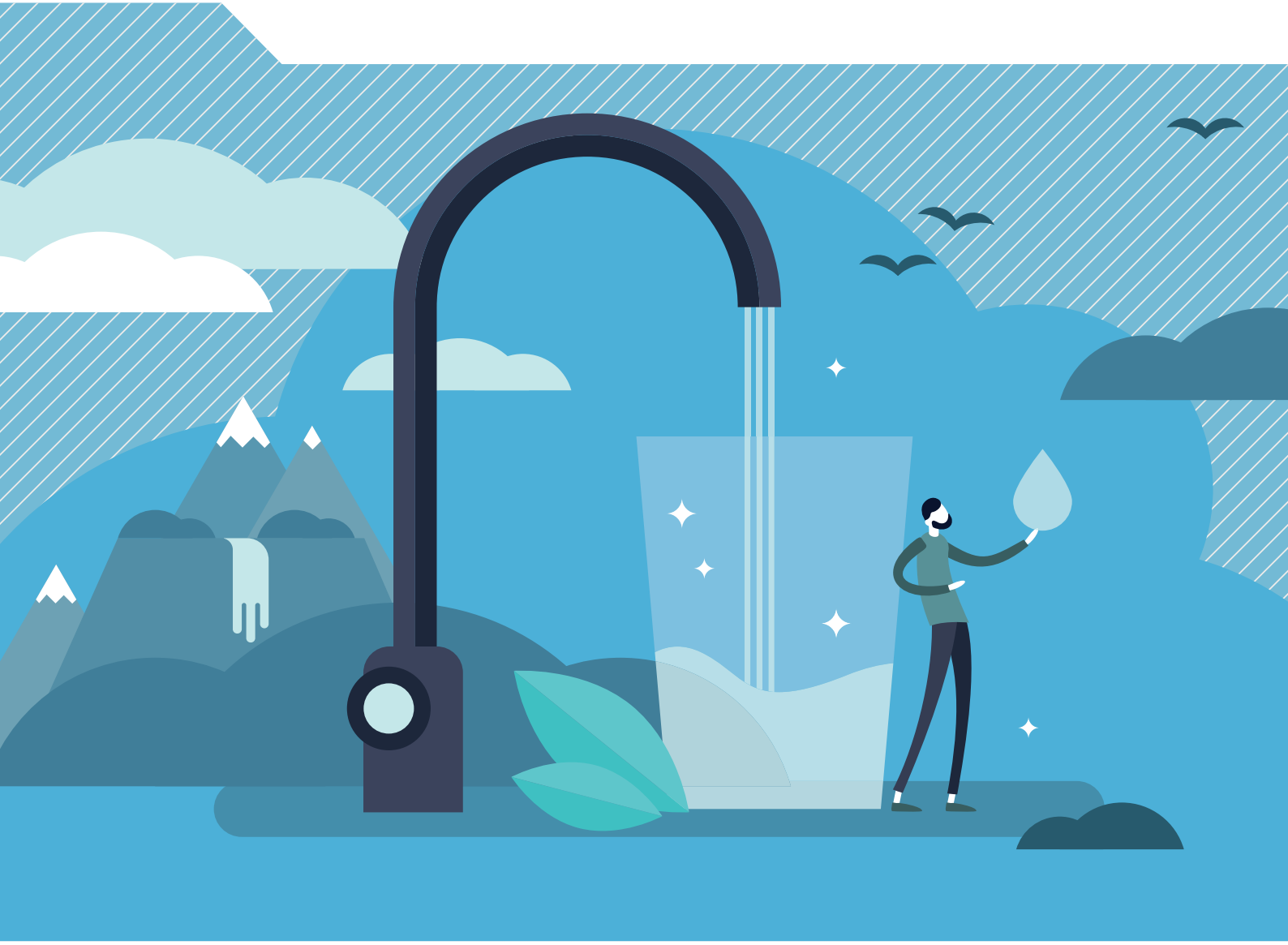
OECD Reviews of Regulatory Reform

Implementing Regulatory Impact Assessment at Peru's National Superintendence of Sanitation Services



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Implementing Regulatory Impact Assessment at Peru's National Superintendence of Sanitation Services

BETTER POLICIES FOR BETTER LIVES

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Foreword

Regulations and laws play a fundamental role in achieving public policy objectives, including the protection of human health, the environment, the fight against monopolies, or the efficient provision of water and sanitation services, among many others. Good quality regulations pursue these goals, while ensuring that the benefits that they generate for society are greater than their costs.

Regulatory impact assessment (RIA) is one of the main regulatory management tools recommended by the OECD to improve the quality of government intervention. It allows policy makers to ensure, for example, that a draft regulation addresses a relevant public problem, and that it is the best available alternative in contrast to, for instance, a tax or a subsidy. RIA also helps ensure that the draft regulation will bring a net positive benefit to society.

The 2016 OECD report *Regulatory Policy in Peru. Assembling the Framework for Regulatory Quality* recommended that economic regulators introduce an *ex ante* impact assessment system independent from that of Peru's central government. This report provides guidance for implementing RIA at the National Superintendence of Sanitation Services (Sunass), the agency responsible for regulating and supervising the provision of sanitation services in Peru. It documents and assesses the agency's process for issuing rules and identifies key elements for systematically implementing RIA. The report recommends designing legal reforms needed to establish RIA as a permanent practice and ensuring the necessary training for staff responsible for developing RIAs.

The report also includes technical guidelines that will help Sunass officials conduct an RIA, including undertaking public consultation and stakeholder participation, properly identifying the public policy problem at hand, and performing the cost-benefit analysis, among others.

The report is based on the 2012 OECD *Recommendation of the Council on Regulatory Policy and Governance,* which considers the RIA as a core element for regulatory quality. The assessment and recommendations in this report also build on the *OECD Best Practice Principles for Regulatory Policy: Regulatory Impact Assessment*.

This report is the result of an ample process of consultation with stakeholders through a physical mission in March 2019 and a virtual capacity-building workshop in November 2020. It was prepared by the Secretariat for publication.

Acknowledgements

The report was prepared by the OECD Public Governance Directorate (GOV), under the leadership of Elsa Pilichowski, Director. The review was led by Manuel Gerardo Flores, Senior Policy Analyst, under the direction of Nick Malyshev, Head of the Regulatory Policy Division in GOV. The main authors are Alberto Morales, Erik Perez, Andres Blancas, Gloriana Madrigal and Manuel Gerardo Flores from the OECD and María Antonieta Merino, regulatory policy expert. The report was prepared for publication by Jennifer Stein.

The review is based on the information gathered through a questionnaire submitted in January 2020 and from meetings with a large range of stakeholders held in Lima, Peru, in March 2020. We thank the National Superintendence of Sanitation Services – Sunass – in particular Ivan Lucich, President of the Board of Directors; Roger Loyola, Counselor of the President; and Ximena Quiroz, Economic Analyst, for all their support. We also appreciate the valuable comments from many Sunass' officials to drafts of this report: Mauro Gutiérrez, Ana Vergara, Mabel Morillo, Luis Acosta, José Patino, Juan Carlos Zevillanos, Vielka Chariarse, Miguel Layseca, Lourdes Flores, Sandro Huamaní, Irina Palomino, Alfredo Cotrado, Javier Noriega. They helped improve the report. We are thankful to officials from Mexico´s National Water Commission, from Peru´s regulators in Energy, Telecommunication and Transport Infrastructure, from Peru´s Presidency of Council of Minister, Ministry of Economy and Finance and from the Water Services Regulation Authority of the UK, for their comments and feedback to the case studies.

A draft version of Chapter 4 of this report, which includes the technical guidelines for preparing an RIA, was tested during a virtual capacity-building workshop held by the OECD's Secretariat in November 2020 with the participation of experts from Colombia, Mexico, Scotland and the United Kingdom. We thank all participants and, especially, Sunass staff, who enriched this report with their comments and insights.

