted use of the regulator’s constrained and technical resources. This might include assessing how some supervision works can be delegated to third parties or could be directly implemented by concessionaires, applying the principles of evidence-based, selective, risk-focused and proportionate inspection and enforcement activities (Box 1).
- **Ensure** that OSITRAN’s increased focus on users relies on an assessment of potential impact on workload (for example, in the area of consumer complaints) and that the approach to user protection is aligned across OSITRAN departments. It would also be essential to co-ordinate with other public entities with responsibilities in this area.

Box 1. Organisational renewal at the Canadian Transportation Agency (CTA)

In the fall 2015, the leadership of the Canadian Transportation Agency (CTA) identified a need for organisational renewal. This reflected the fact that despite being characterised by high levels of expertise and professionalism, the CTA did not have a strong sense of common purpose, was not particularly dynamic or agile, and had relatively low “name recognition,” even though it delivered important services to the public and stakeholders. Three steps were taken over the next 18 months to address these issues:

- First, a reorganisation was designed and implemented to cluster functions in ways that minimised role confusion, de-layer management, improve analytical capacity, and foster greater internal collaboration and more nimble responses to external developments.
- Second, the CTA’s mission was re-articulated around three core mandates: helping ensure that the national transportation system runs smoothly and efficiently, protecting the fundamental rights of persons with disabilities to accessible transportation, and providing consumer protection to air passengers.
- Third, drawing on past descriptions of organisational objectives but reflecting current needs, four strategic priorities were established: a modern legislative and regulatory framework, excellence in service delivery, public and stakeholder awareness of the CTA’s responsibilities and services, and a healthy, high-performing organisation.

Throughout these renewal efforts, the CTA’s Chair and Executive Committee engaged staff regularly, giving them multiple and meaningful opportunities to provide input and shape outcomes, while sustaining momentum and emphasising simple, clear, compelling language.

This process resulted in increased motivation and productivity within the CTA, and to greater visibility and credibility with the public, stakeholders, partners in government, and the media.

Source: Information provided by the CTA, 2019.

Box 2. Bringing the organisation together to embrace the mission, vision and principles at Mexico's Agency for Safety, Energy and Environment (ASEA).

Created in 2015 after the structural reform of Mexico's energy sector, ASEA was a new agency under pressure to create a new regulatory framework in a limited amount of time. It was important to ensure every member of staff understood the mission, vision and guiding principles of the regulatory authority. The focus was to ensure every ASEA member felt pride in his or her work. Messaging was centred on the importance of ASEA's work: saving lives and protecting the environment, whilst enabling a new era of economic and social development in the country. The process included introductory talks and courses on "the ASEA way of doing things", both for new personnel, as well as those already working in the agency.

During a two and a half week process, staff were organised in groups of 10-15 persons and were exposed to the fundamentals of the institution in sessions that covered different areas of work of the agency: its mandate, strategic framework (mission, vision and objectives), guiding principles, internal processes, risk-based regulatory model and organisational structure. Some of the heads of department were responsible for delivering these short courses. The induction process would end, for each group, with a conversation with the Executive Director. The Executive Director would explain his personal understanding of ASEA's mission, vision and principles and would ask the participants to explain their own understanding of these. At the end of these meetings, the Executive Director would ask the group to stand up and confirm if they were ready to commit to these concepts and carry out their work according to the guiding principles.

Finally, every ASEA member would add their signature to the "Commitment Wall" (the main wall in the boardroom), where the mission, vision and principles were displayed.

This process was highly valued by ASEA's personnel as they felt it was a genuine and personalised strategy that helped build a sense of community and belonging.

Source: Information provided by ASEA, 2019.

Institutional co-ordination

Responsibilities for the planning and regulation of transport infrastructure and services are shared between many public bodies with limited structured co-ordination in place, hindering transparency and predictability. Policy for the transport sector is set by the Ministry of Transport and Telecommunications (*Ministerio de Transportes y Comunicaciones*, MTC). ProInversión designs the contracts in co-ordination with MTC, a process to which OSITRAN can contribute through non-binding technical opinions. OSITRAN regularly interacts with Indecopi on consumer protection and competition matters. Since 2018, the Comptroller General of the Republic (*Contraloría General de la República*, CGR), the supreme audit institution, is among the public bodies requested by law to provide opinions on draft contracts. Moreover, CGR interacts with OSITRAN when carrying out its *ex post* audit functions. Up to now, with no structured mechanisms in place, interaction with other entities is informal and often depends on personal relationships. This complex governance system creates potential overlaps and in some areas, lack of clarity around respective roles, in the negotiation and supervision of concession contracts.

Table 1. Public administration bodies involved in the transport infrastructure sector

Authorities	Mandate	Interactions with OSITRAN
	ALL SECTORS	
MTC	To design, regulate and implement the promotion and development policy in the transport sector.	The MTC sets sectoral policy, as well as performing the role of the grantor of concession contracts. The MTC can request OSITRAN to provide comments and opinions in relation to the legal and contractual framework under the regulator's scope of action.
ProlInversión	Specialised technical body attached to the MEF, responsible for the promotion of national investments through public-private partnerships (PPPs) in services, infrastructure and other state projects.	OSITRAN participates in processes under PPPs. ProlInversión designs concession contracts in co-ordination with MTC. OSITRAN is requested to provide non-binding opinions for the approval of concession contract projects.
General Comptroller of the Republic (CGR)	Highest authority of the national control system. Supervises, monitors and verifies the correct application of laws and public policies, as well as the correct use of state resources and assets.	The CGR regularly interacts with OSITRAN through OSITRAN's Institutional Control Body (OCI). The head of OCI functionally responds to CGR. OSITRAN has powers to supervise, enforce and interpret concession contracts. When exercising control body functions, the CGR interacts with OSITRAN. In addition, CGR must issue a non-binding opinion about the first drafts of contracts under PPPs.
Congress	Unicameral legislative branch of 130 members	Requests OSITRAN to provide comments on issues of draft laws.
	PORTS	
APN	Technical body attached to the MTC responsible for the development of the port sector. APN supervises compliance with ports operational and security aspects.	APN can request OSITRAN to issue non-binding opinions relating to the port sector, and vice versa. In the port sector, regulated entities are supervised by both APN and OSITRAN.
Indecopi	Independent regulatory body aimed at both providing competition and consumer protection. Assessment of competition conditions in the framework of tariff setting for port infrastructure.	Port regulations state that Indecopi is empowered to establish whether the market has competition conditions within the framework of port tariff setting procedures.
	PUBLIC TRANSPORT	
Urban Transport Authority for Lima and Callao (ATU)	Technical body attached to the MTC, responsible for planning, regulating, managing and supervising the operation of the Lima and Callao Integrated Transport System. This body was created in 2019 and absorbed ATTE (agency that was responsible for managing the Electric Transport System).	ATU plans, regulates and supervises the operation of the Lima Metro. OSITRAN supervises compliance with concession contract provisions.
Superintendence of Land Transportation of People, Cargo and Merchandise (SUTRAN)	Technical body attached to the MTC, responsible for supervising compliance with regulations for land transport and transit services of national scope.	While OSITRAN supervises transport infrastructure of public use, SUTRAN supervises transport services. There is ad hoc co-ordination when vehicles carrying heavy cargo can affect both transport infrastructure and transport services.

Source: Information provided by OSITRAN, 2019.

Little predictability of requests by the Ministry creates stress on the regulator's resources. In general, interactions between the regulator and the line ministry are fluid and MTC regularly (both formally and informally) requests technical opinions from the regulator. The MTC normally provides OSITRAN with 10-15 days to respond to its requests, which gives little time to plan and creates pressure on the resources of regulator. It may be challenging for the regulator to comply in a timely manner and OSITRAN reports that it often needs to ask for extensions to be able to respond.

Recommendations

- **Advocate** for more structured and effective co-ordination among public entities involved in the planning and supervision of transport infrastructure and private investment, in the interest of promoting predictability, transparency and trust, in a manner that upholds the independence of OSITRAN's regulatory decisions.
- **Actively push** for the creation of a MTC-OSITRAN co-ordination platform for the purpose of giving advance notification of future requests from MTC that the regulator will have to respond to. In addition to creating a predictable and transparent work programme, this platform should be used to discuss and define a longer period for the preparation of technical opinions by the regulator (currently 10-15 days).
- **Formalise** existing successful operational co-ordination with other public agencies through protocols, regular working groups or Memoranda of Understanding, providing more structured and permanent co-ordination mechanisms.
- **Advocate** for establishing a collaborative relationship with the CGR, in order to safeguard independent regulatory decisions while complying with control body requirements. This relationship should be based on a clear definition of roles and the need to safeguard the autonomy of regulatory decision-making.
- **Set up** a forum of economic regulators of Peru to harmonise external communication on the role of economic regulators, share good practices (e.g. the use of regulatory management tools), and jointly advocate for governance-related topics as relevant. The leadership of the group could rotate between the regulatory authorities and the group should aim to focus on concrete deliverable and activities, rather than setting up a bureaucratic system of collaboration.
- **Seek** to participate in or create instances for sharing of experience with other sector regulators, beyond the national level. This could involve seeking to create an informal group to share experiences between transport regulators across the Americas, or another relevant group of countries for Peru such as APEC.

Box 3. Examples of forums of economic regulators in Australia and in France

In **Australia**, the Utility Regulators Forum aims to facilitate the exchange of information, understanding of the issues faced by regulators, consistency in the application of regulatory functions and the review of new ideas about regulatory practices. The newsletter of the forum is published quarterly and contains articles on common challenges, summaries of recent journal articles on regulatory matters, and updates on regulatory decisions.

In **France**, the *Club des Régulateurs* provides a forum for both established and new economic regulators to share common problems with a few thematic meetings every year, most recently on issues of data privacy and data handling. It is hosted by a third party, currently an academic institution.

Note: For more information see: <https://www.accc.gov.au/about-us/consultative-committees/utility-regulators-forum> and <http://chairgovreg.fondation-dauphine.fr/fr/club>.

Source: Public information, 2019.

Strategic objectives

OSITRAN sets out its strategic objectives for a four year period via a participative internal process and makes this framework available on its website. The regulator's strategic objectives are set through the Strategic Planning Commission (*Comisión de Planeamiento Estratégico Institucional*) that is led by the President of OSITRAN's Board of Directors and includes all senior management. The members of the Board of Directors are not part of the Commission and do not take part in setting the objectives and the strategic planning of the institution, nor does the process involve consultation of external stakeholders. The Strategic Institutional Plan (*Plan Estratégico Institucional, PEI*) is the main reference framework for the management of its internal activities and is operationalised via an annual work plan (*Plan Operacional Institucional, POI*) and Strategic Institutional Actions (*Acciones Estratégicas Institucionales, AEI*).

Figure 1. OSITRAN Strategic Objectives 2019-2022



Source: (OSITRAN, 2019^[1]).

Recommendations

- **Update** the strategic framework of OSITRAN (PEI) to follow the new vision and mission of the regulator.
 - Include internal teams, Board members as well as external stakeholders in the definition of the new strategic objectives for enhanced ownership and understanding of the framework.
 - Focus the strategic framework on a few objectives that are clear in their wording and inspiring to staff. The objectives should include economy, sector, or society-wide goals as well as objectives closer to the regulator and its processes.
 - Make sure that objectives are SMART: specific, measurable, achievable, relevant, and time-based.
 - Define a clear and accessible (for example, with a focus on plain language) reporting and communications strategy around the new strategic framework, with a dedicated budget.
- **Prioritise** objectives and actions systematically across the short, medium and long term, thereby providing a timeline for actions and targets in the PEI.
- **Continue carrying out** evaluations of the PEI to prioritise its actions and resources effectively to achieve the objectives.

Box 4. The inclusive and collaborative process to establish a strategic framework at Ireland's Environmental Protection Agency (EPA)

The EPA has a long history of strategic planning with the first strategic plan published in 1998. Both the plans and the process for making them have evolved over time with greater emphasis on consultation and engagement both within the EPA and with external stakeholders.

EPA operates in the framework of a strategic plan 2016-2020 “Our Environment, our Wellbeing” which sets out the EPA's goals to be:

- a trusted environmental regulator
- a leader in environmental evidence and knowledge
- an effective advocate and partner
- responding to key environmental challenges
- organisationally excellent.

The strategy making process was the most collaborative ever undertaken by the EPA. The Director General, in consultation with the senior management team and staff of the EPA, sets the objectives. Input from the EPA advisory committee is also considered. EPA's senior management conducted four workshops between November 2013 and November 2014 to establish the grounds of the strategy work.

A draft of the 2016-2020 strategic plan was published on the EPA website for public consultation. The EPA published a summary on its website of the major issues that were raised through the consultation and an explanation as to how the EPA responded to the points that were raised (http://www.epa.ie/pubs/reports/other/corporate/occs/Consultation_Issues_Response.pdf).

The 2016-2020 strategic plan was submitted to the former Minister for Environment, Community & Local Government. The EPA corporate governance manual states, “a copy of the draft strategic plan should be sent for views from the Minister or Department who should have up to 12 weeks to comment”.

In 2018, the EPA carried out a mid-term review of the 2016-2020 strategic plan through a collaborative process involving over 40 members of staff. The review resulted in amendments to the objectives and to the outcomes. A number of actions were also revised.

Source: Information provided by the EPA, 2019.

Input

Financial resources

OSITRAN is mostly funded by resources received from the regulated sector but this income is decreasing and the regulator feels it is underfunded. LMOR establishes that all regulatory agencies will be financed by the regulated sector up to 1% of operators' income (*aporte por regulación*). For OSITRAN, Supreme Decree No. 104-2003-PCM sets contributions at the maximum 1% level since 1 January 2004 (while in other sectors, regulators receive under 1% of sector income). The same level applies to all transportation sub-sectors under the purview of OSITRAN except for the Lima metro where OSITRAN receives up to 2% of income. In real terms, between 2017 and 2018, OSITRAN's initial annual budget declined by 15%. According to OSITRAN, this can be explained by a decrease in industry income on the one hand, and by a low budget execution by OSITRAN in the previous years on the other hand.

The latter taken into account by MEF when deciding OSITRAN's budget allocation. OSITRAN's budget execution fell below 80% in 2016 and 2017 (from almost 100% in 2015) due to a change in leadership in 2017. This trend combined with other contextual factors has led to the regulator feeling that its activities are under-funded.

Table 2. OSITRAN annual budget and execution, 2015-18

Expressed in million PEN

Year	2015	2016	2017	2018
Initial budget	66.5	84.0	93.8	79.9
Supplemental funds	N/A	6.0	-1.4	4.7
Modified institutional budget (PIM)	N/A	90	92.4	84.6
Execution of initial budget (%)	96.2	79.4	78.8	97.2
Execution of modified institutional budget (%)	N/A	74.1	80	91.8

Notes: Initial budget is sourced from funds collected from the regulatory contributions levied to regulated entities. Supplemental funds are approved by MEF.

Source: Information provided by OSITRAN, 2019.

Budget availability and autonomy in managing resources are limited by central government rules and recent austerity measures. Since 2017, the *Ley de Equilibrio Financiero* requires all public entities to transfer surplus funds to the Treasury if not executed in a given fiscal year. Government has renewed this measure for 2018 and 2019. Previously sector regulators could retain unspent funds and carry them forward to finance activities over the next years freely. Since OSITRAN's budget execution has sometimes been below 80%, unspent funds have been forwarded to Treasury. This practice limits the autonomy of the regulator in managing its resources and directs income from regulated entities towards funding general government activities rather than those of the regulated sector. In addition, the PCM has decision over some budgetary allocations, including approval of trips abroad for institutional representation. The latter are currently limited by austerity measures.

The regulator's budget is limited by caps defined in law rather than according to the principles of cost recovery. The Multi-annual Budget Allocation (APM) is communicated by the MEF on the basis of projected income from industry. The Planning and Budget Department (*Gerencia de Planeamiento y Presupuesto*, GPP) of OSITRAN prepares a budget proposal, with reference to the POI and historical performance and taking into account inputs from internal departments. Nevertheless, the total amount of budget is set according to the available resources mainly received from the industry contributions, rather than an estimation of the costs related to the delivery of the regulator's mandate.

Recommendations

- In light of funding uncertainty, **ensure** adequate prioritisation of activities during the budgeting and planning phase when establishing annual work plans (POI); a clearer strategic focus on outcomes may provide an opportunity for this practice.
- **Introduce** principles of cost-recovery of regulatory activities, used by many economic regulators in OECD countries, into the budgeting exercise.
- If and when budget surpluses currently transferred to the Ministry are returned to the regulator, **increase** transparency around the use of funds over the following financial cycle. This practice will be important in showing that unused funds collected from industry are not retained over a long period of time by the regulator but rather, are quickly recycled into funding activities that will benefit the sector or, as far as possible, are used to decrease financial burden on regulated entities following a cost-recovery model.

- **Document and share** the direct impacts of the central administration constraints and measures that impact on OSITRAN's funding model, financial management and activities.
- **Engage** in a documented and evidence-based discussion with relevant stakeholders on the need for additional resources when new functions or tasks are assigned to the regulator (e.g. Lima Metro concession supervision).
- Based on the principle of using income from industry to recover the costs of regulatory activities, **advocate** with other economic regulators for a review of financial and human resource legal constraints, including cap limits, ministerial decision over budgetary allocations, absorption of carry forward from the budget of economic regulators, etc.

Box 5. Cost-recovery budgeting in Ireland (CRU) and Canada (CER)

Ireland's Commission for Regulation of Utilities (CRU)

The CRU is funded entirely through levy and licence fees from relevant electricity, gas, petroleum safety, and water industry participants. Levies from market participants comprise the bulk of the CRU's income. The CRU sets its own budget without requiring government participation, and is defined annually on a cost-recovery basis in the fourth quarter of the year, on the basis of an estimate of CRU operating and capital budget required for the next year. There is no direct government contribution to the CRU budget and the regulator's annual budget is approved by the Commission without approval or *ex ante* assessment by the Oireachtas.

Annual budgets for the electricity, gas, petroleum and water are allocated by the CRU to each sector. Revenues, expenses and capital expenditure directly incurred by each sector are recorded in the separate budgets of the electricity, gas, petroleum and water sectors. Shared costs are allocated to each sector in proportion to the staff numbers engaged in the relevant sector. Costs linked to shared administrative functions such as finance, HR, IT, and Communications are pooled for all sectors.

Where annual expenditures exceed revenue, the balance is offset against the levy income for the subsequent year. The balances for the electricity, gas, petroleum and water sectors are recorded in their respective accounts, and audited on an annual basis by the Office of the Comptroller and Auditor General, which reports to the Public Accounts Committee of the Oireachtas. The CRU also conducts an annual internal audit, which is outsourced to an audit company). Moreover, based on a risk assessment, a contingency fund is defined on a yearly basis to provide flexibility to deal with potential legal challenges or costs linked to safety cases or events. Any excess of revenue in the financial year is taken into account in determining the levy for the subsequent year per sector. The CRU can carry unspent funds over to the following year's budget without review or approval from external government entities.

Canada Energy Regulator (CER)

The CER's Cost Recovery Regulations set out the manner in which the CER determines the costs related to carrying out its mandate and the process for recovering all or a portion of those costs from the companies it regulates. Currently, the CER's cost recovery system is premised on commodity charging costs that are allocated to specific entities within those sectors (oil – oil pipelines, gas – gas pipelines, etc.). While the CER performs the administrative functions of calculating, billing and collecting cost recovery levies from industry, it does this on behalf of the Government of Canada and does not have responsible revenue authority, rather, companies pay their share of recoverable costs to the Consolidated Revenue Fund of Canada and the CER receives its funding through an annual appropriation process through Parliament.

The CER has a Cost Recovery Liaison Committee, which is composed of the staff from the regulator and representatives of the regulated companies. The purpose of this committee is to:

- provide industry with a thorough understanding of CER costs,
- provide a forum to raise issues or concerns related to the cost recovery processes and methods; and,
- discuss the Cost Recovery Regulations.

Source: Information provided by CRU and CER, 2019.

Managing human resources

OSITRAN reports a high level of voluntary departures and is implementing measures to reverse this trend. Voluntary resignations have been the leading cause of staff turnover between 2015 and 2018 with 18% of staff resigning annually (overall turnover is at 21.5%). Resignations are high among technical staff, posing problems for the continuity of highly specialised work on PPPs. While OSITRAN staff is recognised as highly capable, staff are not always trained to cover the different sectors under OSITRAN’s purview; moreover, staff have expressed their frustration with respect to the training system in a staff survey. OSITRAN acknowledges this challenge and is implementing measures to address it. For example, the “Cultural Alignment Plan” and “Talent Management and Development Plan 2019-2022” contain key recommendations on recruitment and the selection process, induction, performance management, trainings and social welfare of staff. OSITRAN is also implementing a national recruitment programme for engineering, economics and law graduates through internship programmes often leading to full employment to attract the best-qualified candidates.

Contracts, salaries and other benefits of OSITRAN staff are governed by three parallel systems that may undermine staff motivation and HR practices. The three labour regimes are governed by three distinct regimes (Laws 728, 1057 and 30057). As of September 2019, 45% of staff (139 out of 310) work under labour regulations for the private sector, not commonly offered in public entities (Law 728). The 728 regime offers open-ended contract term with full benefits. The number of positions is fixed, meaning that recruitments can only be made when a 728 position has been vacated. 55% of OSITRAN employees (171 out of 310) work under non-permanent positions governed by law 1057, a regime for “Administrative Service Contracting” (*Contratos Administrativos de Servicios, CAS*) that offers non-permanent employment on a fixed-term six-month contract that can be renewed without limit. Contracts in the last six-months of the year must end in December and be renewed in January. The CAS regime also offers less employment benefits, such as insurance or pensions, in contrast to the 728 regime. A new labour regime was created by SERVIR (30057) in 2013 as an administration-wide project seeks to create a unified employment regime for all public officials. OSITRAN currently applies this new regime only to the President of the Board of Directors. According to OSITRAN, migration to SERVIR regime would imply a decrease in salary for staff currently employed under the Law 728 regime.