Table of contents

Tables

Figures

Boxes

Abbreviations and acronyms

CBA	Cost-Benefit Analysis
CONAMER	National Commission for Better regulation of Mexico
CSA	Supervisory Committee of RIA of Sunass (*Comité Supervisor de AIR*)
DPN	Department of Policies and Regulations of Sunass
DRT	Department of Tariffs Regulation of Sunass
ISO	International Organization for Standardization
MCA	Multicriteria analysis
MEF	Ministry of Economy and Finance
MINJUS	Ministry of Justice and Human Rights
OAJ	Office of Legal Advice of Sunass
OECD	Organisation for Economic Co-operation and Development
OMP	Optimized Master Plan
OSINERGMIN	Supervisory Agency for Investment in Energy and Mining
OSIPTEL	Supervisory Organism of Private Investment in Telecommunications
OSITRAN	Supervisory Agency for Public Transportation Infrastructure
PCM	Presidency of the Council of Ministers
RGRT	General Rules of Tariffs Regulation
RIA	Regulatory impact assessment
RQA	Regulatory Quality Analysis
SCM	Standard Cost Model
SPC	Service Provider Companies
SUNASS	National Superintendence of Sanitation Services

Executive summary

The National Superintendence of Sanitation Services (Sunass) is the agency in charge of regulating, governing, and supervising the provision of sanitation services in Peru. Within its portfolio of functions, it regulates the tariffs that service provider companies (SPC) charge to their users and has a major role in setting access and quality standards for sanitation services. Sunass also carries out inspections, applies sanction, and resolves user claims and conflicts among service provider companies. In response to the 2016 OECD report *Regulatory Policy in Peru. Assembling the Framework for Regulatory Quality*, Sunass has begun to implement a system of regulatory impact assessment (RIA) to improve the quality of its regulations.

RIA requires a rigorous and transparent analysis, including a cost-benefit analysis to identify impacts. However, effectively implementing RIA will require Sunass to adjust its internal design and processes to ensure the quality and continuity of the analysis.

The report finds that Sunass has a fundamental role on regulation of tariffs, quality, and conditions for access. The General Regulation of Tariffs establishes the methodologies and procedures that govern the way tariffs are calculated. The Regulation of Quality of Sanitation Services defines the obligations that service providing companies have regarding the access to the service, quality of supply, and other topics, including the closure of services and rules for properties with common use areas. Sunass is in charge of overseeing the implementation and enforcement of both regulations. Additionally, Sunass applies the Regulation on supervision, oversight, and sanctions of sanitation service provider companies.

This report should serve as a manual for Sunass to undertake public consultation and prepare RIAs when modifying or updating these regulations, or whenever it has to issue or modify secondary legal instruments that emanate from these regulations, such as standards, and guidelines. The report also contains specific recommendations for designing and implementing a system for preparing RIA. Technical guidelines explain in detail how to prepare each element of an RIA. Key recommendations include the following.

- Sunass should undertake reforms to make an RIA obligatory whenever a regulatory proposal or amendment to an existing regulation implies compliance costs for stakeholders. Costs affecting any stakeholder, including service provider companies, users, and the state, should be considered, and the scope of these costs should be broad. Sunass should consider non-monetary externalities and opportunity costs. Waivers for applying RIA to regulatory amendments or new regulations should be limited and approved by the office monitoring the quality and approval of RIAs. These exceptions should be applied only to those regulatory projects whose costs are negligible or insignificant.
- As part of the reform, Sunass should officially approve the technical guidelines for the development of RIAs. This will provide a common basis for a rigorous and standardised quality analysis. Technical guidelines should be disseminated to Sunass staff on a regular basis.

- Sunas should embrace the proportionality principle in its RIA system by introducing differentiated types of assessment according to the level of impact. The different RIA types should be well defined, with clear distinctions on what is expected in the corresponding cost-benefit analysis, the number of alternatives to assess, and the scope of public consultation.
- RIA development and supervision should be conducted independently. Sunass should avoid having the same offices involved in both processes. This will enable, to the extent possible, an impartial and rigorous quality control. Moreover, the preparation process should evolve to become a collaborative process among the Sunass directorates involved in the regulatory project under development. The supervision process should be carried out by offices with sufficient authority to approve or reject the RIA.
- Sunass should have a clear and gradual implementation plan. For this purpose, it should define the critical path for the necessary administrative changes to implement the RIA system, a RIA communication and socialisation plan, recurrent training for Sunass technical staff, and the adoption of technological tools to allow for the efficient elaboration of the RIA and undertaking of the public consultation.

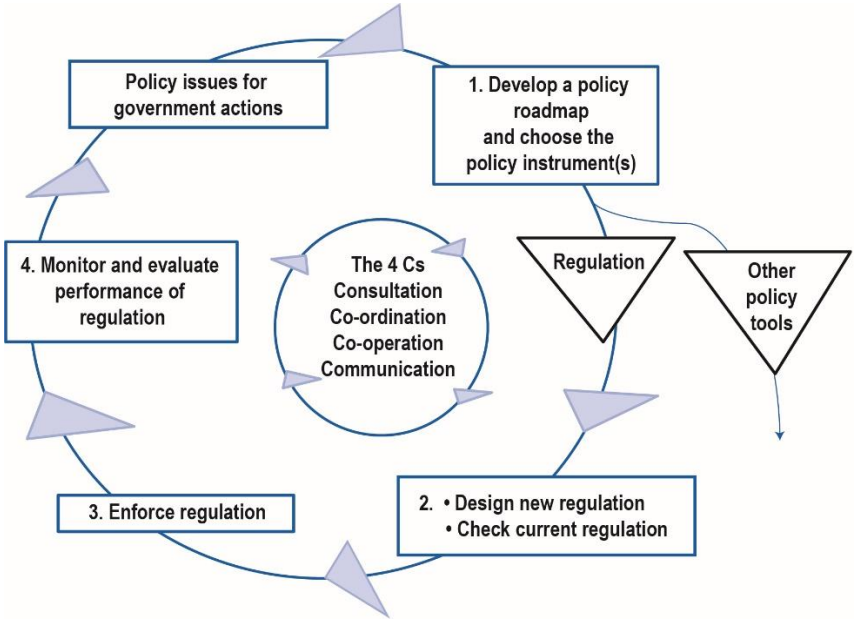
1 Context of regulatory impact assessment

Regulatory impact assessment is a key element of the regulatory governance cycle, as it ensures the quality of new regulation by assessing its potential impact. This chapter presents the context of the regulatory governance cycle and how RIA fits within the lifecycle of regulation. The chapter also outlines the OECD best practice principles on RIA and presents the status of *ex ante* assessment in OECD countries.

RIA within the context of regulatory governance

Regulation generally aims to solve public policy problems that can be economic, social, environmental, inclusion and others. For regulation to be effective in solving these problems, it must have a good design and a clear and solid strategy for its implementation and supervision. For that purpose, governments around the world should be concerned not only with thinking about what is the best possible regulation, but also with the ways in which such regulations can be designed and implemented better. To contextualise the abovementioned, the OECD frequently uses the regulatory governance cycle, included Figure 1.1 (OECD, 2011[1]). This cycle allows addressing regulation from a comprehensive point of view. In other words, from the onset of the designing process to the moment that the regulation solves the public policy problem. The regulatory governance cycle has four main stages: development of a public policy and choice of instruments; design of the new regulation (or review of an existing regulation); enforcement of the regulation; and monitoring and evaluation of its effects. However, the prelude of this analysis is the identification of the policy problem.

Figure 1.1. Regulatory governance cycle



Source: (OECD, 2011[1]), Regulatory Policy and Governance: Supporting Economic Growth and Serving the Public Interest, Paris, https://doi.org/10.1787/9789264116573-en.

Figure 1.1 describes the process of how a regulation must be created, but also states how a regulation must have a cycle of continuous analysis. After evaluating the performance of the regulation, it must be assessed if it is still valid or must be removed or amended.

To begin the regulatory design process, the OECD considers it important to adopt a regulatory impact assessment method that incorporates proportionality and cost-benefit criteria. Therefore, the Regulatory Impact Assessment (RIA) is a key element for the adequate management of the regulatory governance cycle. The RIA is an element that allows measuring the relevance of regulations against public policy objectives. Therefore, the RIA should help to carry out the definition of the public policy problem and to assess the best way to implement and enforce the regulation. The RIA is involved in the identification of the problem, through preliminary consultation with stakeholders or potential stakeholders, in order to develop a description of the problem, make adjustments, or refine the problem identified by public officials.

With this information it is possible to develop a public policy approach and choose the instruments of intervention.