As allowed by law and practiced across Peruvian public entities, many senior management positions at OSITRAN are filled outside public and competitive selection process. The President and GM appoint 23 senior management positions outside the usual public competitive selection process and without term limit. Eighteen senior managers are appointed under the “*puestos de confianza*” modality in application of Supreme Decree 084-2016-PCM and five senior managers are directly appointed in application to the *Public Employment Framework Law*. Three senior staff positions are appointed by other public entities (Head of the Institutional Control Body, Public Prosecutor, Deputy Public Prosecutor). This practice, while allowed by law and governed by OSITRAN’s human resource manuals, may create a sense of lack of transparency in hiring and appointments.

Recommendations

- **Level** the playing field for staff between the different employment regimes by advocating for the implementation of one unified regime with similar benefits. The creation of a unified employment regime system will be one of the conditions for the creation of a unified and motivated staff. While this unification may need to be progressive, an early move in this direction will send the right signal to staff.
- **Advocate** with other economic regulators that any migration to the SERVIR regime should not imply a decrease in salary for any staff.
- **Implement** transparent and open requirements and recruitments for all posts in the regulatory authority, including the senior management.
- **Continue** the implementation of the performance assessment system that links staff objectives and a human resources policy based on performance recognition and the improvement of skills recognition.
- **Develop and implement** an offer of trainings to addressing current needs and future expectations in collaboration with existing staff and maintain technical expertise.
- **Develop and implement** a broader benefit employment package to make OSITRAN an attractive place to work.
- **Continue investing** in recruitment strategies in order to remain an attractive choice for new graduates.
- **Monitor** the implementation of the “Cultural Alignment Plan” and “Talent Management and Development Plan 2019-2022” and report on results to staff.
- **Share** good practices and results in terms of talent retention and staff well-being across Peruvian national administration and other regulatory authorities.

Box 6. Remuneration policy independent of civil service salary policy in Portugal, Water and Waste Services Regulation Authority (ERSAR)

ERSAR is entitled by law to have a different remuneration policy from other civil servants. The salary of the members of the Board is established by a remuneration committee, under the terms defined in the Framework Law for Regulatory Entities, which is composed of three members: one appointed by the Ministry of Finance, one appointed by the Ministry responsible for the economic activity which ERSAR regulates (environment) and one appointed by ERSAR (Article 23 of ERSAR statutes). The determination of the remunerations is made according to the complexity of the sector, the remuneration benchmark within the regulated industry and other relevant criteria.

Source: Information provided by ERSAR, December 2019.

Process

Governing body and decision making

The Board of Directors, led by the President, is the regulator’s decision-making body and is called on to fulfil a wide variety of principally executive duties, with limited resources. The President of the Board holds a full-time executive position, while other four Board members only serve on a part-time basis.

The part-time members are remunerated for two mandatory board meetings per month and the law expressly forbids additional remuneration (the President works and is remunerated on a full-time basis). Part-time Board members make decisions based on reports provided by OSITRAN management three days prior to Board meetings and can consult technical staff in case of questions, but they do not count with dedicated supporting staff. Requests can be made for the Board to meet exceptionally by the President or a majority of Board members. Due to the little time to meet monthly, board meetings are dominated by operational and technical matters, rather than strategic planning. The Board also approves the PEI, the POI, the initial institutional budget, the general balance sheet and the audited financial statements, as well as the Accountability Report.

The members of the Board are appointed for staggered five-year terms following a process involving different actors from the Peruvian executive. As of September 2019 the Board is composed of four members, one of whom is its President, two lawyers, two engineers and one economist. In the past ten years, there have been two women on the OSITRAN board. Board members are selected by a multi-step process that includes review by an inter-institutional selection committee, submission of selected candidates to the President of the Republic by the President of the Council of Ministers, appointment by the President of the Republic by Supreme Decree, and finally endorsement by the PCM, MEF and MTC.

OSITRAN is managed by the President of the Board, with the support of the General Manager (GM). The President appoints the GM without open recruitment and can remove them from the post at their discretion. The GM is responsible for the administrative, operational, economic and financial responsibilities of OSITRAN, implementing the policies established by the Board and the President. The GM also manages, co-ordinates and supervises OSITRAN's departments. Together, the President and General Manager chair a weekly meeting with OSITRAN senior management. A large number of decision-making functions are concentrated in these two executive positions, placing very high expectations on the individuals and centralising risk for the organisation.

OSITRAN has placed an emphasis in becoming paperless; this drive could be expanded to overall digitalisation and standardisation of processes for a modern and transparent regulator. Current leadership of the regulator has set ambitious targets with regard to moving away from an analogue mode of working. These efforts could be continued with a digitalisation of all internal and regulatory processes, in an effort to alleviate burden on regulated entities and for more operational efficiency. Moreover, decision-making by technical staff could be made more predictable and transparent by a standardisation, as far as possible, of criteria used in decision-making, such as the issuance of technical opinions or interpretations. The interface between efficient digital processes and predictable criteria would make a case for a modern and predictable regulatory authority.

Recommendations

- **Ensure** that the resources and structure of the Board of Directors reflect its mandate and duties. More specifically ensure that the Board is able to weigh in on strategic matters and the overall direction of the regulator. This could include ensuring the participation of the Board in the elaboration of OSITRAN's strategic framework, or quarterly strategic retreats that could bring together Board members and senior management, as necessary with external perspectives.
- **Ensure** that Board members have sufficient time, resources and advice to engage in decision-making. This may include:
 - Provide Board members with succinct and consolidated information ahead of meetings to support more informed decision-making, with sufficient time to review briefings and documents ahead of meetings (more than the current three days).
 - Consider strengthening existing and, where necessary, allocating additional advisory and support resources to Board members. This could include assessing the possibility of creating a dedicated advisory secretariat to the Board.

- Consider proposing specialisation and responsibility for certain strategic and technical areas that could rotate between Board members.
- **Ensure** diversity of inputs and opinions in the decision making process. This may include:
 - Develop opportunities for strengthening the challenge function in decision making.
 - Include analysis of alternatives and justification for proposed decision for matters presented to the Board when proportional to the decision being weighed.
 - Consider delegating some of the decisions that are currently concentrated between the President of the Board and the General Manager.
- **Continue** efforts to digitalise and standardise processes:
 - Build upon recent digitalisation and process engineering efforts to make procedures and communications with regulated entities fully digital.
 - Standardise consistent criteria for analysis (opinions on contracts, amendments, application of penalties, etc.) as far as possible and issue them as Board resolutions for maximum transparency and predictability.

Integrity and conflict of interests

OSITRAN has expressed a strong commitment to being a leader within the Peruvian public administration with regard to anti-corruption and it has gone beyond central government requirements to achieve this goal. The current national context highlights the importance of strong measures across the public sector to promote a culture of accountability and transparency. OSITRAN has adopted a number of initiatives with this in mind. These include:

- In February 2019 the regulator adopted an anti-bribery policy and created two reporting mechanisms,² one concerning allegations of corruption accessible to OSITRAN staff and the public and another for general allegations concerning concessionaires accessible to the public. Both mechanisms are implemented by the head of the human resources department and are placed under the responsibility of the General Manager.
- A 2019 Presidential Resolution provides general ethical principles for OSITRAN staff, including bribery and conflicts of interest prohibition.
- OSITRAN obtained the ISO 37001 “Anti Bribery Management System” certification in 2019.
- A compliance officer in charge of the effective implementation of the anti-bribery policy has been designated in May 2019.
- Awareness raising activities include training sessions for new employees, and emails sent to staff.
- Like all public entities, OSITRAN is governed by the ethical principles of the Civil Service Ethics Code (Law No. 27815) and has to implement the institutional integrity model (*modelo de integridad*) and the Offices or Officers of Institutional Integrity as foreseen in the Anti-corruption Policy of the government (*Decreto Supremo* 092-2017-PCM) and the resolution No. 001-2019-PCM/SIP of the Secretariat of Public Integrity of the Presidency of the Council of Ministers. Some provisions of the Law deal with conflicts of interest, but not with undue influence specifically.
- OSITRAN is further required to publish on its website a list of all private meetings held with regulated entities, detailing the names and roles of participants, aspects discussed and any conclusions reached. However, explicit protection of engagement processes against potential conflict of interest is lacking. Capture and conflicts of interest through engagement processes should be avoided to guard against pressures from special interests.

The stated strategic importance of these measures is currently undermined by an apparent lack of articulation in their implementation and communication on results. The current measures combine a series of public administration wide requirements and specific measures adopted by OSITRAN. They are

accompanied by some training, but there appears to be little monitoring of the results of awareness raising, with monitoring focusing on inputs (i.e. number of training sessions). Moreover, persons currently dedicating time to advancing the integrity and anti-corruption agenda inside the organisation appear to do on top of their “day jobs”. While this ensures buy in from several areas of the organisation, it puts pressure on resources and may undermine the strategic importance of this agenda for OSITRAN’s leadership.

Recommendations

- **Consolidate** the various integrity, anti-corruption and ethics policies and initiatives of OSITRAN under one umbrella. This consolidated strategy (“Institutional integrity model”) should have one over-arching goal and clear objectives and targets, aiming high above central government requirements.
- **Consolidate** the Whistle-blower protection and reporting mechanisms and policies.
- **Develop**, as part of the Institutional integrity model, a dedicated OSITRAN Code of Conduct in line with the OECD Recommendation on Public Integrity.
- **Develop and implement** a policy approach to conflicts of interests of participants that may arise in stakeholder engagement processes in order to safeguard against capture.
- **Ensure** consistent and continuous support and communication of the goals and implementation of the Institutional integrity model and Whistle-blower policy from the leadership and OSITRAN senior management. This should include consistent messages from the top (i.e. newsletters, top-level speeches to employees, company intranet, memos, social media, etc.) and also leading by example in disclosing potential conflicts of interest and behaving in a transparent manner. This could start with simple measures such as re-signing a disclosure of potential conflicts of interest on a yearly basis or every time a new process starts.
- **Develop and implement** a comprehensive internal communications and training strategy as part of the Institutional integrity model and Whistle-blower policy aiming to raise awareness of existing measures and ensure buy-in; it should also report in a transparent manner on results and activities. Adequate resources should be assigned to the design and implementation of communications and training activities.
- **Assign** specialised resources and staff to the implementation of the strategy, including a dedicated staff member to lead its implementation (“Chief Integrity Officer”). In addition to dedicated staffing, sufficient financial resources should be assigned to: awareness-raising activities for staff and regulated entities, training, oversight, monitoring and review of the Institutional integrity model and Whistle-blower policy to ensure effective implementation in line with the OECD recommendations on the offices of institutional integrity in Peru (Box 8).

Box 7. Stakeholder ethics registry at Spain’s National Authority for Market and Competition (CNMC)

In 2016, the Spanish regulatory and competition authority, created a public, free and voluntary transparency register. This register is an institutional mechanism with the objective of increasing transparency on external contributions to activities developed by CNMC. Provided that external inputs can support appropriate decision making by the regulator, the register makes visible which interests are being pursued, by whom and with which budgets. In this way, the register allows for public scrutiny, giving citizens and other interest groups the possibility to track the activities of lobbyists.

Any party related with the activity of CNMC could become part of the transparency register, including companies, professional associations, trade unions, consultants or law firms.

Being part of transparency register implies, in addition to complying with legal framework, the fulfilment of an ethical code that includes the following commitments:

- Inform CNMC staff on the interests represented.
- Accept that part of the information dealt in the meeting will be published.
- Avoid actions that could create a conflict of interest to CNMC staff.
- Avoid leading CNMC staff on breaking the law by offering presents or services that could challenge their integrity.
- Refrain from obtaining confidential information by dishonest actions in the relationships with CNMC.

Despite being voluntary, CNMC transparency register accounts 519 companies or association since its creation including 286 companies, 120 consultancies or 104 non-government associations.

Source: Information provided by the CNMC, 2019.

Box 8. Offices of institutional integrity in Peru

In Peru, the National Plan of Integrity and Fight Against Corruption 2018-2021 (PNILC) lay the foundations for a coherent integrity system in public sector entities Peru with the implementation of the Offices of Institutional Integrity (OII). These Offices or Officers of Institutional Integrity have the potential to become key actors in order to assure the implementation of an organisational culture that cultivates integrity, adopted in the context of every public entity and also ensuring a coherent framework. The OECD report on the offices of institutional integrity in Peru recommends that the OIIs should focus on the prevention of corruption and promotion of integrity within their organisation.

The OIIs should promote integrity culture and co-ordinate efforts to implement the Institutional integrity model in all public entities. Specifically, it is recommended that OIIs perform the following functions:

- Support public officials in the identification of integrity and corruption risks and advice units in the selection of effective and efficient controls.
- Lead the incorporation of integrity measures in public entity plans.
- Take part in Internal Control Committees and contribute from there to the joint monitoring of internal control.
- Communicate public integrity matters both internally, to all employees, and externally, to stakeholders and users of the institution's services. This includes communicating the progress of the implementation of the integrity model at the entity level and the results of evaluations.
- Raising awareness among public officials on public integrity matters and reminding them about their obligations.
- In co-ordination with the Office of Human Resources, support the development of an internal integrity training plan and assure the implementation thereof.

- Advise and guide public officials on doubts, ethical dilemmas, conflict-of-interest situations regarding complaint channels and existing protective measures and other aspects of integrity policies.
- Monitor the implementation of the institutional integrity model aided by the Secretariat of Public Integrity.
- Monitor the follow-up on whistleblower reports and the use of protective measures. This includes assuring that units responsible for receiving complaints, investigating and sanctioning have adequate personnel and perform their functions promptly and effectively.
- Collect information on complaints and sanctions as a source of information in order to focus preventive measures more specifically. For example, concentrate certain training or communication activities in areas or processes that generated more complaints than others.
- The public entity could designate the OII to be in charge of the application of the Law of Transparency and Access to Public Information (Law 27806). If it were to be decided that these two areas are to be kept separate, co-ordination between integrity and transparency needs to be assured.

In order to fulfil their functions effectively, the Officer or OIIs could report directly to the head of the entity and have certain degree of administrative and financial autonomy. Likewise, they should work in close co-operation with Secretariat of Public Integrity of the Presidency of the Council of Ministers, in charge of implementing the integrity policies in Peru.

Source: (OECD, 2019^[2]), Offices of Institutional Integrity in Peru.

Regulatory quality tools and practices

Ex ante and ex post assessments

OSITRAN has been a pioneer amongst government agencies in Peru in implementing regulatory impact assessments (RIA), along with other sector regulators, contributing to predictability and trust in the regulatory process. In response to the 2016 *OECD Regulatory Review of Peru*, the PCM began developing a Regulatory Quality Assessment (RQA) framework that requires a RIA for regulations that add administrative processes. OSITRAN, independently and in parallel, developed and released in 2018 the manual “Regulatory Impact Analysis Handbook” with guidelines for applying RIA to all regulatory decisions. As of February 2019, one full RIA was completed, two other RIA were underway. The alignment of the central government framework and the regulator’s one will be key for success going forward, and the regulators overall will need to engage with PCM to ensure their lessons in using good regulatory practices are taken on board in national frameworks.

OSITRAN has reviewed its entire stock of regulations in accordance with the PCM Regulatory Quality Assessment (RQA). The Technical Secretariat of Multi-sectorial Regulatory Quality Commission validated twelve out of fifteen administrative procedures that were submitted for analysis under the RQA on November 2018. In April 2019, a new RQA regulation was approved.

Recommendations

- **Maintain** momentum towards the full implementation of the new RIA system and continue to make efforts to improve regulations on an on-going basis.
- **Use** the lessons learned from evaluating the entire stock of regulations to extend ex post evaluations as a consistent and automatic component of policy making at OSITRAN.

Stakeholder engagement

The regulator's increased focus on consumer protection and user satisfaction has been translated into regular and purposeful stakeholder engagement. OSITRAN counts with several national and regional statutory Users Councils that report high levels of satisfaction in engaging with OSITRAN through existing procedures and mechanisms. The President of the Board of Directors convenes the election of the members of the User Councils for a biannual period and the User Protection Department (GAU) acts as a Technical Secretariat during these User Council sessions. The regulator convenes at least two ordinary sessions of the Users Councils per year to provide relevant information on the implementation of the infrastructures under concession, and to gather the main requests submitted by the members of the User Council. The Agenda is prepared in co-ordination with the President or the GM as appropriate.

OSITRAN consistently engages with regulated entities through mandatory written consultations and public hearings on tariffs and regulatory projects, but there is no systematic early stage consultation. Consultations can take place either before or after deciding to issue a regulation. Private hearings shall also be held with the service-providing entities and user representative organisations at their request to share comments on tariff proposals. OSITRAN is supposed to systematically prepares a matrix of comments that assembles stakeholders' comments with an evaluation on whether and how they are considered.

OSITRAN places a high priority on transparency in its activities and decision making. OSITRAN is committed to publishing all regulatory, supervisory, and normative decisions on its website supported by the relevant non-confidential information used to render the decisions. It publishes information on its activities on its website, including the list of meetings held and of people met, and uses social networks to disseminate informative material to a wide audience. Finally, entities and Users Councils are satisfied with the availability and accessibility of data and information used by the Board to make decisions.

Recommendations

- **Share** Users Councils' experience and good practices with other Peruvian regulators and internationally.
- **Align** to best practice in consultation by systematically providing feedback to comments received.

Supervision, enforcement and inspections

OSITRAN is entrusted with supervising compliance with all obligations of 32 concession contracts making prioritising and resource management challenging. The regulator supervises a large number of obligations from 32 concession contracts in five different sectors, including for public works. The regulator considers that permanent on-site inspections are the best strategy to fulfil this mandate. In consequence, OSITRAN devotes a high percentage of its resources for supervision and inspections (in fact, out of 310 staff, 125 focus on inspections and enforcement). Given the important amount of resources needed for these activities, the PEI 2018-2022 establishes as one of the seven strategic objectives 'to optimise supervision and inspections activities'.

When prioritising, the regulator often responds to user complaints and also gives priority to inspecting breaches of key contract obligations. According to the Annual Supervision Plan 2019, the regulator prioritises supervision and inspections activities that secure the adequate provision of services for users. This plan describes the types of inspections, the "service level standards" (*niveles de servicio*) and the supervised obligations per infrastructure and concessionaire. Nevertheless, it lacks a clear prioritising strategy and a risk-based approach that would be more aligned with international best practice in this area.

Supervision, enforcement and inspections are core functions of OSITRAN and regulated entities perceive OSITRAN as a sanctioning authority. The Budget of the Inspections and Enforcement Department represent 43% of OSITRAN Modified Institutional Budget and 40% of OSITRAN staff work in this department. While OSITRAN can give the opportunity to correct an infraction without applying sanctions and penalties, the regulator relies highly on sanctioning for enforcement. However, the regulator acknowledges the importance of strengthening the role of prevention and compliance, and aims to achieve a strategy where sanctioning is the last option. Regulated entities have expressed that they would like to receive more guidance from OSITRAN concerning operational policies covering compliance as well as enforcement and decision reviews in general and how their compliance with regulations and contracts will be monitored in particular. This would contribute to the regulated entities having confidence and understanding of what is expected from them and how their compliance will be monitored, judged and enforced in the event of breaches of the law or contract.

Recommendations

- **Improve** the efficiency of supervision, enforcement and inspections by better prioritising the use of public resources. Strive to become a proactive supervisory agency with a clear prioritising strategy that considers a risk based-approach.
- **Increase** efficiency by adopting a compliance-driven and risk-based supervision, inspections and enforcement strategy and using solutions offered by regulatory technology (regtech).
- **Alleviate** burden on OSITRAN staff by continue enhancing use of third party actors and self-reporting mechanisms, as well as using solutions offered by digital and electronic tools.
- **Continue reviewing** methods in the sanctioning process to promote compliance while using sanctions as a last resort, aiming to achieve desired behaviours rather than punishing regulated entities.
- **Continue standardising** consistent criteria for analysis (opinion on contracts, amendments, application of penalties, etc.) when possible, and issue them as Board resolutions for maximum transparency and predictability.
- **Consider organising** awareness raising activities for regulated entities on how their compliance with regulations and contracts will be monitored (e.g. forums, media dissemination material).
- **Develop** guidance material to aid understanding of this matter and support regulated entities to achieve compliance with contracts and regulations.
- **Make** available operational policies covering compliance as well as enforcement and decision reviews.
- **Build** on the Annual Supervision Plan to develop an Enforcement and Compliance Strategy to ensure more transparency on inspections and their outcomes. For example, the regulator could use the outcome of sanctioning administrative or judicial processes (once they are finalised) to encourage other regulated entities to improve their practices. The strategy could reflect annual enforcement priorities to inform decision making.

Box 9. OECD best practice principles: regulatory enforcement and inspections

1. Evidence-based enforcement. Regulatory enforcement and inspections should be evidence-based and measurement-based: deciding what to inspect and how should be grounded on data and evidence, and results should be evaluated regularly.
2. Selectivity. Promoting compliance and enforcing rules should be left to market forces, private sector and civil society actions wherever possible: inspections and enforcement cannot be everywhere and address everything, and there are many other ways to achieve regulatory objectives.
3. Risk focus and proportionality. Enforcement needs to be risk-based and proportionate: the frequency of inspections and the resources employed should be proportional to the level of risk and enforcement actions should be aiming at reducing the actual risk posed by infractions.
4. Responsive regulation. Enforcement should be based on “responsive regulation” principles: inspection enforcement actions should be modulated depending on the profile and behaviour of specific businesses.
5. Long term vision. Governments should adopt policies and institutional mechanisms on regulatory enforcement and inspections with clear objectives and a long-term road-map.
6. Co-ordination and consolidation. Inspection functions should be co-ordinated and, where needed, consolidated: less duplication and overlaps will ensure better use of public resources, minimise burden on regulated subjects, and maximise effectiveness.
7. Transparent governance. Governance structures and human resources policies for regulatory enforcement should support transparency, professionalism, and results-oriented management. Execution of regulatory enforcement should be independent from political influence, and compliance promotion efforts should be rewarded.
8. Information integration. Information and communication technologies should be used to maximise risk-focus, co-ordination and information-sharing – as well as optimal use of resources.
9. Clear and fair process. Governments should ensure clarity of rules and process for enforcement and inspections: coherent legislation to organise inspections and enforcement needs to be adopted and published, and clearly articulate rights and obligations of officials and of businesses.
10. Compliance promotion. Transparency and compliance should be promoted through the use of appropriate instruments such as guidance, toolkits and checklists.
11. Professionalism. Inspectors should be trained and managed to ensure professionalism, integrity, consistency and transparency: this requires substantial training focusing not only on technical but also on generic inspection skills, and official guidelines for inspectors to help ensure consistency and fairness.

Source: (OECD, 2014^[3]), Regulatory Enforcement and Inspections, OECD Best Practice Principles for Regulatory Policy, Paris, <https://doi.org/10.1787/9789264208117-en>.

Box 10. The ACCC's compliance and enforcement strategy

In Australia, the Australian Competition & Consumer Commission (ACCC) has developed a compliance and enforcement strategy that is communicated to all stakeholders. The agency uses four integrated strategies to achieve the compliance objectives:

- Encouraging compliance with the law by educating and informing consumers and businesses about their rights and responsibilities.
- Enforcing the law, including resolution of possible contraventions both administratively and by litigation and other formal enforcement outcomes.
- Undertaking market studies or reporting on emerging competition or consumer issues with a view to identifying any market failures and how to address them, and to support and inform the compliance and enforcement measures and identify possible areas for policy consideration.
- Working with other agencies to implement these strategies, including through co-ordinated approaches.

The ACCC is selective in the matters to investigate and the sectors in which the agency engages in education and market analysis. The ACCC uses annual compliance and enforcement priorities to inform decision making in this regard.

In deciding which compliance or enforcement tool (or the combination of such tools) to use, the first priority is always to achieve the best possible outcome for the community and to manage risk proportionately. The ACCC's enforcement actions seek to maximise impact across an industry sector. For example, the agency uses the outcome of one court proceeding to encourage other industry participants in the sector to improve their practices.

The ACCC's role is to focus on those circumstances that will, or have the potential to, harm the competitive process or result in widespread consumer detriment. The ACCC therefore exercises discretion to direct resources to matters that provide the greatest overall benefit.

Each year the ACCC reviews the compliance and enforcement priorities. Priorities are determined following external consultation and an assessment of existing or emerging issues and their impact on the regulated matters. The ACCC publically announces its priorities in February each year. The priorities are released with the aim of promoting market wide compliance with the law and to manage public expectations regarding the ACCC's ability to take on additional matters outside its priority areas. A number of key stakeholders in Australia actively respond to the ACCC's announcement of the priorities and take active measures to improve compliance.

Source: Information provided by ACCC, 2019.

Appeals

Citizens and businesses have access to an administrative review system that is part of OSITRAN, but appeals can be very lengthy and there have been delays in the appointment of members of the dispute resolution bodies. The different appellate bodies housed within OSITRAN are staffed with lawyers and engineers to hear and rule on matters presented to them. However, the appointment of some of them is pending. The Controversies Court Settlement members must be appointed by PCM and two out of five members have not been nominated. On the other hand, the Administrative Affairs Tribunal was created as second instance for appeals against sanctions imposed by GSF (e.g. sanctions for non-compliance with service level standards). Its members must be appointed by the Board of Directors at the

proposal of OSITRAN's President. To date, the members of the Administrative Affairs Tribunal have not been appointed and its functions fall under OSITRAN's General Management. Complaints can be filed by consumers and citizens easily via the OSITRAN website.

Recommendations

- **Advocate** for the timely nomination of dispute resolution members by PCM and the Board of Directors.
- **Advocate** for the simplification of the current administrative review system. This simplification should apply best practices in the area of administrative justice (expert, streamlined and efficient) and could be carried out with other Peruvian regulators that have similar institutional dispute resolution bodies.

Output and outcomes

Assessing the performance of the regulated entities

OSITRAN collects a vast amount of data and information from regulated entities, and produces regular statistical reports. The Statistical Declaration is the main tool used by the regulator to collect information from the regulated entities. To date, more than 16 000 forms of statistical declarations have been filed by the service-providing entities. OSITRAN reports on the contracts under its supervision through a number of different channels including a monthly bulletin that summarises relevant data (traffic, income, trends) in four sectors (not waterways) that are published on its website; more detailed bi-monthly statistical reports that include information for each concession contract. The sectoral statistical reports provide a good picture of the evolution of the main indicators over time for each concessionaire in a transparent manner.

OSITRAN manages a wealth of data and feels that it lacks sufficient resources to manage them in a systematic manner. Despite the large size of available information, OSITRAN does not have the relevant IT tools that would allow to manage a database bringing this data together. Moreover, while the regulator publishes regular reports and working documents on traffic and income linked to concession contracts, it does not appear to turn this data into information or evidence that could be used to guide decisions linked to regional development and policies. OSITRAN is very aware of these challenges and is currently implementing information technologies to efficiently manage statistical information on entities performance.

Recommendations

- **Use** the wealth of information held by OSITRAN to engage with concessionaires on delivery, for example through yearly public events, as well as to formulate evidence on the performance of concessions to the executive in favour of improved regulation and policy.
- **Adopt** a comprehensive approach to data management to avoid burdensome data flows and improved data interfaces with regulated entities.
- **Continue** implementing information technologies to efficiently manage statistical information on regulated entities and sector performance.
- **Strengthen** IT and analytical tools across all departments, and more particularly in GSF and GRE that are in charge of reviewing the information and producing reports and indicators.

Box 11. Data collection and stakeholder engagement at the Hungarian Energy and Public Utility Authority (HEA)

The Hungarian Energy and Public Utility Authority (HEA) regulates the energy and public utility market in Hungary, supervising sectors of strategic importance such as electricity, natural gas, district heating, water utility supply and waste management. HEA's competences include licensing, supervision, price regulation, consumer protection and energy statistics.

As an official statistical body, the HEA performs tasks related to national energy-statistics and complies with data reporting obligations to national and international bodies and organisations. The HEA compiles the monthly and annual energy statistics and requires a large amount of detailed data from regulated entities. As part of the National Statistical Data Collection Programme, the HEA liaises with around 5 700 data suppliers.

In 2019, the HEA received questions from stakeholders, regarding its reporting and data collection activities regarding the water sector. In this process, the HEA acknowledged that it was putting too much burden on data providers and it used this information to change its data collection strategy. The HEA organized several meetings during the year with the association of service providers in the water sector and reviewed its datasets. As the result of the review process, the HEA simplified its datasheets and reduced the amount of data collected from the service providers. The HEA also decided to hold regular workshops and direct meetings with the regulated stakeholders in order to help them to provide correct and reliable data. The first report that takes into account these comments will be published in 2020.

Another example for stakeholder engagement is the assessment of consumer's satisfaction. The HEA's predecessor, the Hungarian Energy Office first started surveying the consumer's satisfaction level in the field of electricity and natural gas more than 20 years ago. This activity has been a legal requirement in the energy sector and this practice was put into legislation after the regulator got its competencies in the water sector. Since 2016 the HEA also carries out an assessment of the user satisfaction level in the water sector and district heating.

The HEA regularly publishes how it monitors companies to build a better relationship with them and to learn from international experience.

Source: 13th OECD Network of Economic Regulators, <http://www.mekh.hu/introduction>.

Assessing the performance of the regulator

OSITRAN has defined an institutional strategic plan which does not include objectives for the sector or sector policy. The seven objectives of the strategic plan (*Plan Estratégico Institucional*, PEI 2019-2022) are classified in two categories: first order priorities (type 1) and second order priorities (type 2). In PEI 2019-2022 the three main priorities of the institution (type 1) are focused on optimising enforcement and inspection activities, optimising the regulatory function for the benefit of citizens and strengthening protection rights. The objective number 7 (to implement disaster risk management) is a requirement set by National Centre for Strategic Planning (CEPLAN) rules and is required in strategic frameworks of all public bodies in Peru. Only one objective (4. Strengthen citizen's and stakeholder's knowledge of OSITRAN's role) looks at external impact and the rest focus on OSITRAN processes and own performance (management or intermediate objectives), making for an imbalanced strategic framework.

Table 3. OSITRAN strategic objectives and indicators, according to OECD input-process-output-outcome framework

Priority	Strategic objective	Indicator	Type of indicator
1	To optimise supervision and inspection activities (OEI.03)	Supervision and inspection efficiency index	Process
1	To optimise the regulatory function for the benefit of users and citizens (OEI.04)	Regulatory function compliance index	Process
1	To strengthen user rights protection (OEI.05)	User protection index	Output
2	To strengthen stakeholders and citizens knowledge of OSITRAN's role (OEI.01)	% of knowledge of OSITRAN	Outcome
2	To optimise its organisational development (OEI.02)	Organisational development index	Process
2	To efficiently manage institutional resources (OEI.06)	Resources management index	Input
2	To implement disaster risk management.	Number of implementation reports	Process

Source: OECD analysis based on OSITRAN's strategic objectives.

Each strategic objective has a number of “strategic actions” (*acciones estratégicas*) with an indicator per action. The PEI includes a matrix per strategic objective, which includes the description of the strategic objective and its main indicator, as well as the strategic actions and its indicators. Measurement can be complicated due to the large number of indicators (41). In addition, the strategic action indicators are greatly focused on the implementation of activities, plans and projects. Monitoring is carried out twice a year, at mid-year and year-end review.

Table 4. Example of main aspects of a strategic objective matrix

Strategic Objective (OEI) No. 2

Code	Description	Name of the indicator
OEI.02	To optimise organisational development	Organisational development index
	Strategic actions (<i>AEI</i>)	
AEI.02.01	Strengthened organisational culture	% of implementation of the Plan for Strengthening organisational culture
AEI.02.02	Optimised strategic, operational and support processes	% of optimise processes
AEI.02.03	Strengthened in-person user protection	Number of enquiries attended to by 'deconcentrated offices'
AEI.02.04	External supervision contracts efficiently managed by OSITRAN	% of efficient selection processes
AEI.02.05	Implementation of OECD Regulatory Policy Standards	% of implementation of the OECD Regulatory Policy Standards Plan
AEI.02.06	Knowledge management system	% of implementation of the Knowledge Management Plan
AEI.02.07	Digitalisation of processes and services	% of digitalised processes

Source: OSITRAN PEI 2019-2022.

OSITRAN has devoted great effort to elaborating several sophisticated indicators, but their monitoring may be under-utilised for transparency purposes. While OSITRAN is not required to report on these indicators, the regulator could use them to communicate on its performance to public authorities and the public, rather than using them mainly for internal management purposes. Given the internal focus of the objectives and indicators, the focus of monitoring activities misses the opportunity of linking

OSITRAN performance to sector performance (and thus the impact of OSITRAN activities on the quality of services or economic growth).

OSITRAN is accountable to Congress, while being overseen by PCM; there is room for continuing efforts to put in place more transparent and predictable performance reporting. In early July 2018, OSITRAN issued an internal resolution to require the President of the Board to submit the annual report to Congress, as part of its Regulatory Improvement Policy. There are two ordinary committees in Congress directly related to OSITRAN: The Consumer Defence Commission for Regulatory Agencies and the Transport and Communications Commission. In April 2018, OSITRAN submitted to Congress the first performance report but it was not discussed at a dedicated session in either Committee.

Recommendations

- **Develop** outcome-focused performance indicators for newly visited strategic framework and assign time-bound targets to KPIs.
- **Develop** a small number of KPIs that capture the quality and impact of process/activities with focus on delivery of investment, service quality, and high level sector performance.
- **Continue monitoring** the indicators twice a year and use the results for transparency purposes for the benefit of stakeholders and citizens.
- **Continue** efforts to strengthen reporting and engagement with Congress, as well as the wider public.

Box 12. Key performance indicators

Key performance indicators (KPIs) provide a means to measure whether organisations are performing in relation to their strategic goals and objectives. A manageable number of well-designed KPIs give a clear picture of current levels of performance and can aid decision-making. Each KPI should be clearly linked to a strategic objective and accompanied by a target or benchmark.

Indicators of output from regulatory activity capture whether regulatory decisions, actions and interventions are effective (e.g. decisions taken which were upheld). Indicators of direct outcomes or the impact of outcomes could include, for example, compliance with the regulator's decisions.

Indicators of wider outcomes ("watchtower" indicators) can be included as learning (rather than accountability) indicators. These could include, for example, service and infrastructure quality (e.g. frequency and reliability of services to consumers).

Note: The framework for performance indicators 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^[4]), Driving Performance at Colombia's Communications Regulator, Figure 3.3, <http://dx.doi.org/10.1787/9789264232945-en>.

Notes

¹ In addition to OSITRAN, these include: the Supervisory agency for investment in energy and mining (*Organismo supervisor de inversion privada en energía y minas*, Osinergmin), the Supervisory agency for private investment in telecommunications (*organismo supervisor de inversion privada en telecomunicaciones*, OSIPTEL), and the National superintendency of sanitation services (*Superintendencia nacional de servicios de saneamiento*, SUNASS).

² <https://plataforma.ositran.gob.pe/pySIDECO/denuncia.jsp>.

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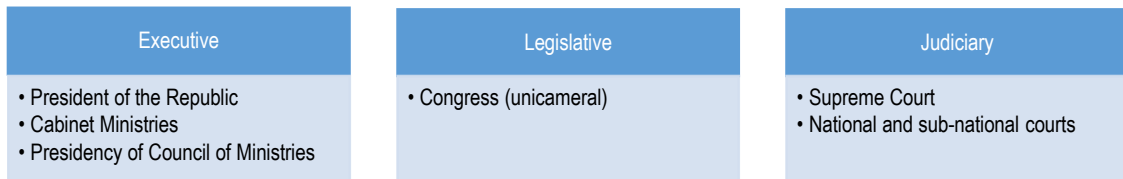
1 Institutional and sector context

This chapter provides an overview of Peru's public institutions and the main features of the sectors regulated by Peru's transport infrastructure regulator (*Organismo Supervisor de Inversión en Infraestructura de Uso Público*, OSITRAN).

Institutions

Peru has a centralised system of government, which is comprised of the executive, legislative and judiciary branches.

Figure 1.1. Branches of the government of Peru

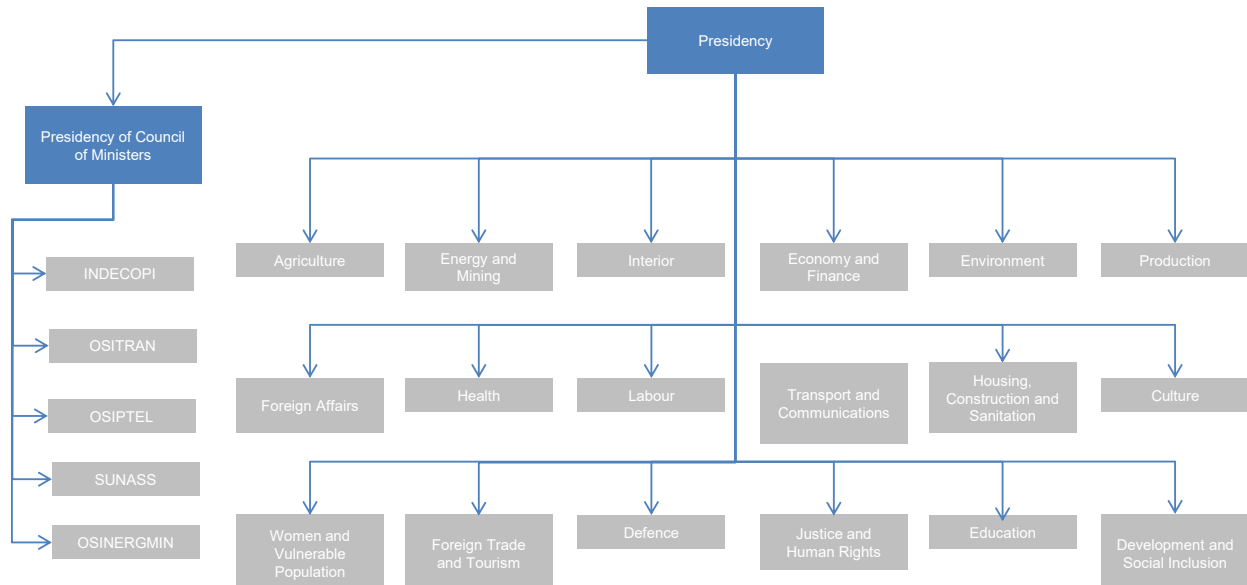


Source: (Government of Peru, 2019^[1]), https://www.peru.gob.pe/directorio/pep_directorio_gobierno.asp.

Executive

The President of the Republic, the Council of Ministers, and the Presidency of the Council of Ministers (*Presidencia del Consejo de Ministros*, PCM) constitute the core bodies of the executive branch (see Figure 1.2, (OECD, 2016^[2]). Along with the PCM, the Ministry of Economy and Finance (*Ministerio de Economía y Finanzas*, MEF) help shape the overall regulatory environment in Peru. In the transport infrastructure sector, the Ministry of Transport and Communications (*Ministerio de Transporte y Comunicaciones*, MTC) and other public bodies, such as the Agency for the Promotion of Private Investment (*Agencia de Promoción de la Inversión Privada*, Proinversión), also work closely with OSITRAN.

Figure 1.2. Structure of the executive branch of the Peruvian government



Note: The PCM also houses a large number of public entities, secretariats and commissions, which are not included in this figure.

Source: (OECD, 2016^[3]), Regulatory Policy in Peru: Assembling the Framework for Regulatory Quality, OECD Reviews of Regulatory Reform, Paris, <http://dx.doi.org/10.1787/9789264260054-en>.

Presidency of the Council of Ministers (PCM)

The Presidency of the Council of Ministers (PCM) is responsible for co-ordinating national and sector policies within the executive, including line Ministries and public agencies. The PCM houses several secretariats and commissions, and manages and co-ordinates line ministries and public entities. The PCM plays a key role in appointing and nominating the President and the members of the Board of the regulator, as well as administering budget allocations and disbursements. While not formally defined in law, the President of the Council of Ministers in practice plays the role of Prime Minister and government spokesperson (OECD, 2016^[2]).

Ministry of Economy and Finance (MEF)

The Ministry of Economy and Finance (MEF) is responsible for the development of economic and financial policy in the country. MEF manages the performance-based budgeting system, which applies to all executive bodies and economic regulators. MEF is also in charge of other areas of regulatory policy such as administrative simplification, international regulatory co-operation, inter-governmental co-ordination, performance-based regulation, *ex ante* impact assessments of regulation, and governmental transparency and consultation (OECD, 2016^[3]).

Agency for the Promotion of Investment (ProInversión)

The Agency for the Promotion of Investment (*Agencia de Promoción de la Inversión Privada*, ProInversión) is a specialised technical body attached to MEF and is responsible for the promotion of national investments through public-private partnerships (PPPs) in services, infrastructure, assets, and other state projects. It provides information and orientation services to investors, mediating different views on investment projects, and creating a conducive environment for attracting private investments, in accordance with economic plans and integration policies, such as those related to the development of transport infrastructure. ProInversión receives technical comments from OSITRAN, MEF and the MTC when developing investment projects; however, only MEF and the MTC opinions are considered binding.

Ministry of Transport and Communications (MTC)

The Ministry of Transport and Communications (MTC) establishes the general policy and direction of the transport sector. It is in charge of designing, leading, promoting, and implementing actions aimed at providing efficient transportation and telecommunication systems and overseeing concession programmes in these sectors.

Legislature

Congress is a unicameral institution composed of 130 members elected to serve five-year terms. Congress can enact legislation that requires regulators to develop secondary regulations. Moreover, Congress can call on ministries and regulators to submit opinions on draft laws and to attend sessions to respond to any questions raised by Congress. There are currently 23 standing committees, including the Commission for Consumer Defence and Regulators of Public Utilities (*Comisión de Defensa del Consumidor y Organismos Reguladores de los Servicios Públicos*, CODECO) and Commission for Transport and Communications (*Comisión Transporte y Comunicaciones*).

Judiciary

The judiciary branch is responsible for interpreting and applying the laws in Peru. It is responsible for providing mechanisms for dispute resolution through a hierarchical system. The judiciary is led by the Supreme Court and is supported by superior courts with defined jurisdictions across the 25 regions in the

country. Under each superior court are 195 primary courts responsible for each province and 1 838 Courts of justice of the Peace within each district (Poder Judicial del Peru, 2012_[4]). In the transport infrastructure sector, dispute resolution between regulated entities, as well as between regulated entities and users, are first handled via OSITRAN's internal dispute resolution bodies. If the parties wish to appeal these decisions, they can launch a "contentious administrative process" under Law No. 27584. The judiciary makes the final decision, which can be decided based on both the merit of the issue as well as the process. In addition, it is possible for regulated entities to resort to arbitration.

Subnational governments

There are three subnational layers of government in Peru: the regional government, the provincial local government and the district local government (OECD, 2016_[3]). These government levels have exclusive and joint functions which are described in the Peruvian Political Constitution (*Constitución Política del Perú*, CPP), the Organic Law of the Executive Power (*Ley Orgánica del Poder Ejecutivo*, LOPE), the Organic Law of Regional Governments (*Ley Orgánica de Gobiernos Regionales*, LOGR) and the Organic Law of Municipalities (*Ley Orgánica de Municipalidades*, LOM). Sub-national governments have the authority to enact regulatory measures in their region.