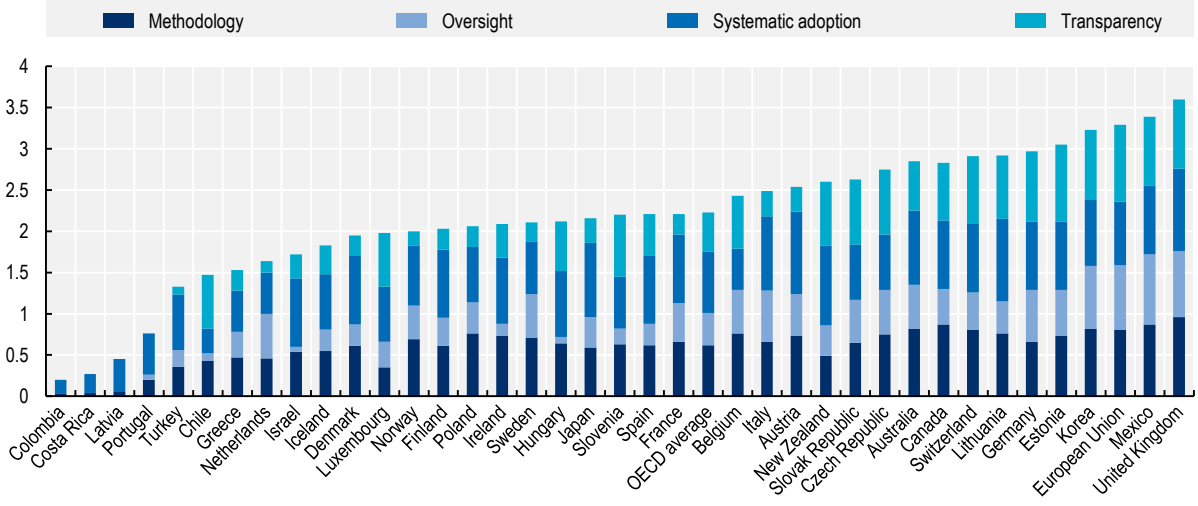
Subsequently, RIA helps select the best option for government intervention, whether with regulatory or other mechanisms, using cost-benefit analysis, among other cost analysis tools. The final design of the regulation is part of the RIA process, which includes an additional consultation process that should be more open and with the aim of making adjustments to the regulatory instruments used. This consultation process is very important to make the regulation as appropriate as possible, since it allows the identification of omissions, biases, and unidentified effects (OECD, 2019[2]). Furthermore, the RIA helps to improve the decision-making process which defines the regulation. The RIA promotes a systematic process, with a comparative approach to policy decisions and makes the issuer aware of the regulations on the precise identification of the problem to be addressed, as well as the different alternatives to achieve it. In addition, the RIA weighs the economic viability of implementing a regulation or, in other words, that its costs are less than the benefits.

Another advantage of RIA is that it provides an evidence-based analytical method and empirical information comparing several proposals or alternatives; it promotes the identification of (direct or indirect) benefits and costs derived from the regulation; it establishes a rational system for decision-making and makes a cross-wised evaluation of the regulation.

RIA at OECD countries

The OECD Regulatory Policy Review 2018 compiled the OECD practices of its member countries, and notes that virtually all carry out the practice of the RIA (OECD, 2018[3]). Despite this, there is a great difference in the scope and quality of RIA practices in each country. The OECD conducts a survey every two years to measure RIA practices for both primary legislation and subordinate regulations. Figure 1.2 shows the results of the latest survey conducted in 2017. The measurement indicator is constructed with four categories: methodology, transparency, systematic adoption, and monitoring and quality control. The United Kingdom, Mexico, the European Union, and South Korea are the top-ranked countries. It can also be seen that the indicators with the greatest variability are monitoring and quality control and transparency.

Figure 1.2. RIA quality indicators for primary laws



Note: The indicator reflects the practices of the Executive Branch and excludes United States since all its laws are prepared by the Congress.
Source: Indicators of Regulatory Policy and Governance, Survey 2017, http://oe.cd/ireg.

Beyond the difference in the quality of RIA practices, there are different considerations in the practical elements of implementation. This includes the exceptions to RIA, and the elements that are required in the assessment process. Despite the fact that RIA is a practice that has been in place for decades, countries have continued to reform their systems. Some relevant examples of the last years include Italy, which expanded its category of impacts for including social and environmental costs. South Korea implemented a digital platform in order that its officers perform more efficaciously the cost-benefit analysis (OECD, 2018[3]). This reveals that while all countries are implementing RIA, governments must continue to constantly reform their practices.

OECD Principles: RIA Best Practices

RIAs must be set as a tool for improving decision-making, and not as an additional administrative burden for decision makers. Therefore, for having a correct implementation of the RIA, it is important to consider the following elements (OECD, 2020[4]):

- Always start in the baseline stage of the regulation process;
- Clearly identify the problem and the objectives expected from the proposal;
- Identify and assess all the potential alternate solutions (including non-regulatory);
- Try to assess always all the potential costs and benefits, both direct and indirect;
- Rely on all the scientific evidence and knowledge available;
- Have a more transparent relationship with stakeholders and clearly communicate the outcomes.

The OECD developed principles from the international best practices, with the elements to be considered in the RIA available in (OECD, 2020[4]). These principles provide an extension and preparation of the precepts contained in the 2012 Recommendation of the Council on Regulatory Policy and Governance, in addition that it considers the experience gathered by the member countries since its publication.

The principles are intended to be relevant and useful for all member countries and for countries wishing to implement RIA within their regulatory governance framework. Therefore, they offer a more general overview, instead of providing a detailed prescription. However, by intending to be the ideal scenario for the implementation of the RIA, the principles are intentionally ambitious. Notwithstanding, by being based on the real-life experience of several countries, they must adapt to the local reality.

Principles are based on five fundamental elements for preparing and implementing RIA. These elements are listed in Box 1.1.

Box 1.1. Best Practice Principles for Regulatory Impact Assessment

1. Commitment and buy-in for RIA

- Governments should:
  - Spell out what governments consider as “good regulations”.
  - Introduce RIA as part of a comprehensive long-term plan to boost quality of regulation.
  - Create an oversight unit for RIA with sufficient competences.
  - Create credible “internal and external constraints”, which guarantee that RIA will effectively be implemented.
  - Secure political backing of RIA.

- Securing stakeholder support is essential.
- Governments have to ensure transparency of decision making to enable public control of the RIA process.

2. Governance of RIA– Having the right set up or system design

- RIA should be fully integrated with other regulatory management tools and should be implemented in the context of the Regulatory Governance Cycle.
- RIA and its implementation should be adjusted to the legal and administrative system and culture of the country.
- Governments need to decide whether to implement RIA at once or gradually.
- Responsibilities for RIA programme elements have to be allocated carefully.
- Efficient regulatory oversight is a crucial precondition for a successful RIA.
- RIA should be proportional to the significance of the regulation. .
- Parliaments should be encouraged to set up their own procedures to guarantee the quality of legislation, including the quality of RIA.

3. Embedding RIA through strengthening capacity and accountability of the administration.

- Adequate training must be provided to civil servants.
- Governments should publish detailed guidance material.
- There should be only limited exceptions to the general rule that RIA is required.
- Accountability- and performance-oriented arrangements should be implemented.

4. Targeted and appropriate RIA methodology

- The RIA methodology should be as simple and flexible as possible, while ensuring certain key features are covered.
- RIA should not always be interpreted as requiring a full-fledged, quantitative cost-benefit analysis of legislation.
- Sound data governance strategies can help produce, collect, process, access and share data in the context of RIA.
- RIA has to follow all stages of the regulation-making process and has to start at the inception stage in order to inform policy development.
- No RIA can be successful without defining the policy context and objectives, in particular the systematic identification of the problem.
- All plausible alternatives, including non-regulatory solutions must be taken into account.
- It is essential to always identify all relevant direct and important indirect costs as well as benefits.
- Stakeholder engagement must be incorporated systematically in the RIA process.
- Insights from behavioural science and economics should be considered, as appropriate.
- The development of enforcement and compliance strategies should be part of every RIA.
- RIA should be perceived as an iterative process.
- Results of RIA should be well communicated.

5. Continuous monitoring, evaluation and improvement of RIA

- It is important to validate the real impacts of adopted regulations after their implementation.
- RIA systems should also have an in-built monitoring, evaluation and refinement mechanism in place. This includes early plans for data collection or access to data.
- A regular, comprehensive evaluation of the impact of RIA on the (perceived) quality of regulatory decisions is essential.

- It is important to evaluate the impacts in cases where the original RIA document does not coincide with the final text of the proposal
- Systematic evaluation of the performance of the regulatory oversight bodies is important.

Source: (OECD, 2020[4]), Regulatory Impact Assessment, OECD Best Practice Principles for Regulatory Policy OECD Publishing, Paris, https://doi.org/10.1787/7a9638cb-en.