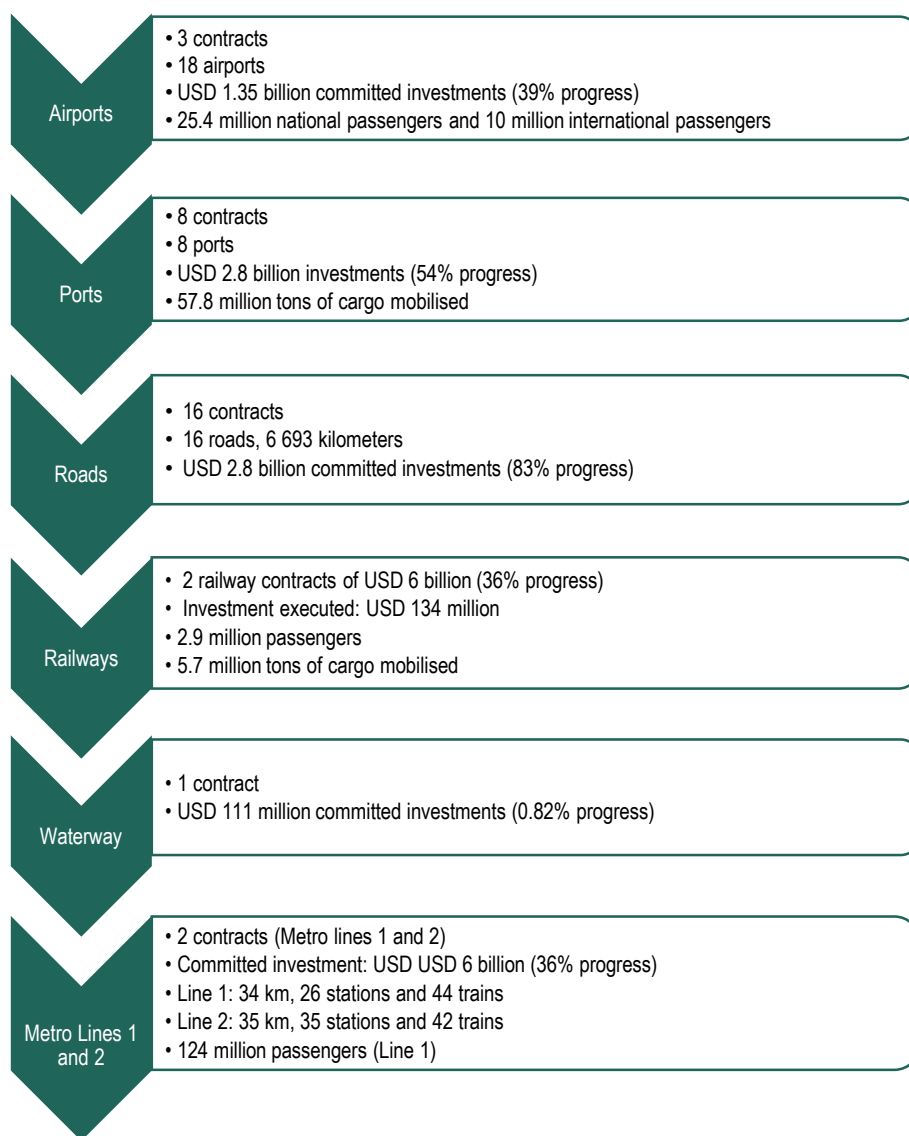
Comptroller General of the Republic

The Comptroller General of the Republic (*Contraloría General de la República del Perú*, CGR) was established in 1929 as the supreme audit institution of Peru. As the highest authority of the national control system, the CGR supervises, monitors and verifies the correct application of laws and the use of state resources and assets. An Institutional Control Body (*Órgano de Control Institucional*, OCI) represents it inside each public entity. The Chief Audit Officer of the OCI is assigned by the General Comptroller of the Republic and its function is to oversee transparent management of public resources, safeguarding the legality and efficiency of activities. The OCI is responsible for all auditing all public spending.

Sector context

OSITRAN oversees transport infrastructure for public use, such as airports, ports, roads, railways (including passenger services in the Lima Metro), as well as the Amazon Waterway. As of December 2018, OSITRAN supervises 32 contracts with the approximate total amount of investments at USD 15.2 billion (see Figure 1.3).

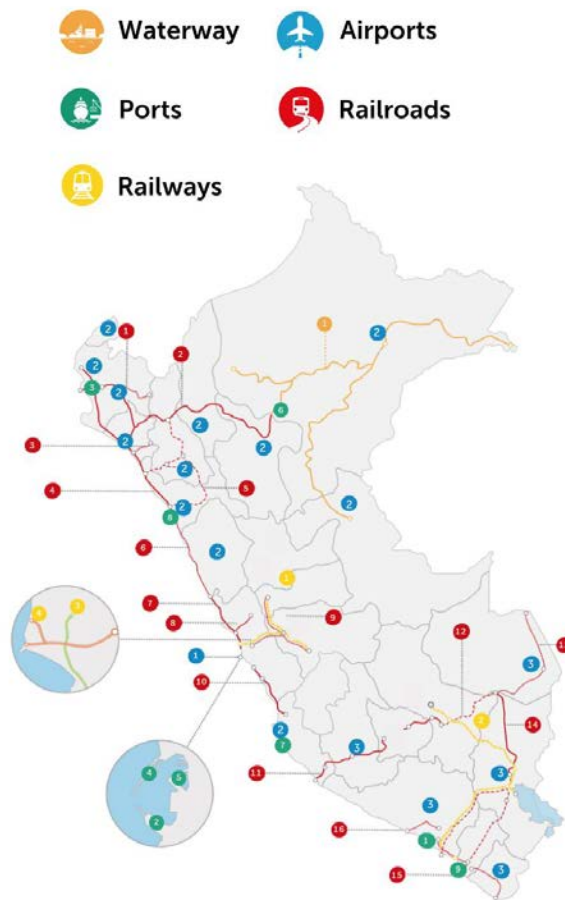
Figure 1.3. Sectors supervised by OSITRAN



Note: The information is for the year 2018, except for the committed and executed investments that are as of June 2019.

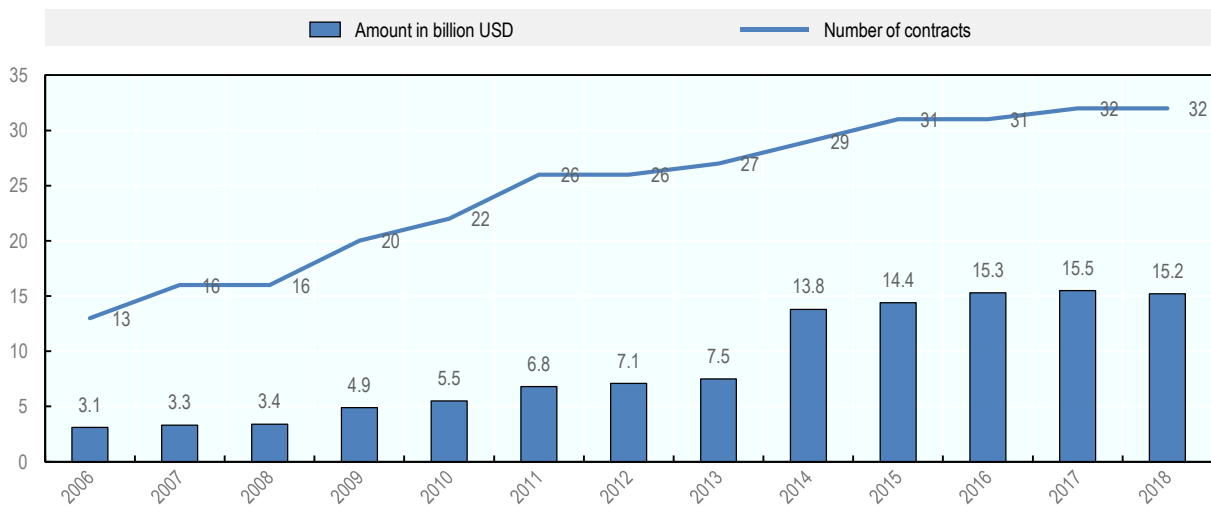
Source: Information provided by OSITRAN, 2019.

Figure 1.4. Map of contracts supervised by OSITRAN



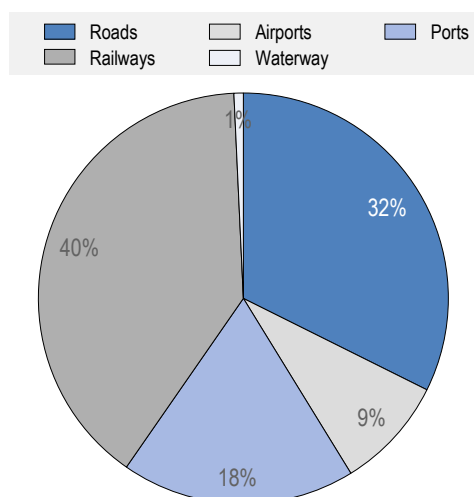
Note: Map available on OSITRAN website. It includes relevant information related to concession contracts, tariffs, supervision plans, sanctions, etc.
 Source: (OSITRAN, 2018^[5]).

Figure 1.5. Amount of investments and number of contracts, 2006-2018



Source: (OSITRAN, 2018^[6]).

Figure 1.6. Distribution of investments per sector as of December 2018



Source: (OSITRAN, 2018^[6]).

Concession contracts system

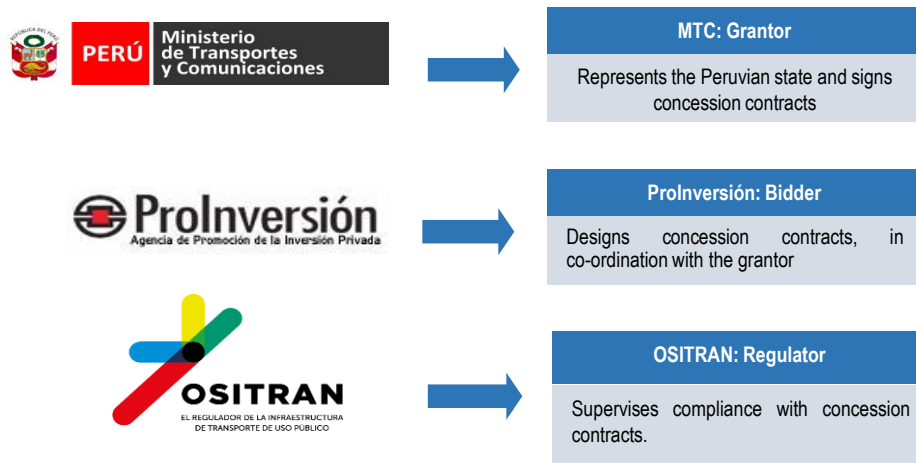
The large majority of concession contracts for transport infrastructure in Peru are governed by public-private partnerships (PPPs). PPP contracts aim to enhance the development of public service infrastructure for the benefit of citizens and users. The State (grantor) delegates the construction, operation and maintenance of public service infrastructure to a private company (concessionaire). Contracts can be awarded either through public tenders or initiatives that can be classified as self-sustained and co-financed (see Table 1.1).

Table 1.1. Types of concession contracts

Self-sustained concessions (<i>autosostenibles</i>)	Co-financed concessions (<i>cofinanciadas</i>)
<p>OSITRAN supervises sixteen self-sustained concessions. Do not require co-financing of the public sector and produce their own income.</p> <p>Must meet the following conditions:</p> <ul style="list-style-type: none"> • Minimum or no demand for financial guarantee by the Peruvian state. • Non-financial guarantees that have no or minimum probability of demanding cofinancing. 	<p>OSITRAN supervises sixteen co-financed concessions. Require granting or contracting of financial guarantees or non-financial guarantees that have a significant probability of cofinancing demands.</p>
<p>Role of OSITRAN</p>	
<p>The role of OSITRAN is the same in both categories: The regulator verifies compliance with concession contracts. Differences in procedures, standards, adjustment mechanisms or methodological aspects for tariff review are established in the contracts.</p>	

Source: Information provided by OSITRAN, 2019.

Figure 1.7. Main public entities involved in PPPs

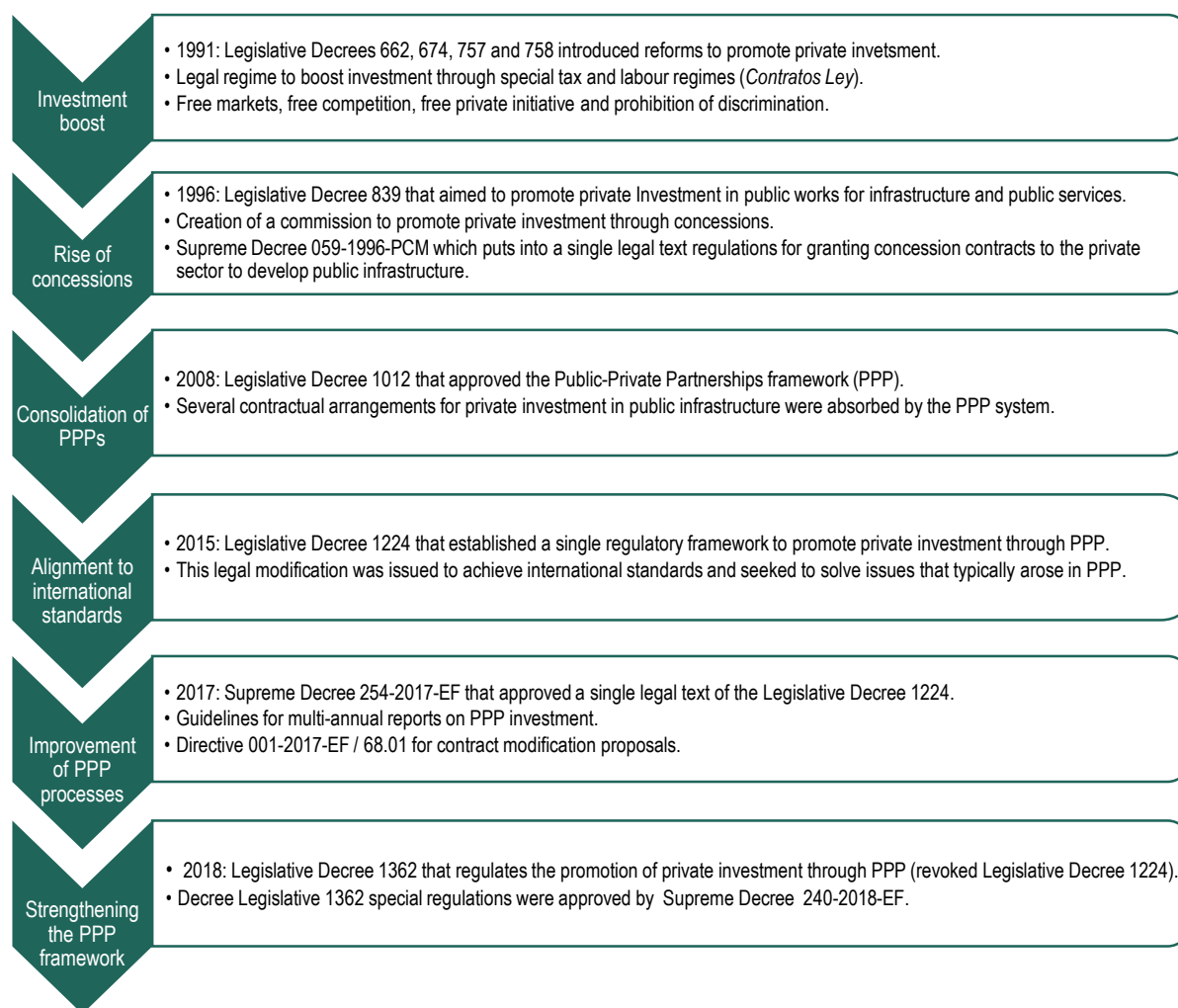


OSITRAN participates in the design of concession contracts by issuing technical and non-binding opinions. Since 2018, under Legislative Decree 1362, it is mandatory for OSITRAN to issue opinions on initial drafts of contract. Previously, OSITRAN's opinions were mandatory only once contracts had been negotiated and finalised.

Legislative Decree 1362 introduced other important modifications, such as the requirement to obtain property rights of the lands needed to execute the projects early; the role of the CGR in issuing non-binding opinions on draft contracts; and the obligatory publication of all OSITRAN and MEF opinions concerning contract modification on their institutional websites.

In addition, OSITRAN supervises some infrastructures that are not governed by PPPs. For example, the Regulator supervises the activities of the public company *Corporación Peruana de Aeropuertos y Aviación Comercial S.A.*, CORPAC that administrates 29 airports.

Figure 1.8. Evolution of the private investment for public works framework (1991-2018)



Source: Figure provided by OSITRAN, 2019.

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(accessed on 25 June 2018).

2 Governance of OSITRAN

The Performance Assessment Framework for Economic Regulators (PAFER) was developed by the OECD to help regulators assess their own performance. The PAFER structures the drivers of performance along an input-process-output-outcome framework. This chapter applies the framework to the governance of Peru's public transport infrastructure regulator (*Organismo Supervisor de Inversión en Infraestructura de Uso Público*, OSITRAN) and reviews the existing features, opportunities and challenges faced by OSITRAN in developing an effective performance assessment framework.

Peru's public transport infrastructure regulator (*Organismo Supervisor de Inversión en Infraestructura de Uso Público*, OSITRAN) was created in 1998 private investment in transport infrastructure for public use.

Role and objectives

In 2000, Law No. 27332 Framework Law for Regulatory Bodies (*Ley Marco de los Organismos Reguladores de Servicios Públicos*, LMOR), recognised the technical, administrative, economic and financial autonomy of all four economic sector regulators¹ and placed them under the Presidency of the Council of Ministers (PCM). This law grants regulators with functions to supervise, set tariffs, issue regulations, inspect the sector activity of regulated entities, as well as to solve conflicts and claims (see Table 2.1).

Table 2.1. Regulators functions according to LMOR

Supervisory (<i>función supervisora</i>)	Supervise compliance with laws, contracts and regulations issued by the regulator
Tariff-setting (<i>función reguladora</i>)	Set and review tariffs for public services under their scope of action
Regulatory (<i>función normativa</i>)	Establishes regulations under its scope of action
Enforcement and inspections (<i>función fiscalizadora y sancionadora</i>)	Qualifies infractions and imposes sanctions
Conflict resolution (<i>función de solución de controversias</i>)	Resolves administrative disputes between regulated entities.
Claim resolution (<i>función de solución de reclamos</i>)	Acts as second instance for users claims

Source: article 3, LMOR.

Mandate

The Supervisory Agency for Investment in Public Use Transport Infrastructure (*Organismo Supervisor de la Inversión en Infraestructura de Transporte de Uso Público*) was created in 1998 by Law 26917 to oversee private investment in transport infrastructure for public use, under the Ministry of Transport. In 2000, the LMOR placed OSITRAN under the PCM.

Law 26917 aims to promote transport development and the supervision of transport infrastructure for public use. The text states that OSITRAN's mission is to regulate transport infrastructure, as well as to verify compliance with concession contracts, while impartially protecting the interests of the Peruvian state, investors and users.

At its creation, OSITRAN was given a mandate in airports, ports, roads and railways sectors. It was granted powers to supervise concession contracts, set and review tariffs and provide non-binding technical opinions on transport infrastructure of national scope, manage and issue regulatory instruments and establish and impose sanctions and corrective measures.

OSITRAN's role, mandate and structure have changed over the years. In 2011, Law 29754 granted OSITRAN additional powers to supervise public passenger transport services of the Lima Metro. This is the only sector in which OSITRAN regulates passenger services, but without the ability to set and review tariffs, a ministerial competence. In 2017, the supervision of the country's first waterway, the Amazonian Waterway, was added to OSITRAN's portfolio.

Functions and powers

Law 26917 defines the main functions of OSITRAN as follows:

- Tariff-setting (with limitations).
- Supervision of concession contracts.
- Inspection and enforcement.
- Advisory role (issuance of technical opinions).
- Contract interpretation.
- Regulatory functions.

Tariff-setting

OSITRAN tariff-setting function mainly depends on the provisions of concession contracts. Contracts establish service standards, procedures, tariffs as well as methodologies to review and adjust them. Only three concession contracts in the road sector require OSITRAN to set tolls.

OSITRAN sets and reviews transport infrastructure tariffs, in the following cases:

- If there is no competition in the market, OSITRAN sets tariffs and establishes regulations to apply, review and modify them.
- If tariffs and readjustment mechanisms are set in concession contracts, OSITRAN ensures compliance with contract provisions.
- If there is competition in the market, and there are no tariff provisions, OSITRAN ensures the free functioning of the market.

OSITRAN analyses if there are competitive conditions in the market. In the case of setting tariffs for port infrastructure, the National Institute for the Defence of Competition and Intellectual Property (*Instituto Nacional de Defensa de la Competencia y Protección de la Propiedad Intelectual*, Indecopi) is charged with analysing competition conditions.

The regulator does not set tariffs for public passenger transport services, for transport infrastructure for private use and for municipal road infrastructure.

OSITRAN's Board of Directors exercises the tariff-setting function. The Board bases its decisions on reports prepared jointly by the Regulation and Economic Studies Department (GRE) and the Legal Advice Department (GAJ). The GRE conducts tariff-related procedures, while GAJ evaluates legal issues.

Contract supervision

OSITRAN supervises compliance with the obligations of 32 concession contracts in five different sectors (see Table 2.2). This is one of the regulator's core activities, representing 43% of its 2019 annual budget.

Table 2.2. Supervised contracts

Sector	Number of contracts	Committed Investments (Billion USD)
Airports	3	1 348
Ports	8	2 804
Railways	4	6 018
Roads	16	4 915
Waterway	1	112
Total	32	15 197

Notes: Two railway contracts do not include value of committed investments. The information is updated as of June 2019. Source: information provided by OSITRAN, 2019.