For more information on RIAs, readers may refer to the following sources:

- (OECD, 2020[4]), Regulatory Impact Assessment, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, Paris, https://doi.org/10.1787/7a9638cb-en
- (OECD, 2018[3]) "Chapter 2. Recent trends in regulatory management practices" in OECD Regulatory Policy Outlook 2018, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264303072-en
- (OECD, 2015[5])"Chapter 4. Evidence-based policy making through Regulatory Impact Assessment" in OECD Regulatory Policy Outlook 2015, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264238770-en
- (OECD, 2015[6]) "Chapter 2. Regulatory Impact Assessment and regulatory policy" in Regulatory Policy in Perspective: A Reader's Companion to the OECD Regulatory Policy Outlook 2015, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264241800-en
- (OECD, 2009[7]), Regulatory Impact Analysis: A Tool for Policy Coherence, OECD Reviews of Regulatory Reform, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264067110-en
- (OECD, 2008[8]), Building an Institutional Framework for Regulatory Impact Analysis (RIA): Guidance for Policy Makers, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264050013-en .
- (OECD, 2008[9]), Introductory Handbook for Undertaking Regulatory Impact Analysis (RIA), https://www.oecd.org/gov/regulatory-policy/44789472.pdf

For more information on RIAs in Peru, readers may refer to the following sources:

- (OECD, 2020[10]), Indicators of Regulatory Policy and Governance, Latin America Peru, OECD, https://www.oecd.org/gov/regulatory-policy/Peru-country-profile-regulatory-policy-es.pdf.
- (OECD, 2020[11]), "Chapter 7. Regulatory Governance", in Government at a Glance: Latin America and the Caribbean 2020, OECD Publishing, Paris, https://doi.org/10.1787/1256b68d-es.
- (OECD, 2019[2]) Implementing Regulatory Impact Analysis in the Central Government of Peru: Estudios de caso 2014-16, OECD Publishing, Paris, https://doi.org/10.1787/9789264305809-es.
- (OCDE, 2016[12]), Regulatory Policy in Peru. Assembling the Framework for Regulatory Quality, Reviews of Regulatory Reform, Éditions OCDE, Paris. http://dx.doi.org/10.1787/9789264279001-es.

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OECD (2020), *Indicadores de Política y Goberanza Regulatoria, América Latina 2019, Perú*, OECD, https://www.oecd.org/gov/regulatory-policy/Peru-country-profile-regulatory-policy-es.pdf. [10]

OECD (2020), *Panorama de las Administraciones Públicas América Latina y el Caribe 2020*, OECD Publishing, https://doi.org/10.1787/1256b68d-es. [11]

OECD (2020), *Regulatory Impact Assessment*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, Paris, https://dx.doi.org/10.1787/7a9638cb-en. [4]

OECD (2019), *Implementación del Análisis de Impacto Regulatorio en el Gobierno Central del Perú: Estudios de Caso 2014-16*, OECD Publishing, https://doi.org/10.1787/9789264305809-es. [2]

OECD (2018), *OECD Regulatory Policy Outlook 2018*, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264303072-en. [3]

OECD (2015), *OECD Regulatory Policy Outlook 2015*, OECD Publishing, https://dx.doi.org/10.1787/9789264238770-en. [5]

OECD (2015), *Regulatory Policy in Perspective: A Reader's Companion to the OECD Regulatory Policy Outlook 2015*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264241800-en. [6]

OECD (2011), *Regulatory Policy and Governance: Supporting Economic Growth and Serving the Public Interest*, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264116573-en. [1]

OECD (2009), *Regulatory Impact Analysis: A Tool for Policy Coherence*, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264067110-en. [7]

OECD (2008), *Building an Institutional Framework for Regulatory Impact Analysis (RIA): Guidance for Policy Makers*, OECD Publishing, https://dx.doi.org/10.1787/9789264050013-en. [8]

OECD (2008), *Introductory Handbook for Undertaking Regulatory Impact Analysis (RIA),*, OECD, https://www.oecd.org/gov/regulatory-policy/44789472.pdf. [9]

2 RIA system at Sunass

RIA must be understood as a comprehensive *ex ante* evaluation system of the regulation. This chapter contextualises the importance of the implementation of RIA at Sunass. This chapter also lists the key elements for implementing RIA as a system. This includes the assumptions for the preparation of a RIA, exceptions, technical guidelines, and thresholds for different types of RIA analysis. The chapter finishes by introducing the preparation and oversight as independent processes.

Context

The regulation, inspection and supervision of the provision of the water sanitation services is part of the duties of the National Superintendence of Sanitation Services (Sunass, for its Spanish acronym). According to the Framework Law for Regulators on Private Investment for Public Services (LMOR), Sunass is a *decentralised public organism affiliated to the Presidency of the Council of Ministers, with legal capacity and administrative, technical function, economic, and financial autonomy.* According with the Sanitation Service Management and Delivery Framework Law, the function of Sunass is as follows:

> The National Superintendence of Sanitation Services – Sunass, on its character of regulatory body, is responsible for ensuring users the delivery of sanitation services in the urban and rural setting, with quality, contributing to the population health and the environment preservation.

According to Sunass General Regulations (RGS), its main objectives include the following: (SUNASS, 2019[1]):

- Protecting users' rights and interests
- Encouraging, by means of tariffs, the achievement and maintenance of the economic-financial balance of Service Provider Companies (SPC), as well as their efficiency on the expansion and development of services.
- Supervising and inspecting the compliance of the rules on sanitation service supply and of the goals of quality and coverage of such services.
- Ensuring the free access to sanitation services.
- Watching the comprehensive compliance of the contract concession of sanitation services.

The compliance of these goals requires designing and implementing high quality regulation[1] (see Box 2.1). Sunass is uniquely positioned to control the quality of regulation. This is because it has a role throughout the regulatory governance cycle. Sunass has the power to issue regulations, to supervise them and to generate sanctions in case of non-compliance. It should also be noted that Sunass also implements and supervises regulations that central-government ministries of Peru issue.

Box 2.1. What is regulatory quality?

Regulations are rules governing the daily life of companies and citizens. They are essential for economic growth, social well-being, and environmental protection. But they can also be costly in both economic and social terms. In this context, "regulatory quality" means to improve performance, profitability, and legal quality of regulatory and administrative formalities. The concept of regulatory quality covers the process, that is, the way in which regulations are developed and enforced, which must follow the key consultation principles such as, transparency, accountability, and empirical basis. Beyond the process, the concept of regulatory quality also covers the outcomes, that is, regulations which are effective for achieving objectives, efficient (not imposing unnecessary costs), consistent (when considered within the whole regulatory regimen), and simple (regulations themselves and those rules for their implementation are clear and easy to understand for users).

By constructing and extending the OECD Recommendation on Improving the Quality of Government Regulation (OECD, 1995[2]), it is possible to define regulatory quality through regulations that:

1. Serve public policy goals which are clearly defined and effective for achieving those goals;
2. Are clear, simple, and practical for users;
3. Have a sound legal and empirical foundation;

4. Are consistent with other regulations and policies;
5. Produce benefits that justify the costs, considering the distribution of the effects on society and taking into account the economic, environmental and social effects;
6. Are applied in a fair, transparent, and proportional manner;
7. Minimise costs and market disruptions;
8. Promote innovation through market incentives and objective-based focus; and
9. Are compatible, if possible, with principles of competence, commerce, and ease of investments, nationally and internationally.

Source: OECD (2015[3]), OECD Regulatory Policy Outlook 2015, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264238770-en.

Frequently, regulators face situations where their goals compete among each other. For instance, Sunass must mediate the pressure to regulate water tariffs implemented by Service Provider Companies (SPC). On one hand, there is the objective of expanding and increasing the quality of the infrastructure in which SPC invest in. This necessarily requires an increase in the income available for SPC investment, thus obliging a tariff increase. However, an increase in tariffs also means a higher cost for users, which can lead to inability to pay or significant effects on the available income of the population in Peru. Sunass also has the objective of *protecting the rights and interests of users.* While this is the most classic example of the tensions faced by a regulator, the Sunass has a wide range of regulatory tools that it has to design and implement to ensure the functioning of sanitation services.

In addition to ensure the technical quality of the regulation, Sunass must manage its relationships with the parties obliged to comply with the regulation or who will benefit from it. Precisely, these regulatory decisions create differential costs and benefits for the regulated parties, users, and the government itself. This can lead Sunass to make evidence-based decisions and to be transparent in the regulatory issuance and supervision processes. This is the motivation for Sunass to seek the implementation of better regulatory tools, which will allow it to make better public policy decisions. A Regulatory Impact Assessment (RIA) system helps to make decisions transparently, explore costs and benefits, and weigh alternatives which solve public policy problems.