If during OSITRAN finds evidence of non-compliance with contract obligations, it can exercise its sanctioning powers. Regulated entities can challenge sanctions (see section *Appeals*). For more information related to supervision activities and sanctions see section *Supervision, Enforcement and Inspections*.

Advisory function (issuance of opinions)

Since 2018, OSITRAN is empowered to issue opinions on initial drafts of PPP contracts; previously, this was mandatory only *ex post* once contracts had been negotiated and finalised between ProInversión and the MTC. The OSITRAN Board of Directors must issue a prior technical opinion on concession contracts at the request of ProInversión, as well as on any contract amendments at the request of the MTC.

OSITRAN is given between ten and fifteen days to issue opinions (a delay not defined in law). It may be challenging for the regulator to comply in a timely manner and OSITRAN reports that it often needs to ask for extensions to be able to respond.

OSITRAN issues the following opinions:

- Opinion on modifications of concession contracts (*adendas*).
- Opinion on drafts of concession contract.
- Opinion on draft laws related to transport concessions.
- *Ad-hoc* opinions at the request of the MTC.

Stakeholders and OSITRAN acknowledge that its non-binding opinions are mostly taken into account.

Contract interpretation

OSITRAN has the exclusive power to interpret concession contracts should disputes arise. OSITRAN is the only Peruvian regulator that has this function. The regulator exercises this function through decisions of the Board of Directors (*resoluciones de Consejo Directivo*), as the sole administrative instance. The interpretation proceeding can be initiated *ex officio* or upon request of the grantor, concessionaire or other legitimate third parties.

OSITRAN interprets contractual clauses through various methods including literal, logical, systematic and historical methods. The interpretation function can be exercised on concession contracts (including annexes) and other binding rules. OSITRAN's interpretation decision is final.

Regulatory function (función normativa)

OSITRAN issues regulations and norms under its competence. These regulations may define the rights and obligations of regulated entities and users. The regulatory function is of exclusive competence of the Board of Directors through the adoption of Board resolutions.

Institutional co-ordination

OSITRAN operates in a complex environment alongside many other public bodies. The regulator co-ordinates its technical work with other public administration bodies, such as the MTC and Congress. However, there are no overall regular and structured co-ordination mechanisms and interactions with other entities are often informal.

Given OSITRAN's role in the management and supervision of public-private partnerships (PPPs), the regulator frequently interacts with the MTC and ProInversión. OSITRAN issues non-binding opinions on concession contracts. The MTC regularly (both formally and informally) requests technical support from the regulator. In addition, OSITRAN regularly interacts with CGR in matters relating to compliance with

contract provisions and the oversight activities of the supreme audit authority. OSITRAN co-ordinates with Indecopi on aspects relating to tariff proposals submitted by APM Terminals (port infrastructure concessionaire) and for this purpose, Indecopi and OSITRAN have signed a co-operation agreement. In the case of legislative proposals submitted by Congress, there is no formal co-ordination mechanism in place. However, Congress may require OSITRAN to issue opinions or reports.

Table 2.3. Public administration bodies involved in the transport infrastructure sector

Authorities	Mandate	Interactions with OSITRAN
	ALL SECTORS	
MTC	To design, regulate and implement the promotion and development policy in the transport sector.	The MTC sets sectoral policy, as well as performing the role of the grantor in concession contracts. The MTC can request OSITRAN to provide comments and opinions in relation to the legal and contractual framework under the regulator's scope of action.
ProlInversión	Specialised technical body attached to MEF, responsible for the promotion of national investments through public-private partnerships (PPPs) in services, infrastructure and other state projects.	OSITRAN participates in processes under PPPs. ProlInversión designs concession contracts in co-ordination with the MTC. OSITRAN is requested to provide non-binding opinions for the approval of concession contract projects.
General Comptroller of the Republic (CGR)	Highest authority of the national control system. Supervises, monitors and verifies the correct application of laws and public policies, as well as the correct use of state resources and assets.	The CGR regularly interacts with OSITRAN through OSITRAN's Institutional Control Body (OCI). The head of OCI functionally responds to CGR. OSITRAN has powers to supervise, enforce and interpret concession contracts. When exercising control body functions, the CGR may understand contract provisions in a different manner, which sometimes leads to OSITRAN and the CGR to have different positions regarding the same matter/issue. In addition, CGR must issue non-binding opinions about first drafts of contracts under PPPs.
Congress	Unicameral legislative branch of 130 members.	Requests OSITRAN to provide comments on issues of draft laws.
	PORTS	
APN	Technical body attached to the MTC responsible for the development of the port sector. APN supervises compliance with ports' operational and security aspects.	APN can request OSITRAN to issue non-binding opinions relating to the port sector, and vice versa. In the port sector, regulated entities are supervised by both APN and OSITRAN.
Indecopi	Independent regulatory body aimed at both providing competition and consumer protection. Assessment of competition conditions in the framework of tariff setting for port infrastructure.	Port regulations state that Indecopi is empowered to establish whether the market has competition conditions within the framework of tariff setting procedures.
	PUBLIC TRANSPORT	
Urban Transport Authority for Lima and Callao (ATU)	Technical body attached to the MTC, responsible for planning, regulating, managing and supervising the operation of the Lima and Callao Integrated Transport System. This body was created in 2019 and absorbed ATTE (agency that was responsible for managing the Electric Transport System).	ATU plans, regulates and supervises the operation of the Lima Metro. OSITRAN supervises compliance with concession contract provisions.
Superintendence of Land Transportation of People, Cargo and Merchandise (SUTRAN)	Technical body attached to the MTC, responsible for supervising compliance with regulations for land transport and transit services of national scope.	While OSITRAN supervises public service transport infrastructure, SUTRAN supervises transport services. There is <i>ad hoc</i> co-ordination when vehicles carrying heavy cargo can affect both transport infrastructure and transport services.

Source: information provided by OSITRAN, 2019.

Independence

LMOR establishes OSITRAN as a public and decentralised body attached to the PCM with administrative, functional, technical, economic, and financial autonomy. OSITRAN produces its annual work programme independently. However, OSITRAN's Strategic Institutional Plan (*Plan Estratégico Institucional, PEI*) has to follow the National Centre for Strategic Planning (*Centro Nacional de Planeamiento Estratégico, CEPLAN*) and the PCM general guidelines.

The regulator has technical independent to issue its regulatory decisions. Regulated entities can challenge the regulator's decisions through administrative procedures. The only way to overturn final administrative decisions is through a judicial process. In addition, OSITRAN issues opinions on draft legislation, contracts and its modifications, based on its status of independent regulator. Independence and legitimacy in regulatory decisions is enhanced through the development of technical studies.

In June 2018, the Commission for Consumer Defence and Regulators of Public Utilities (*Comisión de Defensa del Consumidor y Organismos Reguladores de los Servicios Públicos, CODECO*) of Congress discussed a draft law to enhance aspects of institutional independence for economic regulators in Peru. As of August 2019, the draft law has not been proposed for discussion in Plenary.

Strategic and operational objectives

OSITRAN develops a four-year Strategic Institutional Plan (*Plan Estratégico Institucional, PEI*) that provides medium-term objectives. The current PEI is set for 2019-2022 and puts forward seven strategic institutional objectives (*Objetivos Estratégicos Institucionales, OEI*) (see Figure 2.1). The Board of Directors is charged with approving the PEI. The previous PEI (2016-18) had fifteen institutional objectives.

Figure 2.1. OSITRAN strategic institutional objectives, 2019-2022



Source: (OSITRAN, 2019_[1]).

The PEI includes a “roadmap” (*ruta estratégica*) that prioritises strategic objectives and proposes indicators (see Table 2.4).

Table 2.4. OSITRAN Strategic Framework

Priority	Strategic Objective	Indicator	2019	2020	2021	2022
1	Optimise supervision and inspection activities (OEI.03)	Supervision and inspection efficiency index	88%	91%	96%	99%
1	Optimise the regulatory function for the benefit of users and citizens (OEI.04)	Regulatory function compliance index	90%	93%	97%	100%
1	Strengthen user rights protection (OEI.05)	User protection index	61%	66%	68%	70%
2	Strengthen OSITRAN's positioning in relation to its stakeholders and citizens (OEI.01)	% of positioning of OSITRAN	ND	ND	ND	ND
2	Optimise its organisational development (OEI.02)	Organisational development index	48.2%	59.5%	82%	93%
2	Efficiently manage institutional resources (OEI.06)	Resources management index	81%	87%	92%	95%
2	Implement disaster risk management	Number of implementation reports	2	2	2	2

Source: (OSITRAN, 2019^[1]).

The National Centre for Strategic Planning (*Centro Nacional de Planeamiento Estratégico*, CEPLAN) establishes the process and methodology for developing the PEI. CEPLAN also oversees Peru's National Development Plan. CEPLAN co-ordinates with OSITRAN and ensures that its methodology is followed. The last objective of the current PEI (Implement processes for disaster risk management) is mandatory for all public bodies as set by CEPLAN.

To achieve its institutional strategic objectives, OSITRAN develops Strategic Institutional Actions (*Acciones Estratégicas Institucionales*, AEI) and yearly operational plans (*Plan Operativo Institucional*, POI), which implement the PEI. The 2019-2022 PEI has 38 Strategic Institutional Actions, shown in Annex 2.A.

The OSITRAN Strategic Planning Commission sets the strategic objectives with inputs from external consultants. The members of the commission are: the President of the Board, General Manager, Supervision and Inspection Manager, Regulation and Economic Studies Manager, User Protection Manager, Legal Advisory Manager, and Planning and Budget Manager. Part-time Board members do not participate in the Strategic Planning Commission.

OSITRAN evaluates the fulfilment of the strategic objectives twice a year. Each department elaborates a report including indicators. The Planning and Budget Department (GPP) reviews this information and produces a final report, which is published on OSITRAN's website.

Input

Financial resources

As defined by LMOR, all sector regulators are financed by regulatory contributions levied on the incomes of entities that are under their jurisdiction. Contributions from the industry constitute nearly 90% of OSITRAN's total budget. The contribution rate from industry is approved by the Executive through a Supreme Decree endorsed by the President of the Council of Ministers and MEF. The rate cannot exceed 1% of the total annual income of regulated firms deducting Peruvian Value Added Tax (IGV) and the Municipal Promotion Tax (IPM).

For OSITRAN, the effective rate of 1% has been in force since 1 January 2004 and has not been reviewed since this date. The contribution rate applies to all sub-sectors except Line 1 of the Lima Metro, where OSITRAN perceives an additional 1% to fund inspection of the provision of services.

Additional revenue can be collected from (OECD, 2016^[2]):

- Financial interests (yielded by deposits).
- Interests or late fees derived from the regulatory contribution.
- Fines imposed on regulated entities for non-compliance with the concession contracts and regulations.
- Fees from public information requests under Peruvian Transparency Law.
- Sales of services.

In addition, additional revenues can be granted to OSITRAN by MEF if resources are considered insufficient. For example, the budget expenditure projection from January to December 2019 noted that the resources assigned for the year were insufficient. Therefore, two Presidential Resolutions incorporated additional funds to the regulator's budget for a total of PEN 5 million, the maximum amount that can be added per year.

After an increase over the period 2015-17, the regulator's budget declined by 14.8% in real terms between 2017 and 2018 (Table 2.5). According to OSITRAN, this is mainly due to the decrease in budget execution in previous years, taken into account by the MEF when deciding on budget allocations. Indeed, while budget execution was close to 100% in 2015 and 2018, it did not reach 80% in 2016 and 2017. The lower budget execution is explained by a change of the regulator's leadership in 2017.

Table 2.5. OSITRAN annual budget and execution

Expressed in million PEN

Year	2015	2016	2017	2018
Initial budget	66.5	84.0	93.8	79.9
Supplemental funds	N/A	6.0	-1.4	4.7
Modified budget		90	92.4	84.6
Execution of initial budget (%)	96.2	79.4	78.9	97.3
Execution of modified budget (%)	-	74.1	80	91.8

Notes: Initial budget is sourced from funds collected from the regulatory contributions levied to regulated entities. Supplemental funds are provided by MEF.

Source: Information provided by OSITRAN, 2019.

Managing financial resources

In 2015, the Government of Peru, through MEF, implemented a performance budgeting system for some government entities. OSITRAN has begun implementing this new system, which requires budgets to be aligned with the goals and objectives established by the institution in their strategic institutional plans (PEI) and operational plans (POI).

The execution of expenditures is carried out by budget period from 1 January to 31 December, based on the institutional budget approved for each year and rules issued by MEF. The budget process is coordinated with the MEF through a digital system. OSITRAN submits information via the online integrated administrative financial system (*Sistemas integrados de administración financiera*, SIAF) every year as part of Peru's administration-wide performance based budgeting system.

Table 2.6. OSITRAN Budgeting process

	Activity
1	Planning: OSITRAN estimates revenues to be collected, and forecasts costs and investments to be executed based on PEI and POI.
2	Submission of the revenues estimate for the following three years to the General Directorate of Public Budget of MEF. This information will be used as a reference by the Directorate to determine the Multi-annual Budget Allocation to OSITRAN.
3	Communication by MEF of the Multi-annual Budget Allocation to OSITRAN.
4	Preparation of a proposal by OSITRAN for the allocation of resources by department, based on the POI and historical performance. To this end, the departments have assessed their operational activities to be carried out in the upcoming years for the fulfilment of their roles.
5	Submission of the income and expense information through MEF Multi-annual Programming Web Application.
6	Justification of the budget for the following period before the General Directorate of Public Budget (DGPP) of MEF.
7	Consolidation by MEF of the information of the three levels of government (national, regional and local levels - including OSITRAN's budget), and submission of the Budget Law to the Congress.
8	Approval of the Budget Law by the Congress and publication in the Official Gazette "El Peruano".
9	Communication of the breakdown of the expenses and income budget report by the General Directorate of Public Budget of MEF to OSITRAN.
10	Opening Institutional Budget approval through Board of Directors Resolution.
11	Information of the assigned budget to each department.

Source: Information provided by OSITRAN, 2019.

The General Management and the Planning and Budget department co-ordinate the budget process. OSITRAN uses expected revenue to determine how much will be available to carry out operational goals set in the POI. Indeed, OSITRAN's budget is determined *ex ante* based on a percentage fixed by law of the revenue projections of the regulated sectors rather than determined with a cost recovery principle.

The budgets for each departments are allocated once the Multi-annual Budget Allocation is defined by MEF, taking into consideration the prioritisation of the activities according to the POI and the historical performance.

Table 2.7. OSITRAN budget by department: Modified Institutional Budget (PIM), 2019

Expressed in million PEN

Department	PIM	% PIM
Inspections and Enforcement Department	38	43
Administration Department	16	19
Head of Information Technologies	6	7
Regulation and Economic Studies Department	5	6
User Protection Department	3	4
Legal Advisory Department	3	3
<i>Procuraduría Pública</i>	2	3
Executive Presidency	2	3
General Management	2	2
Corporate Communications Office	2	2
Planning and Budget Department	2	2
Documentary Management Office	2	2
Institutional Control Body	2	2
Dispute Resolution Bodies	1	2
Decentralised Office Arequipa	0	0
Decentralised Office Cusco	0	0
Decentralised Office Iquitos	0	0

Department	PIM	% PIM
Decentralised Office Tarapoto	0	0
Decentralised Office Piura	-	-
Total	86	100.0

Source: Information provided by OSITRAN, 2019.

OSITRAN is bound by several central government rules with regard to managing its financial resources:

- The budget is approved yearly by MEF and relevant budget issues have to be reported to MEF, under the public budgeting system.
- Staff members of OSITRAN are remunerated according to minimum and maximum limits fixed by Supreme Decree and endorsed by the Council of Ministers and the Minister of Economy and Finances. Current caps limit OSITRAN's ability to attract and retain qualified professionals (see section *Managing human resources*).
- The PCM has decision over some budgetary allocations, including approval of trips abroad for institutional representation. The latter are currently limited by austerity measures.
- The Law of Financial Equilibrium (*Ley de Equilibrio Financiero*): Funds perceived directly from regulated entities are classified as "directly collected resources" (RDR), and not "ordinary resources" (OR) that mostly fund central government entities. Previously, agencies with RDR funds were allowed to keep surplus funds and carry them forward to the following year(s), while agencies with OR funds were required to return surpluses to the Treasury every year. Since 2017, the Law of Financial Equilibrium requires required surplus RDR funds to also be forwarded to the Treasury in order to promote higher budget execution across public entities. The law has been renewed for the 2018 and 2019 fiscal years. The funds transferred to Treasury may be re-incorporated into the entity's budget the following year as additional public revenues (the latter is however capped at a maximum of PEN 5 million by MEF).

Managing human resources

Human resources

OSITRAN employs 310 staff as of September 2019. A breakdown of staff by job family can be found in Table 2.8, while a breakdown of senior and technical staff by department can be found in Table 2.9.

OSITRAN's Handbook for Classification of Positions (*Manual de Clasificación de Cargos*) and a Job Description Manual outline the main functions and responsibilities of staff and describe the professional profile and skills required for each position. The job profiles are approved by the President of the Board.

OSITRAN's public servants work under three different employment regimes (Laws 728, 1057 and 30057).² As of September 2019, 45% staff (139 employees) work under labour regulations for the private sector, not commonly offered in public entities (Law 728 regime). Law 728 offers open-ended contracts with full benefits. The number of positions is fixed, meaning that recruitments under the 728 regime can only be made when a 728 position has been vacated. 55% of OSITRAN employees (171 employees) are hired under non-permanent contracts. Law 1057 regime for "Administrative Service Contracting" (*Contratos Administrativos de Servicios*, CAS) is a public sector regime that offers non-permanent employment on a fixed-term six-month contract that can be renewed without limit. The CAS regime also offers less employment benefits, such as insurance or pensions, in contrast to the 728 regime. A new labour regime was created (Law 30057, SERVIR Law) in 2013 as an administration-wide project to create a unified employment regime for all public officials. OSITRAN currently applies this new regime only to the President of the Board.

Table 2.8. OSITRAN staff by category, 2014-19

Year	Number of support staff	Number of professional staff	Total workforce
2019	54	256	310
2018	79	225	304
2017	74	199	273
2016	69	205	274
2015	64	183	247
2014	54	146	200

Source: Information provided by OSITRAN, 2019.

Table 2.9. OSITRAN staff by department, 2019

Department	Law 728	Law 1057	TOTAL
Inspections and Enforcement	49	76	125
Administration	26	39	65
Regulation and Economic Studies	10	8	18
Legal Advisory	10	4	14
Office of Documentary Management	4	13	17
User Protection	6	3	9
<i>Procuraduría</i>	2	7	9
Executive Presidency	6	2	8
Planning and Budget	5	3	8
Institutional Control Body	5	6	11
General Management	9	0	9
Dispute Resolution Bodies	3	2	5
Decentralised Offices	0	5	5
Corporate Communications Office	4	3	7
TOTAL	139	171	310

Source: Information provided by OSITRAN, 2019.

Table 2.10. OSITRAN Female/Male staff by category, 2019

Category	Male	Female
Senior management (President of the Board, managers and advisers)	27	14
Technical staff	130	85
Support staff	21	33
Total	178	132

Source: Information provided by OSITRAN, 2019.

Senior management recruitment

Twenty three senior management positions are appointed by the President of the Board or the General Manager with no public and competitive selection process and without term limits. The process is informed by OSITRAN's Handbook for Classification of Positions (Manual de Clasificación de Cargos) and the Job Description Manual.

This figure includes 18 trusted positions that are limited to 5% of total staff, in application of the Supreme Decree 084-2016-PCM:

- General Manager

- Strategic Management Adviser
- Legal Adviser
- Legal Adviser Specialised in Concessions and PPPs
- Administrative Management Adviser
- Management Adviser
- Technical Adviser
- Co-ordinator of the Corporate Communications Office
- Co-ordinator of the Security and National Defence
- Legal Manager
- Planning and Budget Manager
- Administration Manager
- Head of Human Resources Management
- Head of Logistics and Equity Control
- Chief Accountant
- Head of Treasury
- Regulation and Economic Studies Manager
- Head of Railway and Metro de Lima Contracts

In addition, in application of article 4 of Law 28175, *Public Employment Framework Law* the following five positions are also freely appointed and removed by the President or the General Manager:

- Assistant Manager of the General Management
- Head of Information Technologies
- Head of Regulation
- Technical Secretary of OSITRAN Controversies Settlement Court
- Technical Secretary of the Collegiate Bodies

Moreover, the Board of Directors appoints and removes the Controversies Settlement Court and Collegiate Bodies members upon the President's proposal.³ Finally, the following categories of senior management are appointed by other entities:

- The Head of the Institutional Control Body is appointed by the CGR
- The "Procurador" and the Deputy "Procurador" are appointed by the Ministry of Justice

The remaining senior management positions undergo a regular recruitment process and are incorporated under the private labour regime (Law 728 regime). There is also the possibility of qualifying for these positions through promotions, except for the trusted positions.

Regular recruitment

In early 2019, OSITRAN approved new guidelines for recruiting professional staff. Job offers are publicly advertised and the selection process is handled by a Selection Committee composed of the Head of Human Resources, a representative from the recruiting department and a representative from the Administration Department (GA). The General Manager actively participates in the selection process for positions at manager, chief or co-ordinator levels.

Box 2.1. Main steps of a regular selection process

- A department send a recruitment request to the GA and the Head of Human Resources for review.
- A report is submitted to the General Management for approval.
- The terms of the call are prepared by the Selection Committee.
- Ten working days before the recruitment process begins, the job description and detailed requirements are published on several supports: OSITRAN website, LinkedIn, and when the recruiting department requests it, in newspapers, job boards and professional associations' portals.
- The selection process handled by the Selection Committee comprises the following stages:
 - review of the resume
 - knowledge test
 - psychological evaluation
 - interview

OSITRAN carries out all the stages of the process, except for the psychological evaluation, entrusted to a consultant. Each specific criterion has a score and the successful candidate is the person who achieves the highest score. Results are published on OSITRAN's website together with the list of documents required for the incorporation of the selected candidate that must be submitted within five working days.