In 2016, the OECD published a cross sectional study on regulatory policy in Peru. Among the problems analysed, the lack of a system of *ex ante* regulatory evaluation stands out. Although Peru has certain tools that improve regulatory quality, the report identified the need to implement a Regulatory Impact Assessment (RIA) system. As part of the assessment, the OECD highlighted the following:

> Although Peru has some basic elements, it lacks an exhaustive system for *ex ante* assessment of draft bills and regulations subject to amendments, to evaluate if they yield a positive net benefit to society and if they are consistent with other government policies. (OCDE, 2016[4])

For central government, OECD recommended to implement a RIA system, which at the beginning was managed by the Ministry of Economy and Finance (MEF), the Presidency of the Council of Ministers (PCM), and the Ministry of Justice and Human Rights (MINJUS) (OCDE, 2016[4]). The central government of Peru is already working for implementing the RIA.[2]

The regulatory policy review (OCDE, 2016[4]) also covers the topic of governance of regulators, where Sunass is included. For Peru, the institutional design of regulatory bodies includes the presence of regulators that rule, oversee, and inspect private investment and public infrastructure. These regulators are empowered with technical, financial, and management autonomy. In this context, OECD considered necessary that such bodies implement their own RIA systems. This along with the goal of ensuring their technical independence. This motivated the OECD to produce the following recommendation, which directly concerns the Sunass:

To introduce an *ex ante* assessment system, that is, a Regulatory Impact Evaluation[3] for draft bills and regulations subject to amendments, which must be independent to RIEs of the Peruvian central government (OCDE, 2016[4]).

Every regulator has started to implement its own version of RIA. Each one with its own operational processes and technical guidelines.[4] Having its own RIA system will allow Sunass to ensure technical independence, and at the same time, to improve the quality of the regulations issued. However, implementing a self-surveillance system requires seals and credible practices by Sunass. Achieving this will allow Sunass to warrant the quality of RIA against the regulated parties, population, and central government. The rest of the chapter presents recommendations for designing the RIA system from the Sunass' view of the regulatory framework.

Sunass main regulations

By being the governing body of the oversight and regulation of sanitation services, Sunass has a fundamental role on tariffs regulation, quality, and conditions for access, as well as oversight and inspection. The following is a brief summary of the role of the Sunass in these three areas.

Tariffs regulation

One of the main activities of Sunass is to regulate tariffs[5] set by SPC. The General Regulation of Tariffs (RGT, for its Spanish acronym) establishes the methodologies and procedures that govern the way these tariffs are calculated. The Optimized Master Plan (OMP) is the basis for preparing the tariffs estimation, and is also regulated by the RGT. Through these OMP, Sunass carries out the necessary analyses to define tariffs. The authorised tariffs have a 5-year life, after which, the study for the OMP is performed again specifically for each SPC. The RGT also defines the procedure for approving formulas and structures of tariffs, as well as the management goals. Some other elements defined by the RGT include prices of collateral services and the inflation adjustment obligation for sanitation service tariffs.

Service quality

Sunass has the task of ensuring that the quality of SPCs service is adhered to the established regulations. The *Reglamento de Calidad de la Prestación de los Servicios de Saneamiento* [regulation of quality of sanitation services] (RCPSS, for its Spanish acronym) defines the obligations that SPCs have regarding the access to the service, quality of supply, and other topics, including the closure of services and rules for properties with common use areas. Below, some key responsibilities of Sunass derived from the RCPSS are listed:

- Definition of the service delivery contract, as well as the characteristics of the contract and relevant topics, including the amendment or termination.
- Guidelines of general obligations for SPC and users, including the adequate and rational use of services, quality conditions, communication to users about obligations, equipment installation.
- Drinking water quality control and issues including treatment, monitoring and analysis of control parameters, evaluation of treatment plants, disinfection process, and wastewater treatment.

Oversight and inspection

The Reglamento de Supervisión, Fiscalización y Sanción de las Empresas Prestadoras de Servicios de Saneamiento [regulations on supervision, oversight, and sanctions of sanitation service provider companies] frames the Sunass' functions on such topics, divided in the following core topics:

- Supervisory function: Onset of supervising actions from headquarters or at the field, conclusion of the supervision, supervising actions carried out by third parties, including the choice of supervisory bodies and their obligations and corrective measures.
- Sanctioning function: sanctions regime, administrative responsibility of the managed parties, types of sanctions and fines, researching powers of Sunass, record of sanctions.

Elements of the RIA system of Sunass

Recommendation 1: The obligation to carry out the RIA should be regulated under a Sunass regulation. The regulations should consider the assumptions that oblige to conduct the RIA, technical guidelines, exceptions and thresholds for different types of RIAs.

The first step to implement the RIA system is to think in the best possible terms to institutionalise its practice. This necessarily requires legal reform, so that Sunass has a legal obligation to carry out the RIA. As part of this demand, the controls that ensure the quality of the analysis must also be regulated. Sunass has to design the optimal regulatory framework to establish the obligation to conduct RIA for the issuance of new regulations, as well as the **modification** of existing regulations.

For such purpose, Sunass must weigh the possible options according to the legal technique. That is, comparing the alternatives, such as creating a regulation for RIAs, or outlining the obligations in different regulations, such as the Internal General Regulation. The most relevant fact of this decision is to consider if there is a significant difference between the likelihood of compliance versus the different design options of the legal framework (OECD, 2020[5]).

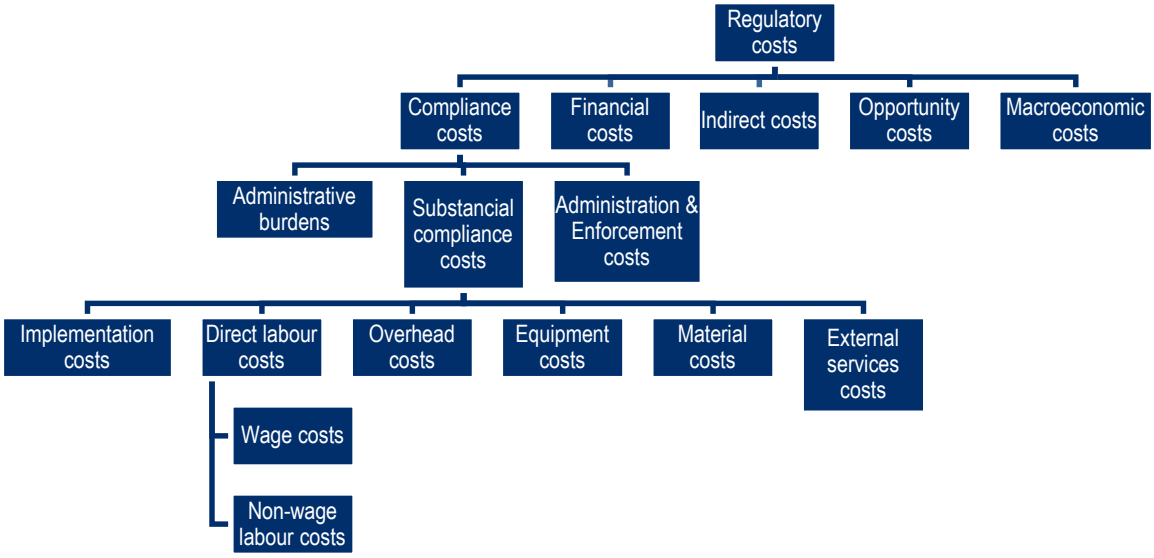
Recommendation 1.1. RIAs must be a requirement for all regulations involving costs.

It is essential to define clear and specific criteria that indicate the scenarios in which a regulatory process should be subject to the RIA. The most common practice is to impose an obligation to carry out the RIA when the issuance or modification of regulations involves costs. In this context, a comprehensive definition of costs as regulatory impacts should be considered (see Chapter 4). This implies extending the cost analysis to analyse how the different sectors involved are affected. In addition, the different categories of costs involved in a regulation must be considered. Figure 2.1 shows the taxonomy of the costs of regulatory compliance. Moreover, the following list includes common examples of cost categories:

- Environment
- Public budget
- Small business
- Innovation
- Sustainable development
- Gender equality
- International business
- Vulnerable groups

These impacts affect differently the involved groups. It is therefore desirable that the impacts on each group should also be specifically analysed. It is unlikely that a regulation can frame all the regulatory costs. It is also undesirable to define cost limits since this would cause the omission of some. That is why Sunass must achieve sufficiently broad wording to ensure that the obligation to conduct the RIA is systematic.

Figure 2.1. Taxonomy of regulatory costs



Source: (OECD, 2014[6]), OECD Regulatory Compliance Cost Assessment Guidance, Paris, http://dx.doi.org/10.1787/9789264209657-en.

Recommendation 1.2. Exceptions to conduct RIAs must be limited and clearly defined in the regulations.