Source: Information provided by OSITRAN, 2019.

Remuneration

Staff members of OSITRAN are remunerated according to minimum and maximum limits fixed by Supreme Decree and endorsed by the Council of Ministers and the Minister of Economy and Finances. The current salaries were established in 2006 and are not indexed to inflation. OSITRAN does not keep track of salary gaps for comparable positions in the regulated sector. In 2018, the Government raised the salary of the President of the Board of Directors from PEN 15 600 to PEN 28 000 (USD 8 480 approximately) in order to be more competitive with industry. According to OSITRAN, migration to SERVIR regime would imply a decrease in salary for staff currently employed under the Law 728 regime.

Table 2.11. Remuneration scales at regulatory agencies in Peru

Expressed in PEN

Job category	Minimum monthly salary	Maximum monthly salary
President*	28 000	-
General Manager	15 600	15 600
Director, associate director or advisor	14 000	15 600
Professional I	10 700	14 900
Professional II	7 000	11 500
Professional III	5 100	10 400
Analyst	3 400	5 700
Assistant	1 900	2 500

Note: By Supreme Decree 172-2013-EF of 15 July 2013 and * Supreme Decree 024-2018-EF of 16 July 2018.
Source: Information provided by OSITRAN, 2019.

The SERVIR reform aims at gradually achieving a consolidated single employment framework, harmonising not only the employment terms but the remuneration of civil servants. However, as of 2018, no public entity has fully implemented the regime (the implementation is voluntary).

Talent recruitment, retention and training

Voluntary resignations have been the leading cause of staff turnover between 2015 and 2018. On average 21.5% staff left the organisation every year, including on average 18% of staff resigning each year. In 2019, staff turnover was above 15% across the Peruvian economy (Espinoza, 2019^[3]) and 16% and 9% among, respectively, staff at Peru's energy and mining regulator (Osinergmin) (OECD, 2019^[4]) and staff at Peru's telecommunications regulator (OSIPTEL) (OECD, 2019^[5]). Such resignations are high among technical staff. A particularly high number of resignations was recorded in 2017 with 26% of staff resigning, including 21 senior managers and 48 technical staff.

OSITRAN is aware of this challenge and is implementing measures to reverse this trend. OSITRAN has for instance developed a "Talent Management and Development Plan" 2019-2022 aimed at improving the attraction and the retention of talent through the "DREAMS" value proposal. The proposal contains six dimensions:

- **Development:** Develop and promote skills development and career progression, to ensure that human assets meet organisational needs.
- **Retention:** Strengthen and implement innovative retention tools enhancing recognition and development opportunities.
- **Equilibrium:** Adopt measures enhancing well-being of staff and their families.
- **Attraction:** Ensure effective recruitment and selection processes, from the definition of the candidates' profile to the induction of the new staff, enhancing productivity and good management of the work environment.
- **Motivation:** Create a work environment where individual objectives meet the organisation's ones.
- **Service:** Implement a culture of service and ensure a communication strategy strengthening the relationship between stakeholders.

In addition, OSITRAN has developed a "Cultural Alignment Plan" with the support of an external consultant aimed at defining and strengthening its organisational culture to support the achievement of its mission, objectives and values. This plan contains key recommendations dealing with human resource management, including recruitment and selection process, induction, performance management, trainings and social welfare of staff.

Performance assessment

The Performance Management Process (PPM) is still at a pilot stage. In December 2018, two presidential resolutions approved the Performance Management Handbook and the Guide for the development of performance targets in Performance Management. These new guidelines are being implemented since May 2019.

Process

OSITRAN is headed by a Board of Directors and its President, who make a wide variety of executive decisions. Its General Management plans, organises, leads, manages and supervises the administrative, operational, economic and financial progress of OSITRAN, implementing the policies established by the Board and the President.

OSITRAN supports the use of regulatory quality tools, such as RIA, *ex post* evaluation, and stakeholder engagement to improve the decision-making process.

Governing body and decision making

Board of Directors

The Board of Directors is the highest governing body of OSITRAN. Its main roles are:

- To approve the strategic direction and policies proposed by the President.
- To exert the tariff and regulatory functions via resolutions.
- To approve the PEI, the POI, the Opening Institutional Budget, the General Balance Sheet and the audited Financial Statements, as well as the Accountability Report to be sent to the CGR.
- To interpret concession contracts and instruments by which the regulated entities carry out their activities, as well as the provision of public services of rail passenger transportation of the Lima Metro.
- To approve technical opinions prior to concession contract execution, or their renewal as well as the modification, renegotiation or revision of the concession term.
- To issue technical opinions to the MTC or other public entities.
- To participate in dispute resolution processes.
- To determine the composition of User Councils.

The President of the Board holds a full-time executive position, while other four Board members only serve on a part-time basis. The part-time members (currently one engineer, a lawyer and one economist) are remunerated for two mandatory half-day board meetings per month (PEN 1 500 per session). Requests can be made to meet additionally under extraordinary circumstances by the President of the Board or a majority of Board members, but the law expressly forbids additional remunerations. There have been two women among Board members in the last ten years. In practice, a number of mandates have been terminated early (Ernesto López Mareovich, Jorge Genaro Cárdenas Bustíos, Sergio Fernando Pedro Salinas Rivas and Juan Carlos Paz Cárdenas), which shortened the effective duration of some mandates (see Table 2.12).

Table 2.12. Composition of the Board 2007-2019

Names	Supreme resolution	Start date	End date	Profession	Position	Observations
Rosa Verónica Zambrano Copello	099-2017-PCM (pub. 07/07/2017)	13/02/2017	13/02/2022	Lawyer	Presidency of the Board	
Ernesto López Mareovich	225-2017-PCM (pub. 11/14/2017)	16/08/2017	10/06/2019	Economist	Vice-president	Elected by Agreement No. 2122-646-18-CD-OSITRAN dated 5 September 2018 By Supreme Resolution No. 099-2019-PCM the resignation is accepted
Alfredo Juan Carlos Dammert Lira	259-2016-PCM (pub. 10/20/2016)	20/06/2016	20/06/2021	Engineer	Member of the Board	
Alex Segundo Díaz Guevara	226-2018-PCM (pub.)	20/12/2018	20/12/2023	Engineer	Vice-president	Supreme Resolution No. 226-2018-PCM does not indicate the form of assignment of periods

Names	Supreme resolution	Start date	End date	Profession	Position	Observations
	12/20/2018)					
Julio Alfonso Vidal Villanueva	226-2018-PCM (pub. 12/20/2018)	20/12/2018	20/12/2023	Lawyer	Member of the Board	
Cesar Antonio Balbuena Vela		14/11/2017 18/08/2013	27/10/2018 15/10/2017	Engineer	Member of the Board	
Jorge Genaro Cárdenas Bustíos		18/08/2013	12/08/2016	Engineer	Member of the Board	Early termination due to death
Patricia Benavente Donayre		16/09/2012	23/01/2017	Lawyer	President of the Board	
Juan Carlos Paz Cárdenas		19/06/2011	24/08/2013	Navy Officer	Member of the Board	By Supreme Resolution No. 239-2013-PCM the resignation is accepted
César Antonio Sánchez Modena		26/08/2008	26/10/2013	Engineer	Member of the Board	
Jesús Francisco Tamayo Pacheco		31/10/2007	19/08/2013	Engineer	Member of the Board	
Sergio Fernando Pedro Salinas Rivas		14/08/2007	13/03/2009	Lawyer	Member of the Board	
Juan Carlos Zevallos Ugarte		10/02/2007	11/04/2012	Economist	President of the Board	

Box 2.2. Selection and dismissal of members of the Board of Directors

The selection criteria for OSITRAN Board member are:

- Be a professional with no less than ten years of practice.
- Have recognised professional solvency and suitability, by way of no less than three years of experience in a position of executive management, with understanding of the decision making in public or private companies; or five years of experience in matters related to the competence of the regulatory body.
- Have completed studies at the Master's level in subjects related to the competence of the regulatory body.

All members of the Board are selected by:

- Review of candidates by a selection committee composed of one member proposed by the PCM, one member proposed by Indecopi, one member proposed by MEF and one member proposed by the sectoral ministry related to regulator activities.
- The President of the Council of Ministers submits the final list of selected candidates to the President of the Republic.
- The President of the Republic appoints the members of the Board by Supreme Resolution, whom will be endorsed by the President of the Council of Ministers, the Minister of Economy and Finance and the sectoral ministry related to the regulator activities.

Members of the Board of OSITRAN are designated for a five year term, renewable once. They are subject to incompatibilities and pre and post-employment restrictions provided in laws 27332 and 27588 (see section *Integrity and conflicts of interest*).

The Law establishes termination reasons for the members of the Board; they can only be removed due to serious misconduct that has to be communicated to the Congress.

In the event of a Board member leaving before the end of their term, the new member is only appointed for the remaining amount of time. Vacancies must be filled within 30 days of the expiration of a member's term, though can be exceptionally extended by 60 days through Supreme Decree.

Source: Law 27332; Supreme Decree 103-2012-PCM; Law 29158, Supreme Decree 014-2008-PCM; (OECD, 2016^[2]).

President of the Board of Directors

The Board of Directors is represented on a full-time basis by the President of the Board, who also holds the function of President of OSITRAN, the highest authority and head of OSITRAN. The President sets the strategic direction and functions of the Board, exerts executive and administrative functions, and reports on behalf of the regulator to the PCM and MEF. In the case of temporary impediment, the Vice-president of the Board performs his functions.

The President of the Board is selected through a public contest. A selection committee composed of two members from the PCM, one member proposed by MEF and one by the MTC proposes a list of applicants to the PCM, who submits to the President of the Republic the proposed selected candidate. The President of the Board is then appointed for a five-year term (renewable once) by Supreme Decree signed by the President of the Republic and endorsed by the President of the Council of Ministers.

The President's main roles are:

- To set strategic direction, develop and lead the institutional policy and monitor performance.
- To approve human resources, finance, as well as communication strategies and institutional relations policies, at the proposal of the General Manager.
- To co-ordinate with institutions and organisations on matters related to the process of new concessions of public transportation infrastructure.
- To convene, preside and set the Agenda of the sessions of the Board.
- To appoint and remove trusted positions, including the GM.⁴
- To represent OSITRAN before public entities, at national and international levels.⁵

General Manager (GM)

The GM is responsible for the implementation of policies established by the Board and the President. He can ensure legal representation of OSITRAN, and may hold other roles that can be delegated by the Board or the President. In addition, the GM oversees the budget process, as well as transparency measures and attention to the public. The GM attends sessions of the Board, but does not have a vote.

The GM main roles are:

- To be responsible for the administrative, operational, economic and financial responsibilities of OSITRAN.
- To present to the Board or the President, for approval, the strategic plan, the Institutional Budget, the General Balance Sheet, the Financial Statements, the Annual Contracting Plan, the Annual Training Plan, the management documents and instruments, as well as the Accountability Report to be submitted to the CGR.
- To approve rules and other internal management documents related to the administrative operations of the institution.
- To manage, co-ordinate and supervise OSITRAN departments.

Decision-making process

The functioning of the Board of Directors is defined by a Board Resolution. It sets the minimum content of documents that departments must submit to the Board before meetings, the roles and responsibilities of meeting participants, the process for debate and decision-making, and the preparation of the minutes. Main clauses include:

- The meeting agenda is set by the President.
- All matters to be discussed (tariffs, new concession contracts, addendum to concession contract, access mandates, draft regulations, POI, etc.) are supported by reports prepared by departments. The reports must be submitted three working days prior to the meeting. External opinions may be requested.
- During the session, department representatives make a presentation and answer questions.
- The Board deliberates and decides by unanimity or majority. Each member of the Board has one vote, and the President has a casting vote. Quorum for meetings is set at three members being present, including the President and the Vice-President.

Data and information used by the Board to make decisions

Board meetings are behind closed doors. Minutes are published on the OSITRAN website within two days of the meeting.⁶ In addition, relevant information used by the Board to make decisions is published in the official gazette “El Peruano” and on the OSITRAN website.⁷ Confidentiality can be granted at the request of interested parties, to protect commercial or industrial secret. Some Board decisions, like the approval of regulations or the modification of tariffs, include a mandatory publication stage (see section *Stakeholder and User Councils consultations*). Other Board decisions can also be published, at the discretion of the Board.

Internal organisational management

OSITRAN is organised as follow (see Figure 2.2 for full organigram):

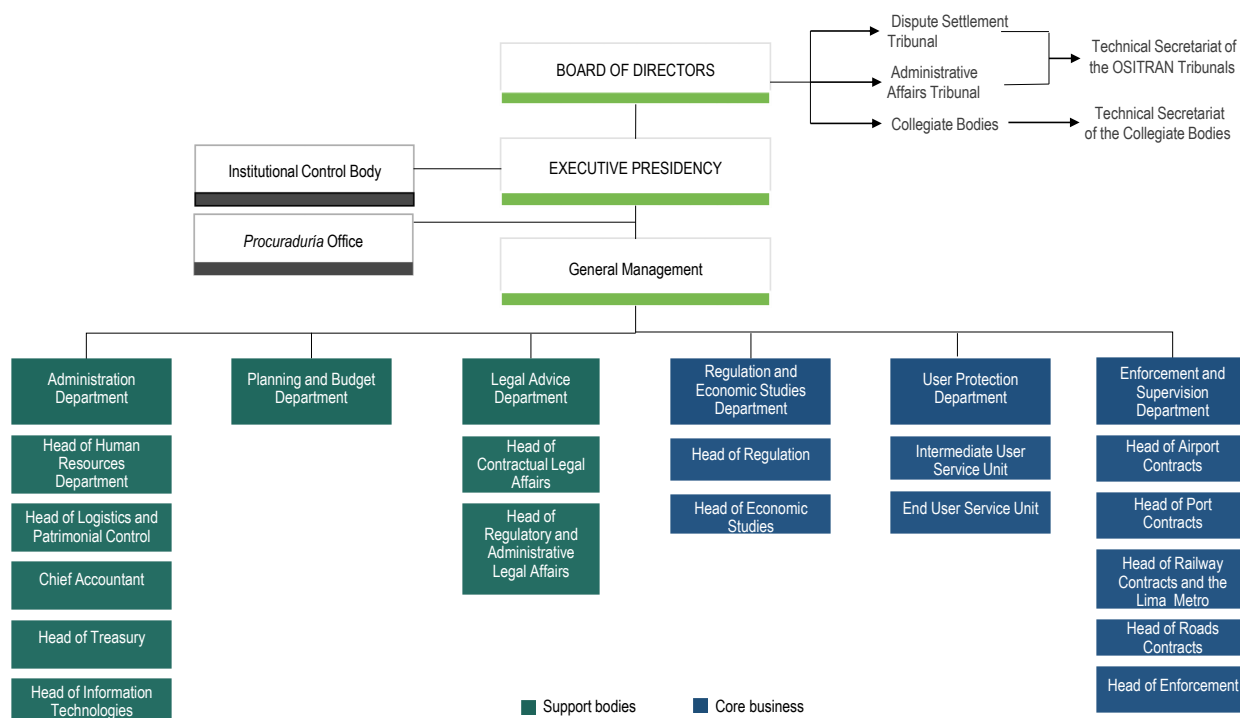
- The **strategic bodies** include the Board of Directors, President of the Board and General Manager, described above.
- The **institutional control body** carries out governmental control functions within OSITRAN and reports to Peru’s supreme audit institution. Its main goal is to ensure transparent management of the entity’s resources and assets. Following the National Control System regulations it scrutinises the legality and efficiency of OSITRAN’s activities and the achievement of its objectives.
- The “Procurador” Office is the **legal defence body**. It represents OSITRAN in legal and administrative proceedings, arbitration and extrajudicial conciliations.
- The **advisory bodies** are responsible for developing and proposing advice and initiatives to the General Management. The Legal Advise Department (GAJ) provides legal advice on contractual, regulatory and administrative matters. The Planning and Budget Department (GPP) develops, implements and monitors activities in the areas of strategic and operational planning and budgeting. The Department also promotes organisational development, supervises processes (including the Quality Management System) and co-ordinates technical co-operation with other entities.
- The Administration Management Department (GA) regroups the **support bodies** that provide support in the areas of human and financial resources and IT services.
- The **Line bodies** are responsible for developing regulations, supervising and protecting users. The Regulation and Economic Studies Department (GRE) oversees the tariff system and monitors tariff

procedures. It also carries out studies, research and publications. The User Protection Department (GAU) oversees the rights of intermediate and final users related to the public transportation infrastructure under the scope of OSITRAN. It also promotes effective policies, processes and mechanisms for quality in consumer protection. The Enforcement and Supervision Department (GSF) co-ordinates and implements the supervision, inspection and enforcement activities of OSITRAN.

- The **dispute resolution bodies**: The Controversies Settlement Court (TSC) decides in second and last administrative instance the disputes that arise between two regulated entities, between a regulated entity and an intermediate user, over the claims of users, as well as other matters established in regulations. The Administrative Affairs Tribunal (TAA) decides in second and last administrative instance the appeals against the Enforcement and Supervision Department decision.
- The **decentralised bodies of OSITRAN** provide technical assistance in regulatory, inspection and enforcement matters, as well as dispute resolution and user service, in co-ordination with the competent OSITRAN bodies.
- In addition, **the Corporate Communications Office** belongs to the Executive Presidency office and handles all media requests and the relationship with the national press, engages in outreach activities with companies, public bodies and citizens, produces the annual report and is in charge of the internal communication.

Most departments report to the General Manager (GM) with the exception of the Institutional Control Body, the “Procurador” Office, the Controversies Settlement Court (TSC), and the Collegiate Bodies.

Figure 2.2. OSITRAN’s organisational structure



Source: Information provided by OSITRAN, 2019.

Internal control mechanisms

OSITRAN first implemented an internal control system (ICS) and a quality management system in 2008, and the systems have been regularly updated. In 2016, OSITRAN put emphasis on risk-based preventive measures rather than an *ex post* corrective approach. The “Risk Management Handbook” issued in 2017 sets the internal risk management policy, based on guidance provided by the CGR and international best practices. The “Risk Management Plan” clarifies the implementation strategy of the policy. OSITRAN Internal Control Committee (ICC) meets regularly to promote actions for the effective implementation of the ICS. OSITRAN obtained the certification ISO 9001 (quality management systems) in May 2018 and is in the process of implementing ISO 27001 (information security management systems).

Regulatory quality tools

The Regulatory Quality Assessment (RQA) is a procedure to assess regulations that establish administrative procedures to identify, reduce and/or eliminate unnecessary, unjustified, disproportionate, or redundant procedures Ministerial Resolution 196-PCM-2017. Laws issued by PCM require all government entities to perform RQAs on all regulations establishing changes in administrative procedures. More specifically, the Decree establishes three actions: an *ex ante* evaluation of the RQA, a review of the regulatory stock, and a revision to the regulatory stock every three years to reduce burdens.

A Multi-Sectoral Commission on Regulatory Quality (MCRQ) was established as a permanent body that reports to the PCM. The MCRQ assesses and validates the RQAs conducted by public entities of the Executive branch following four principles: legality, necessity, effectiveness, and proportionality. The MCRQ share observations and suggestions for improving the measure with the public entity for consideration which in the end turns back to the MCRQ for validation. The MCRQ can also propose the dismissal of an administrative procedure submitted for analysis under the RQA if it does not meet the principles of legality or necessity.

Independently and in parallel to the development of the PCM RQA, three sector regulators – Osinergmin, OSIPTEL and OSITRAN – developed manuals and guidelines for assessing the impact of regulations. These manuals extend the scope of analysis and application of assessments to include a wider scope of regulations, and not just those affecting administrative procedures.

OSITRAN had conducted regulatory impact assessments (RIAs) on draft regulations before 2018, but not on a mandatory basis and had not made these assessments public. To date, the only formal experience in the elaboration of RIAs in OSITRAN has been for the amendment of the OSITRAN’s General Regulation on Tariffs (*Reglamento General de Tarifas de OSITRAN*, RETA). The Regulation of Access to Public Transport Infrastructure (*Reglamento Marco de Acceso a la Infraestructura de Transporte de Uso Público*, REMA) and the General Rules of Supervision are currently in the process of being modified following the RIA Handbook methodology.

Ex ante assessments

In 2016, OSITRAN adopted its Regulatory Improvement Policy and created the Regulatory Improvement Committee, aimed at ensuring regulatory quality and demonstrating its commitment to implementing the recommendations made by the OECD (OECD, 2016^[21]).

In 2017, OSITRAN rolled out its own RIA process and issued a “Regulatory Impact Assessment Handbook” with the support of the OECD. This internal Handbook provides guidelines and criteria to carry out RIAs, following OECD RIA good practices.

The department that identifies the need to modify or approve a new regulation is responsible for the elaboration of the RIA. The Legal Advise Department (GAJ) provides support and reviews the legal quality of draft regulations. All RIAs drafted are overseen by the Board of Directors and the RIA Evaluation

Committee. Regulations can be assessed using a cost-benefit analysis, cost-effectiveness analysis, or multi-criteria analysis. RIAs are then included among documents sent to the Board. A simplified version of the RIA is published online for public consultation.

In May 2018, OSITRAN approved Procedure PC-15-SGC “Elaboration and review of standards under the Regulatory Impact Analysis framework” outlining the different steps to draft or review general standards applying to regulated entities and users that implies the creation of additional obligations, requirements and procedures, as well as the steps to follow to conduct the corresponding RIA.

Ex post reviews

OSITRAN has been making efforts to improve regulations on an on-going basis. The Regulatory Improvement Policy provides that systematic and periodic review of the regulations is part of the Regulatory Quality Management System, with the aim to identify and remove inefficient burdens and requirements.