There are regulations that have insignificant costs. Some examples are changes of domicile, legal name, or reform of internal regulations for hiring technological equipment or personnel. It is obvious that for these events, RIAs do not provide an added value. For this reason, RIA systems provide exceptions to certain regulations. Sunass has to clearly define when a regulation is exempted from the RIA for insignificant costs. The risk is that non-monetary costs, or externalities, such as those listed in Figure 2.1, will not be taken into account.

Even though regulations imply costs, it is common for regulatory systems to foresee exceptions from the obligation of carrying out RIAs. Some examples include emergency regulations requiring fast-track procedures, national security policies, and tax revenue or public debt policies. Defining which regulations qualify as exempt from RIA is a challenge, particularly for central government systems where regulations for different industries are administered. Within the OECD countries, seven countries consider exceptions for regulations constituting part of an international trade, thirteen countries when a regulation has insignificant impacts, and thirteen when an emergency regulation is involved (OECD, 2018[7]).

The RIA regulation, or, if applicable, the legal obligation, must be clear regarding the assumptions for exceptions, and the policy for their approval. OECD emphasises that exceptions must be limited (OECD, 2020[5]). The advantage from having its own RIA system is that Sunass can define exceptions in a more specific manner. In the study case of Australia on Chapter 5, the rejection for exceptions for almost all regulations and those with the explicit permit of the Prime Minister office is emphasised.

Recommendation 1.3 Sunass must publish as part of a regulation the technical guidelines applicable for preparing the RIA.

The Sunass must have technical guidelines that ensure a standardisation in the RIA process. This includes the elaboration process and the responsibilities of the different directorates,[6] as well as the RIA elements.[7] These guidelines must be approved as part of a Sunass regulation in order to generate a legal obligation. The guidelines have to reflect the reality of Sunnas, including the responsibilities and internal powers. In

addition, they must be kept up to date with possible changes in the ROF in terms of organisational structure (see Chapter 4).

> *Recommendation 1.4 Sunass must perform a RIA proportional to the regulatory impact of legislative projects.*

The regulation should be evaluated differently depending on the degree of impact involved (OECD, 2020[5]). Therefore, regulatory systems design different types of RIAs with different requirements. The National Commission for Better Regulation of Mexico (CONAMER), expects RIAs of high-impact, moderate-impact, periodic updating, and emergency (see case study of Mexico). Defining several types of RIAs will help Sunass to be more efficient with the resources dedicated for the preparation and supervision of RIAs. Sunass must have at least definitions for low-impact and high-impact RIAs. Naturally, the requirement variates on the complexity of the cost-benefit analysis and the obligation to weigh different regulatory alternatives.

There are different methods to decide which type of RIA must undertake each legislative project. Commonly, there are cost thresholds, where passing a certain regulatory cost impact requires the more sophisticated RIA. Also, there are methodologies where a threshold is specified according to the type of legislative project. When defining thresholds to decide the type of RIA, the Sunass must avoid two common mistakes. The first one is to require that most of legislative projects fall within the high-impact RIAs, even when they not necessarily imply high costs. This would dilute the sense of importance for those regulations that truly have high costs. On the other side, Sunass must not allow so much flexibility so all regulations can be considered low-impact regulations.

The key difference in the RIA types relies in the difference of time and resources dedicated to their preparation. Also, the engagement of stakeholders can variate, as well as the strictness of the cost-benefit analysis. The Table 2.2 proposes the difference between the scope of key elements according to the type of RIA.

Table 2.1. Proposal of Requirements for Low- and High-Impact RIAs

	Low-impact RIA	High-impact RIA
Public consultation	The RIA project and legislative proposal must be subject to public consultation, and Sunass must publish the response matrix to the comments received.	• The legislative project *ideally* must consider inputs for early consultation. • The public consultation of RIAs must include a previous written document of a discussion guideline and a final report summarising the consultation outcomes. • The consultation must include a stringent strategy for identifying key groups for consultation and developing a strategy beyond a publication on a web site.
Identification of alternatives	It is recommendable to identify a couple of alternatives, even when a complete analysis of the rest of the elements is not carried out.	• It is recommendable to compare at least three alternatives, by assessing the impacts and the rest of the elements for each one of them.
Impact assessment	Qualitative identification of the main costs and benefits.	• Accurate quantification and monetisation of all costs and benefits, categorised by affected group. • Clear identification of externalities and potential unintentional negative consequences. • It is recommended to use at least two different methodologies for measuring impacts (see Chapter 4).

Example: potential high-impact regulatory amendment

In the event that there is no methodology to categorise the impacts of the regulation, it is recommended to include a justification of the proportionality of the RIA. Although this form may be less precise, it is a valid approach. The first step is dictated by the purpose of the regulatory project. That is, if the proposed regulation seeks to modify one of the main Sunass regulations, described above, there is a greater probability of having high impacts. Then, it is recommended to identify in a general way the different ways in which all the groups involved can be affected. If multiple groups are affected in different and relevant ways, a more complete cost-benefit analysis is recommended.

As an example, the *Reglamento de Calidad de la Prestación de los Servicios de Saneamiento* [regulations on the quality of sanitation services provision] defines the conditions under which SPC should provide home access services in Peru.

> *Article 6 – Mandatory character for providing access to services*
>
> *6.2. The service provider company can deny the access if the Applicant, to the date of the submission of the Request of Access to Sanitation Services, has an enforceable debt with the service provider company for the services of sanitation, collateral services, or debt derived from an illegal connection. This provision is also applied if the property already has a household connection, with pending debts, and which requests an additional connection.*

At least two important groups involved in the article, users and SPC, can be preliminarily identified. More importantly, any change in the obligation to provide access to sanitation services implies profound impacts for these groups. For example, reducing the assumptions in which SPC can deny users access means a reduction in barriers for household users. This in turn means all sorts of direct and indirect benefits for household users in the form of health and income, among others. However, this can create problems for SPC and the industry in general. In some cases, not having the right assumptions to deny access can lead to perverse incentives and high financial costs. For this reason, a proper balance must be reached through a cost-benefit analysis.

Recommendation 2: RIAs must be designed by considering two independent processes: preparation and oversight.

> *Recommendation 2.1: The preparation process of RIAs must be a collaboration among the technical directorates and the DPN.*

Currently, Sunass has a legislative preparation process certified by ISO (SUNASS, 2017[8]). DPN has an essential role in this process. In practice, it is in charge of preparing the projects so that they can later be filtered by the General Management and the Board of Directors. During the process, the DPN usually consults the technical directorates of Sunass to provide technical inputs to the normative project. Since the RIA is a tool that must fundamentally change the normative emission process, naturally there must be changes in the participation of the different Sunass offices.

Even if DPN can lead the preparation process of RIAs, the technical directorates must have an active role in the process. In chapter 2, there will be a detailed discussion of a specific proposal mapping the preparation process of RIAs and the cooperation required by the process within Sunass.

> *Recommendation 2.2 Sunass should form a review committee, with independent members from the development process.*

The RIA process within Sunass must have a supervision stage. The purpose of this stage is to assess the RIA quality, as well as the reliability of its outcomes and evidence. Generally, regulatory systems at the international level have an agency or office that is independent of the ministries that develop the RIA. These offices receive RIAs and assess, publish, and manage the outcomes. As part of their powers, they review RIAs to dictate their approval. However, the independent governance of Sunass demands the

self-supervision of RIAs. Both, the preparation, and supervision must be performed by Sunass. To achieve the certainty of having an adequate supervision, self-supervision must have two principles: independence on the legislative preparation process and enough power to reject a RIA. Hence, OECD recommends the creation of a Supervisory Committee of RIAs (CSA, for its Spanish acronym). The constitution of the committee must be by different directorates. This will enrich the analysis for having different points of view and specialties.

Table 2.2. Proposal for the constitution of the Supervisory Board of RIAs

	Reasoning
Board of directors	The Board of Directors is the ultimate authority of Sunass. Its engagement on the oversight of RIAs will ensure the necessary political commitment for the system to be integrated by the different directorates. Furthermore, it will be a counterweight if a RIA does not fulfill the required quality standards.
General Management	The General Management has a better vision of the everyday operations. This allows it to understand the biggest challenges of the industry, and the feasibility of Sunass to implement the legislative proposals.
Legal Counsel Office (OAJ)	The OAJ has a cross-wised view of the operations and powers of Sunass. It also has more visibility on how a regulation takes part of Sunass within a broader context of the regulation of the Peruvian central government.