In accordance with the PCM RQA, OSITRAN has reviewed its entire stock of regulations to determine which need to be updated. The Technical Secretariat of Multi-sectoral Commission on Regulatory Quality validated twelve out of fifteen administrative procedures that were submitted for analysis under the RQA in November 2018.

Engagement and transparency of engagement process

Many governmental and non-governmental stakeholders are directly or indirectly involved in the public transport infrastructure sector. Stakeholders of a governmental nature include the MTC, MEF, and Congress among others. Stakeholders of a non-governmental nature include the intermediate and final users and business associations, such as the Association for the Promotion of National Infrastructure (AFIN), which groups public service infrastructure concessionaires.

User Councils

The LMOR requires regulators to have one or more User Councils for stakeholder participation that serves as a consultative mechanism for decision-making. The Councils can be local, regional or national. Regulators publish a call for potential candidates to the User Councils, as well as a provisional list of candidates and a final list of elected members. Members of User Councils come from consumer associations, universities, professional colleges, non-profit organisations and business organisations not related with the regulated entities. Members are not remunerated but regulators must finance the activities of the Councils.

The role of User Councils includes:

- To issue opinions regarding OSITRAN’s functions and powers.
- To participate in the public hearings concerning OSITRAN’s regulatory framework.
- To hold academic events, in co-ordination with the Board of Directors.
- To provide an effective forum allowing users to exchange ideas concerning OSITRAN policies and rules and to submit questions to the Board of Directors.
- To contribute to improving the quality of transport infrastructure services for public use.

Box 2.3. OSITRAN User Councils

The Board of Directors determines the composition of the User Councils and approves their financing. Council members are appointed by the Board for a two-year period. OSITRAN User Council Operation Regulation establishes that OSITRAN provides all the logistical facilities necessary to carry out the User Councils sessions. A specific budget line covers the expenses needed for the Councils to carry out their activities, including visits to the infrastructures.

OSITRAN has eight User Councils, acting as mechanisms for stakeholder engagement in the regulatory activity of each sector involved.

There are four User Councils of national scope attached to the President of the Board, one each for Airports, Ports, Road Networks and Railways.

In addition there are Four User Councils of local scope, responding to the needs and specificities of local infrastructures, attached to the GM, one in each of the following localities: Arequipa, Cusco, Loreto-San Martín, and Piura.

OSITRAN provides information to the User Councils through:

- expert presentations during consultation sessions
- publication on OSITRAN's website of the minutes of the User Councils sessions
- publication of OSITRAN briefing notes in social media
- publication of the Bulletin of the National Meetings of OSITRAN's User Councils, addressing national and international good practices in public transport infrastructures

Source: Information provided by OSITRAN, 2019.

The regulator convenes at least two ordinary sessions per year to inform User Councils about its actions, provide relevant information on the implementation of the infrastructures under concession, and to collect the main proposals and information requests made by the Councils.

In 2018, OSITRAN held twenty-eight sessions of the User Councils:

Table 2.13. 2018 User Councils sessions

Type of User Council	Sessions held in 2018
Airports User Council	4
Ports User Council	6
Roads User Council	3
Railway User Council	3
Cusco User Council	4
Arequipa User Council	3
Loreto - San Martín User Council	3
Piura User Council	2
Total	28

Source: Information provided by OSITRAN, 2019.

The User Protection Department acts as a Technical Secretariat for User Council sessions. OSITRAN prepares the Agenda based on User Councils' proposals in co-ordination with the President of the Board or with the General Manager, or those required by the regulations of the sector.

Stakeholder engagement

In Peru, it is required by Law to publish every new laws and regulations in the Official Gazette, website or other instrument at least 30 days before its entry into force to receive comments (OECD, 2016^[6]). In addition, prior to the publication of a tariff-setting decision, the regulator is required by Law 27838 to organise decentralised public hearings to expose to the stakeholders the criteria, methodology, studies, reports, economic models and opinions that justify the decision to modify the tariff.

OSITRAN has included the requirement to conduct stakeholder engagement into OSITRAN's General Regulation on Tariffs (*Reglamento General de Tarifas de OSITRAN*, RETA) for tariff regulation and into the OSITRAN General Rules (*Reglamento General del OSITRAN*, REGO) for draft regulations. In addition, guidelines and criteria for public consultations to improve transparency, efficiency and effectiveness of regulations are provided in the OSITRAN RIA Handbook. These texts include the requirement to collect opinions from stakeholders and conduct public hearings.

Concerning tariffs, OSITRAN publishes relevant information related to the tariff revision proposal in the official gazette "El Peruano" and on its website:

- the Board of Directors draft resolution approving the tariff proposal
- the explanatory memorandum
- the list of supporting documents
- the date(s) and place(s) in which the public hearing(s) will be held
- the deadline for sending written comments, that will not be less than fifteen days or more than thirty days, counted from the publication of the proposal for fixing or rate revision

In addition, OSITRAN invites users, members of the User Council, and interested parties with an anticipation not less than five days from the date of the public hearing. OSITRAN also sends the relevant documentation to the service-providing entity. Private hearings are held with the service-providing entities and users' representative organisations at their request.

OSITRAN consulted the User Councils in all instances of tariff review carried out during 2018 as shown in Table 2.14.

Table 2.14. User Councils consultations on tariffs in 2018

User Councils	Session	Date	Agenda items
Airport User Council	038	12 September 2018	Review of the Productivity Factor of Jorge Chavez International Airport.
Port User Council	049	27 September 2018	Setting of Tariffs for a Second Group of Special Services in the New Port Terminal of Yurimaguas - Nueva Reforma.
Loreto - San Martín User Council	015	1 October 2018	Setting of Tariffs for a Second Group of Special Services in the New Port Terminal of Yurimaguas - Nueva Reforma.

Source: Information provided by OSITRAN, 2019.

Concerning stakeholder consultation for draft regulations, relevant information should be published in the official gazette "El Peruano", on OSITRAN's website and in any other media that guarantees its dissemination to interested parties. The publication is required to contain the text of the draft regulation and the explanatory memorandum ("*exposición de motivos*"). OSITRAN might also explain the regulatory background, the problems detected, the objective and the scope of the draft regulation. Since May 2018, regulatory proposals must be supported by a RIA report, which is also submitted to interested parties for consideration. Stakeholders may share their written and oral comments under a given deadline that cannot

be less than fifteen calendar days from the date of publication of the project. In 2016, OSITRAN held one public hearing in Lima, one in Tarapoto, one in Iquitos, one in Arequipa, one in Cusco and one in Piura.

Feedback provided after consultations

OSITRAN prepares a matrix of stakeholders' comments on tariff and regulatory proposals with a technical and legal evaluation of whether the comments will be considered. When a regulation is adopted or modified, the final regulation, the explanatory memorandum ("*exposición de motivos*"), the RIA Report and the matrix of consultation comments are again published on OSITRAN's website. Similarly, once a tariff proposal is approved, the matrix of comments is published.

Appeals

OSITRAN has powers to solve controversies between regulated entities and users. The Board of Directors is ultimately responsible for solving appeals against tariff decisions. OSITRAN has three main administrative dispute resolution bodies governed by its internal regulations and supported by a technical secretariat:

- Collegiate Bodies (*Cuerpos Colegiados de Solución de Controversias*)
- Controversies Settlement Court (*Tribunal de Solución de Controversias, TSC*)
- Administrative Affairs Tribunal (*Tribunal de Asuntos Administrativos, TAA*)

Table 2.15. OSITRAN's administrative dispute resolution bodies

	Conflict resolution (<i>solución de controversias</i>)	Claim resolution (<i>solución de reclamos</i>)	Special claims solution (<i>solución de reclamos especiales</i>)	Sanctions levied by GSF
To solve	Administrative issues between regulated entities	Claims filed by intermediate and final users (e.g. billing, interruption of the service, etc.)	Claims filed by users to solve access denial to infrastructures	Appeals filed by regulated entities against sanctions imposed by GSF
First instance	Collegiate bodies	Regulated entities	Regulated entities	GSF
Second instance	Controversies Settlement Court	Controversies Settlement Court	Controversies Settlement Court	Administrative Affairs Tribunal

Source: Information provided by OSITRAN, 2019.

There have been delays in appointing members of the Controversies Settlement Court (*Tribunal de Solución de Controversias, TSC*) and the Administrative Affairs Tribunal (*Tribunal de Asuntos Administrativos, TAA*). According to LMOR, the TSC members are appointed by Supreme Decree issued by the PCM. Since 2013, the PCM has not appointed two out of five members of the TSC. On the other hand, the TAA was created to serve as second instance body for sanctioning procedures. The Board of Directors appoints its members at the proposal of OSITRAN's President. As of August 2019, the TAA members have not been appointed and the General Management performs its functions.

The Judiciary can review administrative decisions through a "contentious administrative process" under Law 27584 (*proceso contencioso administrativo*). Judges can decide the case based on both the merit of the issue or procedural defects of the administrative proceeding.

Table 2.16. Appeals and outcomes

Year	OSITRAN's administrative decisions	Appeals before court	Number of decisions upheld	Number of decisions rejected	Number of on-going processes
2018	284	38	1	0	42
2017	349	52	3	1	46
2016	322	56	30	0	26
2015	381	13	10	0	3

Note: The chart only considers judicial processes initiated against administrative decisions issued by OSITRAN between January 2015 and December 2018.

Source: Information provided by OSITRAN, 2019.

Moreover, OSITRAN can be involved in arbitration proceedings. There are two types of arbitration: arbitrations where the parties are the MTC and a regulated entity, and arbitrations where the parties are OSITRAN and the regulated entity. In the former, disputes occasionally involve OSITRAN's decisions; thus, the regulator intervenes as a third party. In the latter, disputes involve OSITRAN's decisions directly.

Supervision, inspections and enforcement

Enforcement and inspections are absorbing an increasing amount of resources – in 2019, 125 out of 310 staff work in the Enforcement and Supervision Department that also handles 43% of the regulator's budget (Table 2.9 and Table 2.7). OSITRAN is in charge of supervising, inspecting and enforcing compliance with multiple obligations of 32 concession contracts. Activities are carried out by both permanent staff and external companies that provide specialised inspection services. There is little use of digital and electronic tools in the supervision and inspection activities.

Each concession contract include a risk-matrix mapping financial risks, political and force majeure risks, market risks, construction risks, etc. The regulator does not have a risk-based management approach to prioritise inspection activities. However, OSITRAN is making efforts to better use limited resources by implementing sample-based inspections (*inspecciones por muestreo*).

When finding non-compliance with contract obligations, OSITRAN can impose sanctions on regulated entities. The sanctioning process starts with a supervision report identifying evidence of non-compliance and continues with the communication and levying of fines or penalties. The regulator can give the opportunity to correct a defect or infraction, without applying sanctions or penalties. However, regulated entities perceive OSITRAN as a sanctioning authority.

OSITRAN carries out its supervision and inspection functions (*supervision y fiscalización*) based on the following documents:

- general supervision rules
- annual supervision plan
- incentive, infringement and sanction regulations (*Regulaciones de Incentivos, Infracciones y Sanciones, RIIS*)

The general supervision rules establish four types of enforcement activities: working meetings with the regulated entities to gather information or to co-ordinate activities, supervisions to review information provided by the regulated entities, regular inspections (visits to infrastructure sites) and on-site permanent inspections (permanent OSITRAN staff in the infrastructure sites).

The annual supervision plan is published in OSITRAN's website and it provides information related to concession contract obligations. It includes descriptions of the type of supervised activities shown in Table 2.17.

Table 2.17. Types of supervision

Investment supervision (<i>supervisión de inversiones</i>)	Operational supervision (<i>supervisión de aspectos operativos</i>)	Economic and comercial supervision (<i>supervisión de aspectos económicos y comerciales</i>)	Administrative and financial supervision (<i>supervisión de aspectos administrativos y financieros</i>)
OSITRAN verifies compliance with obligations related to infrastructure development.	During exploitation phase, regulated entities have operational obligations related to service provision. Regulated entities must comply with service level standards (<i>niveles de servicio</i>).	During exploitation phase, regulated entities must comply with obligations related to tariff-setting. Moreover, concessionaires must ensure access to intermediate users and efficiently solve user claims.	OSITRAN verifies compliance with obligations related to financial obligations of regulated entities (e.g. payment of industry fees, validity of insurance policies and guarantee letters, etc.)

Source: OSITRAN's annual supervision plan, 2019.

In 2018, the Board of Directors issued the incentive, infringement and sanction regulations (*Regulaciones de Incentivos, Infracciones y Sanciones*, RIIS). These regulations aim to promote voluntary compliance and prevention rather than reactive sanctioning processes. Through this change, the regulator wants to evolve from an entity perceived as a sanctioning authority to a proactive institution that promotes compliance. The RIIS contains a new methodology to calculate sanctions that would improve predictability. OSITRAN explains this methodology through a guide that is published in its website (OSITRAN, 2018^[7]).

OSITRAN prioritises inspections related to user complaints and sensitive breaches to contractual obligations. During 2018, the GAU received seventeen complaints which motivated inspection activities (Table 2.18).

Table 2.18. Complaints received by GAU

Infrastructure	Complaints
Roads	7
Airports	6
Lima Metro	2
Ports	2
Total	17

Source: Information provided by OSITRAN, 2019.

The regulator does not publish its inspection reports; however, they can be requested under the Peruvian Transparency Law. In addition, some information on inspections is made available through presentations to the User Councils.

Some matters require co-operation between divisions and departments and inter-institutional co-ordination with other entities (for example, the MTC, the APN and SUTRAN). OSITRAN co-ordinates with these bodies using ad-hoc and informal mechanisms.

Integrity and conflicts of interest

OSITRAN is governed by the Civil Service Ethics Code (Law 27815) that establishes ethics principles for civil servants and applies to all OSITRAN staff regardless of their contractual regime. These regulations govern relations between OSITRAN staff and the regulated sector.

The regulator also has to implement the institutional integrity model (*modelo de integridad*) and the Offices or Officers of Institutional Integrity as foreseen in the Anti-corruption Policy of the government (*Decreto Supremo 092-2017-PCM*) and the resolution n°001-2019-PCM/SIP of the Secretariat of Public Integrity of the Presidency of the Council of Ministers. OSITRAN does not have its own code of ethics. However, the regulator has recently adopted a number of initiatives demonstrating its commitment to accountability and integrity. In February 2019, OSITRAN adopted an Anti-Bribery Policy committing itself:

- To ban bribery in the organisation.
- To comply with the anti-bribery laws, regulations and rules applicable to the organisation.
- To comply with the requirements of the anti-bribery management system.
- To promote the reporting of bribery allegations in good faith or on the basis of a reasonable belief, and without fear of reprisals.
- To designate a compliance officer, with the authority to supervise the design of the system, ensure compliance with applicable requirements and guide staff on relevant issues of the anti-bribery management system.

Failure to comply with these provisions will be subject to investigation and sanctioning procedure.

The same month OSITRAN also created a reporting mechanism for alleged acts of corruption accessible to staff and citizens, monitored by the Head of Human Resources. The report can be made in writing or orally through a dedicated website, e-mail address or by phone. The identity of the reporting person and the content of the report are confidential. Reports made in bad faith are subject to sanction. In parallel, another reporting mechanism has been put in place in 2019 for citizens to report allegations concerning the concessionaires. Both mechanisms are placed under the responsibility of the GM.

In April 2019, OSITRAN obtained the ISO 37001 certificate “Anti Bribery Management System”. The implementation of a solid anti-bribery management system aims at instilling an anti-bribery culture within the organisation and implementing appropriate controls, which in turn increase the possibility to mitigate corruption risks. A compliance officer has been appointed in May 2019. Awareness raising activities concerning the Code of Ethics in the Public Service and the anti-corruption policy include trainings for new employees, and information e-mails sent to staff.

According to Supreme Decree 138-2019-PCM, all public servants of the Executive Branch are required to declare potential conflicts of interests (*“Declaración Jurada de Intereses”*). In addition, the Directive for the functioning of the Board of Directors meeting provides that a member with a potential conflict of interest must refrain from voting in the session.

Post-employment restrictions are governed by Law 27588. Any board members, senior officials, advisors and members of administrative tribunals, as well as officers or public servants who have had access to privileged information or whose opinion has been determinant in decision-making, are subject to a one-year post-employment restriction. This includes providing services under contractual arrangement, accepting remuneration, being part of the Board of Directors, directly or indirectly acquiring shares of a company associated with the sector, signing contracts with companies, or participating in employment with companies.

In addition, Law 26917 and the REGA provide that OSITRAN former staff may not provide services directly or indirectly to the service-providing entities for one year after leaving office.

OSITRAN carries out due diligence during the selection process of potential staff. To date, OSITRAN has not faced impediments in recruiting and retaining staff due to pre- or post-employment history.

Following OSITRAN General Regulation of Tariffs, regulated entities can request the organisation of private hearings to share comments on tariff proposal (see *Stakeholder engagement*). OSITRAN is required to publish on its website a list of all the meetings held with entities, detailing the names and roles

of participants, aspects discussed and conclusions reached. However, explicit protection of engagement processes against potential conflict of interests of participants is lacking.

Output and outcome

Assessing the performance of the regulated entities

OSITRAN collects a large amount of data and information from regulated entities in all sectors under its purview. As of August 2019, OSITRAN does not collect information related to the Amazon Waterway given that the project is in an early stage. OSITRAN publishes information related to investments, operations, exploitation, financial resources and management. Non-confidential sector information is posted on OSITRAN's website. For example, the Regulation and Economic Studies Department (GRE) publishes monthly reports with sector information (*boletines estadísticos*) and the Enforcement and Supervision Department (GSF) publishes bi-monthly reports with information such as traffic, traffic accidents and environmental issues (*reportes estadísticos*).

The Statistical Declaration is a tool used to collect information from the regulated entities. Since September 2013, regulated entities must complete a monthly excel document and submit it by e-mail to declaracion.estadistica@ositran.gob.pe. To date, more than 16 000 forms of statistical declarations have been filed by the regulated entities. OSITRAN has the power to collect information from regulated entities through a compulsory process.

Table 2.19. Information requested in the Statistical Declaration

Regulated entities	Information
Roads	Road traffic Revenue collection Traffic accidents Emergency calls Claims Mechanical aid in roads Medical assistance control Environmental incidents
Railways	Cargo, passenger and operation traffic Revenue collection Claims Accidents
Airports	Cargo, passenger and operation traffic Revenue collection Claims Socio-environmental conflicts
Ports	Vessel, Container (TEUS) and Cargo (TM) Traffic Service and productivity levels Revenue collection Accidents Assets inventory Claims Socio-environmental conflicts

Source: Information provided by OSITRAN, 2019.

Regulation and Economic Studies Department (GRE) uses information provided by the regulated entities for benchmarking in tariff-setting procedures. In addition, GRE uses it to monitor market behaviour and to

verify whether services where tariffs are deregulated continue to be provided under competitive conditions. Additionally it is used to inform users and third parties about the regulated entities performance in managing infrastructures.

OSITRAN acknowledges difficulties in managing, processing and using collected information. Human resources and budget are limited and the current tools are not efficient. OSITRAN is aware of these challenges and is aiming to enhance the use of information technologies to efficiently manage information linked to the performance of the sector and concession contracts.

Assessing the performance of the regulator

OSITRAN's strategic framework is embodied in the Strategic Institutional Plan 2019-2022 (PEI), which sets out seven strategic objectives.

OSITRAN's PEI has thirty-eight strategic actions (*acciones estratégicas*) and thirty-eight indicators. Each strategic goal has a matrix of strategic actions and indicators (see Annex 2.A). OSITRAN produces reports monitoring the implementation of the strategic objectives. The next evaluation of the 2019-2022 PEI is due in February 2020.

In addition, OSITRAN produces an Operational Institutional Plan (POI), which allocates responsibilities and budget to the departments. The POI is linked to the PEI through the strategic objectives and strategic actions. The plan is produced on a three-year basis (as the budget plan), but is updated annually. The POI is evaluated quarterly.

Table 2.20. OSITRAN Strategic Institutional Plan 2019-2022

Priority	Strategic objectives	Indicators	2019	2020	2021	2022
1	Optimise supervision and inspection activities (OEI.03)	Supervision and inspection efficiency index	88%	91%	96%	99%
1	Optimise the regulatory function for the benefit of users and citizens (OEI.04)	Regulatory function compliance index	90%	93%	97%	100%
1	Strengthen user rights protection (OEI.05)	User protection index	61%	66%	68%	70%
2	Strengthen OSITRAN's positioning in relation to its stakeholders and citizens (OEI.01)	% of positioning of OSITRAN	ND	ND	ND	ND
2	Optimise its organisational development (OEI.02)	Organisational development index	48.2%	59.5%	82%	93%
2	Efficiently manage institutional resources (OEI.06)	Resources management index	81%	87%	92%	95%
2	Implement disaster risk management	Number of implementation reports	2	2	2	2

Source: (OSITRAN, 2019^[1]).

Reporting

OSITRAN is accountable to Congress, while being overseen by the PCM. The regulator can also be called upon by the MTC or other relevant government departments to provide information or opinions. The Peruvian Congress regularly invites the regulator to intervene on specific matters, or issue opinions on sectoral reforms and draft laws. Two ordinary committees of Congress are relevant to OSITRAN's sectoral responsibilities: the Commission for Consumer Defence and Regulators of Public Utilities (CODECO) and the Transport and Communications Commission.

OSITRAN prepares an annual report on its main activities. There is no legal requirement to share annual reports with Congress or other body. However, the regulator has recently committed to voluntarily reports to the Commission for Consumer Defence and Regulators of Public Utilities (CODECO) to strengthen transparency and accountability (Presidential Resolution 009-2017-PD-OSITRAN). The submission must be completed yearly by the last working day of April. The first annual report (2017) was submitted in April 2018, with no plenary discussion. CODECO members did not raise questions on OSITRAN's performance (OSITRAN, 2018^[8]).

In July 2018, OSITRAN held a “public accountability hearing” (*audiencia pública de rendición de cuentas*) where the President presented the annual report to a wide range of stakeholders. OSITRAN published the call for this hearing in the official gazette El Peruano on 6 July 2018.

Notes

¹ In addition to OSITRAN, these include: the Supervisory agency for investment in energy and mining (*Organismo supervisor de inversion privada en energía y minas, Osinergmin*), the Supervisory agency for private investment in telecommunications (*Organismo supervisor de inversion privada en telecomunicaciones, OSIPTEL*), and the National superintendency of sanitation services (*Superintendencia nacional de servicios de saneamiento, SUNASS*).

² For more information, the 2016 OECD Public Governance Review of Peru, conducted as part of the OECD Country Programme for Peru, assessed, amongst other topics, the management of Peru's professional civil service and public administration reform agenda through the SERVIR law (OECD, 2016^[6]).

³ Supreme Decree 012-2015-PCM, article 7, provisions 16 and 17; article 9, provision 12.

⁴ Supreme Decree No. 012-2015-PCM, article 9, provision 12.

⁵ Supreme Decree No. 012-2015-PCM, articles 8 and 9, provision 8.

⁶ <https://www.ositran.gob.pe/actas/consejo-directivo/>.

⁷ For instance, information used in tariff procedures is available on Ositran's website: <https://www.ositran.gob.pe/consultas-publicas/consultas-tarifarias/>.

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Annex 2.A. OSITRAN strategic objectives and indicators

OSITRAN uses the indicators shown in the table below to measure compliance with the seven strategic objectives and 38 strategic institutional actions (PEI 2019-2022).

Annex Table 2.A.1. Matrix of the Strategic Institutional Plan (strategic objectives and strategic institutional actions)

PEI 2019-2022

Strategic Institutional Objectives (OEI)	Name of the indicator	Calculation method
OEI.01: Strengthen OSITRAN's positioning in relation to its stakeholders and citizens in general	Percentage of positioning of OSITRAN	(Number of surveyed people that know OSITRAN / Number of surveyed people) *100
OEI.02: Optimise its Organizational Development	Organizational Development Index(IDO)	$IDO = 0.20 * (AEI.2.1) + 0.15 * (AEI. 2.2) + 0.15*(AEI. 2.3) + 0.15*(AEI. 2.4) + 0.15* (AEI. 2.5) + 0.1*(AEI. 2.6) + 0.1*(AEI. 2.7)$
AEI.02.01: Organizational culture of OSITRAN strengthened	Percentage of stages of the Strengthening Cultural Organizational Plan implemented	(Number of staged of the Strengthening Cultural Organizational Plan implemented executed / All stages programmed) * 100
AEI.02.02: Optimized (strategic processes, operational processes and support processes of Ositran)	Percentage of Optimised Processes	(Number of reviewed and optimized processes / All processes identified by the entity) * 100
AEI.02.03: Face-to-face attention to the OSITRAN user strengthened	Number of inquiries attended through the Bodies	Number of attended users through customer services channels such as: i) face to face, ii) e-mail, iii) telephone call, iv) Ositran's applications, deployed through Decentralized Bodies
AEI.02.04: Contract for supervisory action in concessions managed effectively by OSITRAN	Percentage of selection procedures summoned effectively	Number of selection procedures summoned within the optimal time / Number of selection procedures requested) * 100
AEI.02.05: Regulatory Improvement Policy with OECD standards implemented in Ositran	Percentage of Implementation of the Work Plan of the Regulatory Improvement Policy (PMR)	(Number of activities executed in the PMR Work Plan / All programmed activities of the PMR Work Plan) * 100
AEI.02.06: Knowledge Management System implemented in OSITRAN	Percentage of stages of the Knowledge Management Plan implemented	(Number of stages of the Knowledge Management Plan executed / All programmed stages) * 100
AEI.02.07: Integral digital transformation of OSITRAN processes and services	Percentage of optimised services with TIC's	(Number of TIC's services implemented/All services)*100
OEI. 03: Optimize the inspection and enforcement of the Public Transportation Infrastructure	Efficiency index in the Supervision and Enforcement of public transport infrastructure	$ISF = 0.16*(AEI.3.1) + 0.12*(AEI.3.2) + 0.12*(AEI.3.3) + 0.12*(AEI.3.4) + 0.12*(AEI.3.5) + 0.12*(AEI.3.6) + 0.12*(AEI.3.7) + 0.12*(AEI.3.8)$
Strategic Institutional Actions (AEI) OEI. 03		
AEI.03.01: Enforcement and Supervisory Function enhanced for its beneficiaries	Efficiency index of Enforcement and Supervisory Function	$IEFSF = 0.30 * Planning, administrative and resource management for the GSF + 0.30 * Transversal services necessary for the fulfillment of the functions of the GSF + 0.10 * Processes, organization + 0.10 * Training + 0.10 * technology + 0.10 * Knowledge management$
AEI.03.02: Efficient and timely supervision actions for the benefit of users of the Airport Infrastructure	Percentage of execution of the Supervision Plan regarding airport infrastructure	(Number of activities executed / All programmed activities) * 100
AEI.03.03: Efficient and timely	Percentage of execution of the	(Number of activities executed / All programmed

Strategic Institutional Objectives (OEI)	Name of the indicator	Calculation method
supervision actions for the benefit of users of the Port Infrastructure	Supervision Plan regarding port infrastructure	activities) * 100
AEI.03.04: Efficient and timely supervision actions for the benefit of Road Infrastructure users	Percentage of execution of the Supervision Plan regarding infrastructure of the Road Network	(Number of activities executed / All programmed activities) * 100
AEI.03.05: Efficient and timely supervision actions for the benefit of users of the Rail Infrastructure y Metro de Lima	Percentage of execution in the Supervision Plan with respect to rail infrastructure and Metro de Lima	(Number of activities executed / All programmed activities) * 100
AEI.03.06: Efficient and timely supervision actions for the benefit of users of the Waterway Infrastructure	Percentage of execution in the Supervision Plan regarding Waterway infrastructure	(Number of activities executed / All programmed activities) * 100
AEI.03.07: Efficient enforcement of compliance with the contractual obligations of provider entities and supervisory companies	Percentage of Files handled within the deadline	(Files processed within the deadline / Files that must be processed in the period) * 100
AEI.03.08: Timely supervision of the determination of the calculating basis of the Regulatory contribution and the remuneration to the State, made by the Providers Entities	Percentage of Verification of Regulatory Contributions Reports and remuneration issued	(Files processed / Files submitted) *100
OEI.04: Optimize the regulatory function for the benefit of our users and citizens in general	Regulatory Function Compliance Index (ICFR)	$ICFR = 0.30 * (AEI.4.1) + 0.30 * (AEI.4.2) + 0.20(AEI.4.3) + 0.20*(AEI.4.4)$
Strategic Institutional Actions (AEI) OEI. 04		
AEI.04.01: Effective technical evaluation of the regulatory contractual framework of the providers' entities	Percentage of Regulatory Documents	(Number of Documents issued within the established deadline / All programmed documents) * 100
AEI.04.02: Timely analysis of the behavior of the use of public transport infrastructure market	Number of performance reports of Public Use of Transportation Infrastructure	Number of documents issued within the established period
AEI.04.03: Consolidated research Program in Regulation of Public Use of Transportation Infrastructure (ITUPs)	Research Documents (ITUPs)	Number of research and methodological documents issued
AEI.04.04: University extension program in Public Use of Transportation Infrastructure Regulation implemented for university students	Training programs on regulation	Program executed
OEI.05: Strengthen the protection of the rights of users of the Public Transport Infrastructure	Index of the degree of user protection (IGPU)	$IGPU = 0.20*(AEI.5.1) + 0.16*(AEI.5.2) + 0.16*(AEI.5.3) + 0.16*(AEI.5.4) + 0.16*(AEI.5.5) + 0.16*(AEI.5.6) + 0.16*(AEI.5.7)$
Strategic Institutional Actions (AEI) OEI. 05		
AEI.05.01: Quality model of Customer Service implemented for the benefit of users of the Public Use Transportation Infrastructure	Percentage of stages of the quality model in customer service implemented	(Number of phases implemented / All stages of the quality model in customer service programmed) * 100
AEI.05.02: Improved broadcast and customer service channels for the benefit of users of the Public Use Transportation Infrastructure	Percentage of satisfaction regarding OSITRAN care services	(Number of satisfied users regarding OSITRAN support services / All Users) * 100
AEI.05.03: User Councils (CU) strengthened with high participation or the benefit of users	Percentage of ordinary sessions of Councils of executed users	(Number of ordinary sessions of User Councils executed / Number of ordinary sessions of User Councils programmed) * 100
AEI.05.04: Timely claims and controversies solved for the benefit of users of the Public Use Transportation Infrastructure	Percentage of claims solved timely	(Number of claims submitted in the year resolved / All claims filed in the year) * 100
Acciones Estratégicas Institucionales (AEI) OEI. 05		
AEI.05.05: Educative Specific	Percentage of knowledge of the	(Percentage in the level of knowledge of the users of

Strategic Institutional Objectives (OEI)	Name of the indicator	Calculation method
Programs on duties and rights and of users and representants of provider entities in the Public Use of Transportation Infrastructure	users of the provider entity regarding rights and duties as users of the Public Use Transportation Infrastructure	the provider entity regarding rights and duties as users of the Public Use of Transportation Infrastructure
AEI.05.06: Research and studies related to user protection issues	Percentage of research work documents prepared timely	
OEI.06: Efficiently manage OSITRAN's institutional resources	Index of Organizational Resource Management (IGRO)	$IGRO = 0.15*(AEI.6.1) + 0.15*(AEI.6.2) + 0.1*(AEI.6.3) + 0.1*(AEI.6.4) + 0.1*(AEI.6.5) + 0.1*(AEI.6.6) + 0.1*(AEI.6.7) + 0.1*(AEI.6.8) + 0.1*(AEI.6.9)$
Acciones Estratégicas Institucionales (AEI) OEI. 06		
AEI.06.01: Efficient Human Talent Management and Development in OSITRAN	Percentage of implementation of the Human Talent Management and Development Plan	(Number of stages implemented / All stages programmed) * 100
AEI.06.02: Efficient Supply Management in OSITRAN	Percentage of selection processes awarded	(Number con selection processes awarded in the year/ Number of processes summoned)*100
AEI.06.03: Efficient institutional treasury management at OSITRAN	Percentage of compliance cancellation of obligations within the deadlines	(Drawn Files within the deadline / All files /All files accrued) *100
AEI.06.04: Efficient Accounting Management in OSITRAN	Percentage of Financial and Budgetary Statements within the established deadlines	(Financial and Budgetary Statements submitted within the established deadlines / Programmed Financial and Budgetary Statements) * 100
AEI.06.05: Efficient Institutional Management of Planning and Budget in Ositran	Percentage of timely compliance in the Formulation and Evaluation of Institutional Plans	(Number of Reports issued / Number of Programmed Reports) * 100
Acciones Estratégicas Institucionales (AEI) del OEI. 06		
AEI.06.06: Efficient Services of Information Technology (TI) in Ositran	Index of Management of Services of Information Technology TI-IGTI	$IGTI = 0.25*F1 + 0.25*F2 + 0.25*F3 + 0.25*F4$ Where: F1: Average value of availability levels of TI services F2: Level of user satisfaction regarding TI services F3: Level of progress in the implementation of disaster recovery mechanisms F4: Level of progress in the implementation of information security mechanisms
AEI.06.07: Enhanced of Infrastructure Capacity of Ositran	Percentage of the implementation of the infrastructure	(Implementation activities executed / Programmed implementation activities) * 100
AEI.06.08: Timely management of the institutional obligations of OSITRAN	Percentage of institutional obligations executed	(Number of obligations executed / Number of programmed obligations) * 100
AEI.06.09: Gestión oportuna de las actividades de Asesoría Jurídica Regulatoria y Contractual del OSITRAN	Percentage of issued reports	(Number of Reports issued / Number of Reports Submitted) * 100
OEI.07: Implementing Disaster Risk Management	Number of implemented reports of the Disaster Risk Management	Number of issued reports

Source: (OSITRAN, 2019^[1]), Plan Estratégico Institucional de OSITRAN PEI 2019-2022 (OSITRAN's Strategic Institutional Plan 2019-2022), <https://www.ositran.gob.pe/wp-content/uploads/2019/06/027CD2019.pdf>.

Annex A. 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 (2014_[1]) *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 (Annex Box A.1).

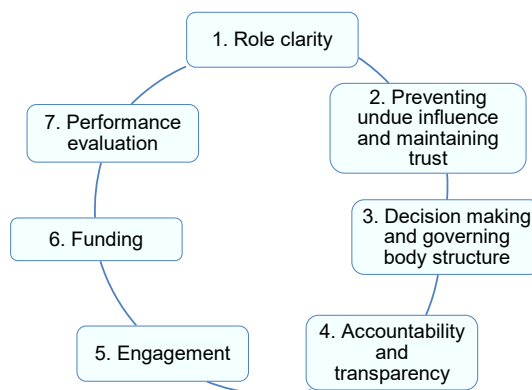
Annex Box A.1. The input-process-output-outcome logic sequence

- 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, 2014_[1]).

The *OECD Best Practice Principles for Regulatory Policy: The Governance of Regulators* (OECD, 2014^[2]) 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) (**Error! Not a valid bookmark self-reference.**).

Figure A A.1. The OECD Best Practice Principles on the Governance of Regulators



Source: Adapted from (OECD, 2014^[2]).

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 A A.1).

Table A A.1. Criteria for assessing regulators’ own performance framework

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

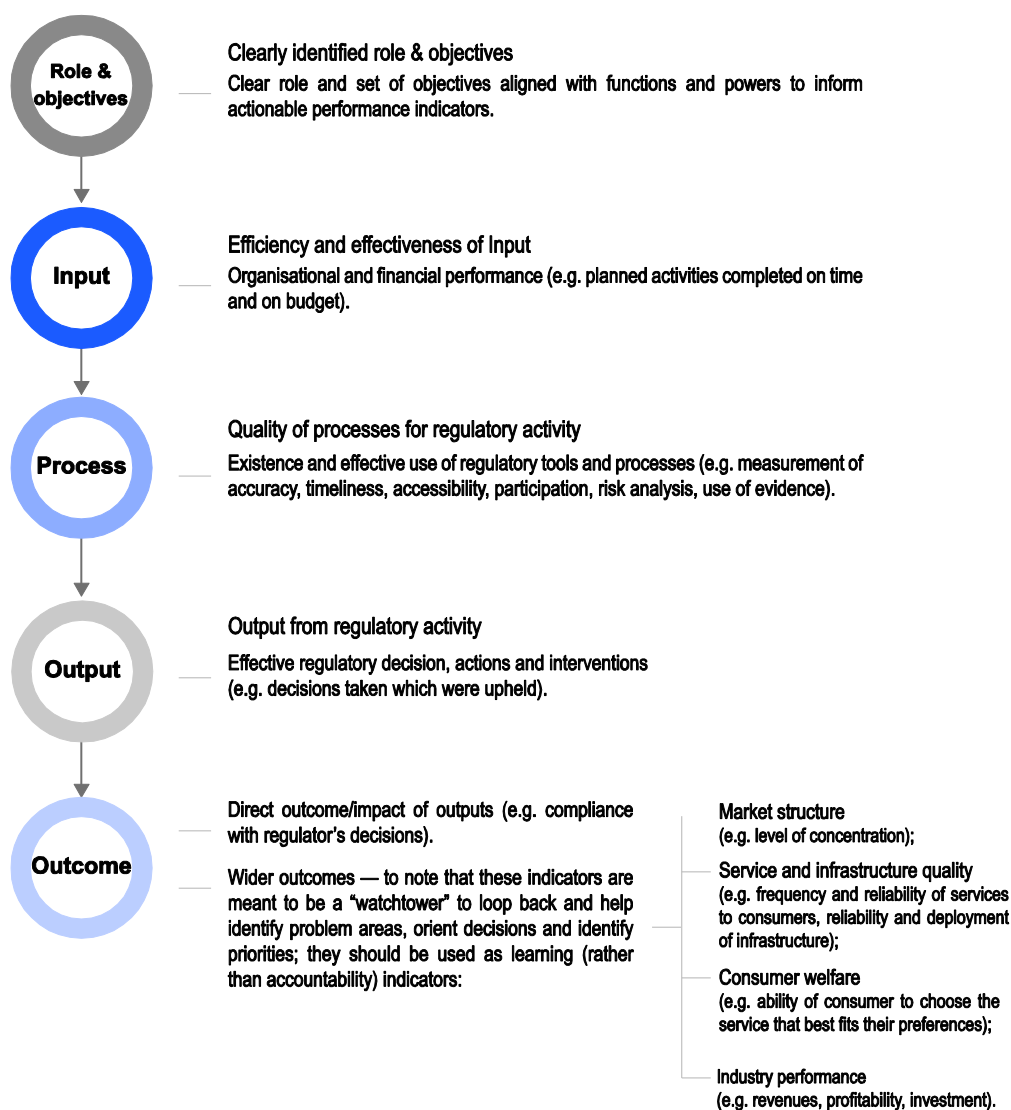
Source: OECD Analysis.

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^[3]).

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 A A.2).

Figure A A.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^[4]), Figure 3.3 (updated in 2017).

Approach

The analytical framework presented above informed the data collection and the analysis presented in the report. The present report looks at the internal and external governance arrangements of Peru's Transport Infrastructure Regulator (*Organismo Supervisor de la Inversión en Infraestructura de Transporte de Uso Público*, OSITRAN) in the following areas:

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

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

- **Questionnaire and desk review:** OSITRAN completed a detailed questionnaire which informed a desk review by the OECD Secretariat. The Secretariat reviewed existing legislation and OSITRAN documents to collect information on the *de jure* functioning of the regulator, and to inform the basis of the fact-finding mission. This questionnaire was tailored to OSITRAN, based on the methodology already applied by the OECD to Colombia's Communications Regulation Commission (OECD, 2015^[4]), Latvia's Public Utilities Commission (OECD, 2016^[5]), Mexico's three energy regulators (OECD, 2017^[6]); (OECD, 2017^[7]); (OECD, 2017^[8]); (OECD, 2017^[9]), Ireland's Commission for Regulation of Utilities (OECD, 2018^[10]); Peru's Energy and Mining Regulator (OECD, 2019^[11]); Peru's Telecommunications Regulator (OECD, 2019^[12]).
- **Fact-finding mission:** the mission was conducted by the OECD Secretariat on 27-31 May 2019 in Lima and was the key tool to collect and complete the *de jure* information obtained through the questionnaire with the *de facto* state of play. The work of the fact-finding mission tailored the PAFER methodology to OSITRAN features. Information collected was completed and checked with OSITRAN for accuracy, and issues for further discussion were also flagged.
- **Peer mission:** the mission took place on 10-13 September 2019 in Lima and included peer reviewers from Canada, Mexico and Spain, in addition to OECD Secretariat. This mission met with key stakeholders in OSITRAN as well as externally. At the end of the mission, the team discussed preliminary findings and recommendations jointly with senior management from OSITRAN to test their feasibility and goodness of fit.

During the fact-finding and peer missions, the team met with OSITRAN's leadership team as well as a number of staff from across the institution. In addition, the team met with government institutions and external stakeholders, including:

Public entities:

- Agency for the Promotion of Investment (*Agencia de Promoción de la Inversión Privada*, ProInversión).
- Comptroller General of the Republic of Peru (*Contraloría General de la República del Perú*).

- National Authority of the Electric Transport System of Lima and Callao (*Autoridad Autónoma del Sistema Eléctrico de Transporte Masivo de Lima y Callao, ATEE*).
- National Institute for the Defense of Competition and Intellectual Property (*Instituto Nacional de Defensa de la Competencia y Protección de la Propiedad Intelectual, Indecopi*).
- National Port Authority (*Autoridad Portuaria Nacional, APN*).
- Ministry of Transport and Communications (*Ministerio de Transporte y Comunicaciones, MTC*).
- Presidency of the Council of Ministers (*Presidencia del Consejo de Ministros, PCM*).
- Transport and Communications Commission of the Peruvian Congress (*Comisión de Transportes y Comunicaciones del Congreso del Perú*).

Private bodies:

- Aeropuertos Andinos del Perú.
- Aeropuertos del Perú S.A.
- Association for the Promotion of National Infrastructure (*Asociación para el Fomento de la Infraestructura Nacional, AFIN*).
- APM Terminals Callao S.A.
- Concesionaria Vial del Sol S.A. (COVISOL)
- Concesionaria Vial del Perú S.A. (COVIPERU).
- Corporación Peruana de Aeropuertos y Aviación Comercial S.A. (CORPAC).
- DP WORLD CALLAO S.R.L.
- Ferrocarril Trasandino S.A.
- GYM Ferrovías S.A.
- IIRSA Norte.
- Lima Airport Partners (LAP).
- Sociedad Concesionaria del Metro de Lima.
- Terminal Internacional del Sur S.A. (TISUR).

OSITRAN User Councils:

- Airports User Council.
- Ports User Council.
- Railways User Council.
- Roads User Council.
- User Council of Arequipa.
- User Council of Cuzco.
- User Council of Loreto-San Martin.
- User Council of Piura.

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The Governance of Regulators

Driving Performance at Peru's Transport Infrastructure Regulator

As “market referees”, regulators contribute to the delivery of essential public utilities. Their organisational culture, behaviour and governance are important factors in how they, and the sectors they oversee, perform. The report uses the OECD Performance Assessment Framework for Economic Regulators to assess both the internal and external governance of Peru's Transport Infrastructure Regulator (OSITRAN). The review discusses OSITRAN's good practices, analyses the key drivers of its performance, and proposes an integrated reform package to help the regulator prepare for the future.

Consult this publication on line at <https://doi.org/10.1787/d4ddab52-en>.

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