Powers:

- **Approve/reject RIAs**: In a more general way, the CSA must have the authority to approve a RIA in order for the regulatory project to be published. Similarly, the CSA must also have the authority to reject a RIA when it deems it necessary. This may include situations where the overall costs of a regulation are prohibitive, when the RIA reveals that the project is too complicated to be implemented or monitored.
- **Request reviews:** If the CSA has noncompliance due to deficiencies in the analysis or the submission of the RIA information, it should have the authority to request a review from the bodies involved in the preparation.
- **Decide on exceptions:** All legislative projects the directorates consider necessary to conduct a RIA must be notified to CSA. CSA must provide its approval.
- **Approve high-/low-impact RIAs:** CSA must say if the RIA applicable to the legislative project must have a more detailed and specific analysis. This always has to be accompanied with the logic of proportionality.

Recommendation 3: Tariff studies must be integrated in a differentiated manner in the RIA process.

Tariff regulation is perhaps the regulatory instrument with the greatest impact administered by Sunass. By authorising tariffs, Sunass indirectly regulates the consumption behavior of the population, but also the business models and the financial viability of Service Provider Companies (SPC). The General Rules of Tariffs Regulation (RGRT) of Sunass frames the process and requirements for the studies that are part of the tariff definition, and the Optimized Master Plans (OMP). The regulation increases certainty and serves as a standardisation mechanism for tariff studies.

The RGRT makes explicit the principles governing the tariff regulations of Sunass: economic efficiency, financial feasibility, social equality, simplicity, transparency, and no discrimination. As mentioned above, some of these principles compete naturally. The prioritisation of criteria is also not uniform in all regions of Peru. Since the needs and demands of the population vary depending on the particular context. RIA is a tool that can precisely help solve this problem of optimising priorities. Currently, the regulation foresees the elements of the tariff estimation study. In an accurate manner, Sunass presents an analysis of the supply and demand, financial, operational, and capital situation of SPC. Tariff estimation studies also include a section on the impact of tariffs. The tariff estimation study of Emapa Huaral in November 2019 shows the tariff increase depending on the sector: social, commercial, industrial, and state. The domestic

sector is divided by low-medium low and medium-high consumption. An analysis relating impact as percentage of income and expenditure segmented by socio-economic decile of the population is included (SUNASS, 2019[9]). In the corresponding RIA, Sunass may assess these estimations.

The rationale of including the tariff estimation study as part of the RIA is to strengthen the impact assessment of tariff proposals. This leads to weighing different options of tariffs, performing a sensitivity analysis, analysing indirect impacts, and expanding the impact assessment to different stakeholders. This recommendation does not imply changing the process or requirements of the tariff estimation studies. DRT must continue with its defined process, which includes public audiences. It is also not recommended that the whole tariff estimation study is subject to RIA. In addition to the long content, there is information that would not necessarily benefit from going through the regulatory impact assessment. However, the tariff estimation study can include a broader section of impacts, which independently follows the RIA system process.

Notes

[1] For purposes of this report, the terms *regulation, legislative project, regulatory instrument, rule,* etc. are used indistinctly. Overall, all these terms refer to the judicial instrument issued by Sunass creating liabilities for any party. This may change from use of equipment, technical requirements, delivery of information, etc.

[2] By the time of the preparation of the report herein, the PCM is performing an intergovernmental consultation of the regulation to implement RIA.

[3] The terms of Regulatory Impact Evaluation and Regulatory Impact Assessment are considered interchangeable. Throughout the report the term Regulatory Impact Assessment is used for ensuring the consistency with the international use.

[4] Chapter 5 analyses the practices and lessons obtained from Peruvian regulators by the implementation of RIAs.

[5] Resolution of the Board of Directors No. 009-2007-SUNASS-CD.

[6] Chapter 2 presents a proposal for the preparation process.

[7] Chapter 3 presents a proposal for the technical guidelines for the RIA's elements.

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3 Implementing RIA at Sunass

This chapter exposes specific topics to implement the RIA system at Sunass. The chapter describes the elements necessary to implement RIA: the design of legal reforms necessary for RIA; the material needed to carry out RIA; staff training; the development of technological tools; pilot testing; and communications campaign. The second part of the chapter shows a proposal for performing both the preparation and oversight of the RIA.

Elements of implementation

Recommendation 4. Sunass must conduct a progressive implementation, by stating clearly what is implicated for the different elements of RIA.

RIA systems must be in a constant status of reform, thus being benefitted from potential improvements and a higher specialisation through the time. Planning a gradual implementation with a progressive advance will help to ensure an adequate transition and a higher efficiency of resources. This is part of the principles recommended by OECD in a recent report on best practices on RIA (OECD, 2020[1]). Having a specific implementation plan will allow Sunass to communicate clearly the progress of tasks for the different internal directorates, thus preventing potential uncertainties. Furthermore, to have a foreseeable timeline will allow a better accountability for the implementation.

Having a gradual implementation also means that the RIA staff must show a learning curve of the elements of the technical analysis of RIAs. In addition to benefit the internal organisation of Sunass, having well-defined elements will allow Sunass socialising the implementation process of the RIA with the regulated bodies and users of sanitation services. Every good regulation must be predictable to avoid uncertainties, and at the same time, this Sunass' new form for issuing and amending regulations, must be transparent. The indispensable elements for implementing the RIA system are shown below.

Element 1. Design and implementation of the legal framework of the RIA

The first step is to possess a legal framework creating obligations and incentives necessary for performing RIAs systematically. The legal technique option optimising the efficiency on process, clarity on attributions, and adequate incentives must be considered for the best possible preparation of RIA. This implies reforms including at least the following:

- Definition of RIA and assumptions that make mandatory its conduction.
- Definition of responsibility of the different areas involved in the preparation of the RIA.
- Definition of the members of the Supervisory Board of RIA, their powers and responsibilities.

Element 2. Approval of the material necessary for preparing RIA

To systematize the RIA quality, Sunass must have material standardising the reference and the preparation materials. Therefore, Sunass must develop and approve the following materials:

- Approval of technical guidelines for preparing the RIA. (Work for adapting and approving Chapter 4. Technical elements for preparing the RIA).
- RIA Reporting Form.
- Prior guideline report form for consultation.
- Reporting Form for notifying the outcomes of the public consultation.

Element 3. Staff training

To ensure that Sunass conducts RIA properly, a technical training for the staff must be performed continuously:

- Introduction to the RIA system: presentation of the elements of analysis and of the role of the *ex ante* assessment within the regulation issuance process. The training workshop by the OECD was held on 3 and 12 November 2020.

- Once officers are familiar with the RIA system, Sunass must ensure a continuous training about the more technical elements. For such purpose, it is recommended to add specific training courses to annual working plans of Sunass.

Element 4. Design and development of technological tools necessary to make the RIA process more efficient

OECD recommends the RIA systems to be subject to better regulation tools. The more efficient and transparent the RIA is, it will provide higher benefits for the quality of the regulation. In this sense, Sunass must ensure that the RIA management has the necessary tools for collaborating among the different directorates and with the public at large. In real terms, this raises the need for developing digital platforms to ensure the greatest efficiency. In principle, Sunass must develop two digital processes for RIA:

- Digital platform for interchanging information among the Sunass' directorates.
- Interactive platform, within the Sunass web page, for publishing RIA projects and receiving comments on the consultation stage.
    - The following elements must be published at least in the platform: RIA elements, outcomes of the public consultation, CSA approval for the RIA's exceptions.

Element 5. Development of RIA

- Preparation of pilot testing for the development of RIA.
- Once the Sunass completes pilot testing, the RIA must be performed selectively. It is recommended that Sunass chooses regulatory instruments of distinct nature. This will allow Sunass to know the challenges implied by the conduction of RIA in different types of legislative projects. It is also recommended to start introducing RIA elements for a limited number of tariff estimation studies.
- Once the capacity needed for the application of the RIA for all regulations demanded by the RIA regulations is created.
- Impact assessment:
    - Start efforts, mainly qualitative, to detail costs and benefits. It is recommended to start exploring categories of externalities and non-monetary costs.
    - More use of data and statistics for quantifying costs. Usage of higher complexity statistical methodologies. Sunass can start by establishing the database and indicators for performing more detailed analysis.

Element 6. Information and socialisation campaign with stakeholders and other instances of the Peruvian government.

A sound information campaign is essential for a successful adoption of RIA. To the extent that stakeholders understand the advantages and the process of the RIA, the engagement on consultations and the demand of a high-quality system will increase. Thus, Sunass must prepare the communication materials presenting information about the following:

- Summary with overall information of the RIA's purpose, its elements, and the preparation process.
- Time, elements, and tools for conducting the public consultation of the legislative project and the RIA.
- Objective and schedule for early consultation.

Preparation and oversight process of RIA at Sunass

Recommendation 5: Sunass must establish a clear process for preparing the RIA, defining the engagement of the different internal directorates.

The RIA implementation must imply a change to the legislation issuance process. This means that the RIA must not be a completion of a final form for creating a legislative project. The RIA starts even before having a legislative regulation. This section describes a proposal for conducting the RIA within a project of a legislative issuance. The process is divided in three stages: identification of a regulatory need, preparation process of RIA, and ultimately the public consultation of the RIA and the legislative project.

Identification of a regulatory need

The first step in designing a new regulatory project is to have tools to identify a public policy problem. Sunass can define structured processes to be aware of policy problems on an ongoing basis. Some examples of tools include the following:

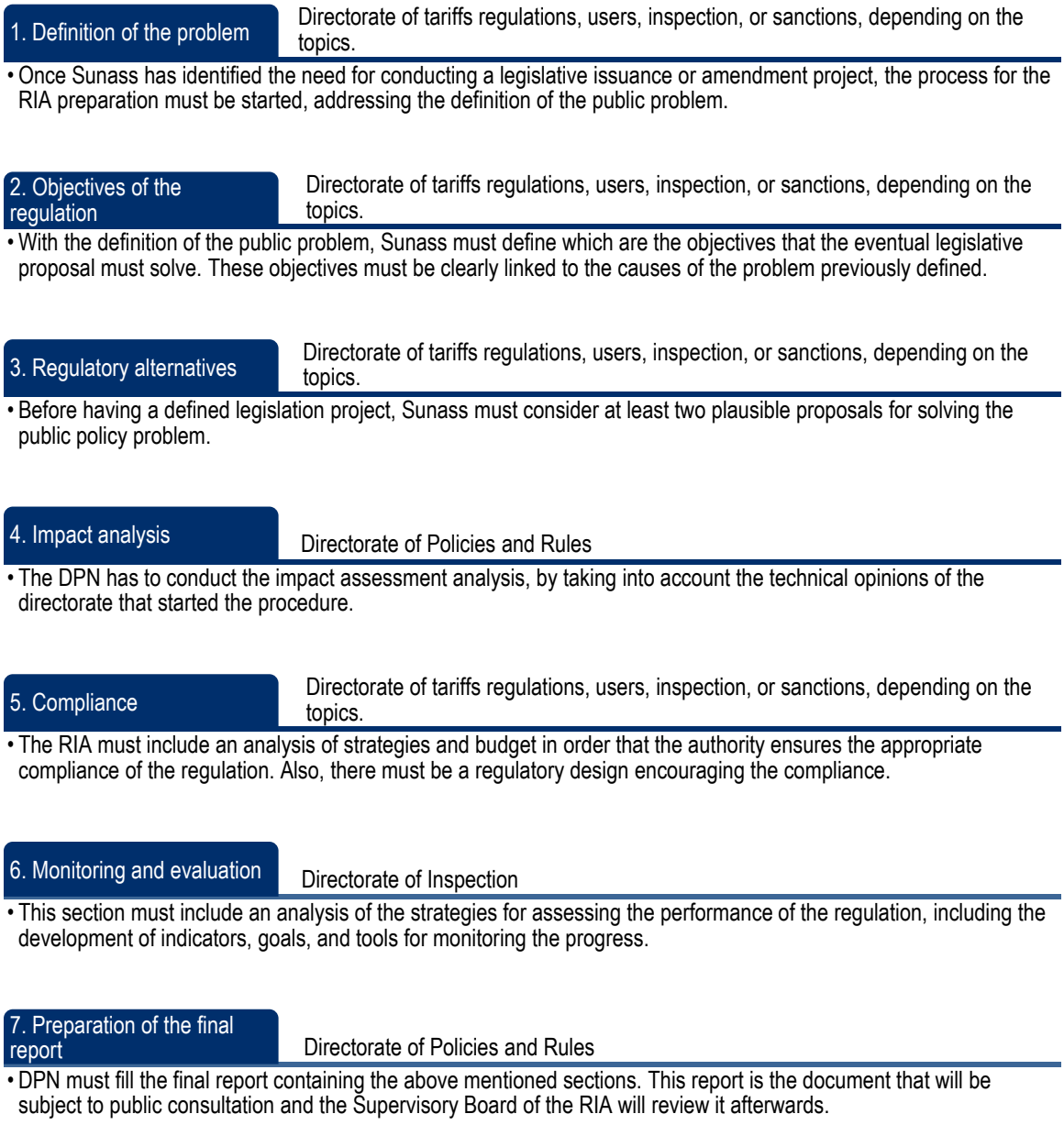
- Early consultation allows Sunass to understand problems from the point of view of users, the regulated industry, experts or even other government agencies. This helps to improve policy design by having a broader context of public problems. These consultations can be periodic and do not necessarily address a specific issue. Early consultation would be carried out by the Directorate of Users. This directorate has experience in implementing stakeholder participation tools, such as users' councils (Chapter 4 provides a detailed explanation of consultation tools and mechanisms).
- Legislative changes derived from legislative reforms coming from the Congress.
- Amendments from the Executive Branch obliging changes in the regulations of Sunass.
- Identification of problems by Sunass.

Preparation of RIA

Once a policy problem has been identified, the process of developing the RIA begins, with the definition of the problem.[1] This, as well as the next step of defining the objective of the regulation, must be carried out by the directorates of tariff regulation, users, supervision or sanctions, depending on the subject. These are the ones that deal with the technical problems of regulation and have the closest approach to the issues.

Once these two elements are written, a stage of collaboration between the DPN and the technical areas begins. The process outlined in Figure 3.1 suggests a sequence of steps for developing the RIA. This includes writing the proposal, as the DPN already does, identifying alternatives, conducting a cost-benefit analysis, and identifying the selected proposal. Given the profile of the NPD staff, this directorate should lead the development of the cost-benefit analysis. By collaborating with the technical directorates, it will have greater input to carry out a high-quality evaluation. This is followed by the development of a monitoring and evaluation plan for the normative proposal. In this stage it is recommended that the Directorate of Control participate. In this way, the DPN will have greater visibility of the challenges to monitor the new normative projects.

Figure 3.1. Preparation process of RIA



Recommendation 6: The public consultation should be transparent, accessible and should inform about the legislative projects.

Once the RIA project is in place, Sunass should publish it to receive comments from stakeholders. The minimum required includes publication of the draft regulations and the RIA on the Sunass website. However, the specific context of each regulation must be considered. There are instances of regions or parties affected or benefitted with scarce access to Internet, where Sunass must use other instruments for public consultation to ensure that all the affected parties have the chance of expressing their opinions.

Once Sunass responds to the comments and, if necessary, edits the RIA, it passes for the oversight process.

Recommendation 7: Sunass must have an oversight process where the outcomes of the RIA are assessed in a diligent manner.

CSA should be involved in two stages of the RIA process: Before its preparation for authorising the exceptions of RIA, or if applicable, reject them and after the preparation, to assess the RIA quality. Before starting a RIA (or proceeding with a legislative project without a RIA), CSA must approve the type of RIA or its exception. For such purpose, DPN must write the grounds, either for the conduction of a low-impact RIA or to request an exception. Once CSA approves the type of RIA, the preparation process must begin.

After the preparation, CSA must start the process of dictating the RIA. CAR must decide if the RIA is approved and the legislative issuance continues, or on the contrary, if the RIA is rejected with the possibility of edition or if the analysis clarifies that the legislative project is not justifiable. For performing an assessment, it is recommended to consider at least the three following elements:

- RIA quality: Check that each element is presented clearly. There is a clear and direct link between the public policy problem and the legislative proposal.
- Assessment of costs and benefits: The relevant costs and benefits are assessed in a clear and detailed manner. The benefits outweigh the costs, and justify the implementation of the regulation.

Note

[1] Chapter 4 presents the elements in a comprehensive manner. A proposal for defining the preparation process is presented in this section.

Reference

OECD (2020), *Regulatory Impact Assessment*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, Paris, https://dx.doi.org/10.1787/7a9638cb-en. [1]

4 Guidelines for Performing RIA

This chapter shows the technical guidelines for developing specific elements which conform the RIA. In real terms, it is the preparation manual. Thus, the methodologies for developing the following elements are presented: public consultation and engagement of stakeholders; definition of the problem; purpose of the regulation; description of the proposal; identification of alternatives; cost-benefit analysis; identification of the solution chosen; preparation for the framework of implementation and assessment.

The RIA is a mechanism that allows the systematisation of critical evaluation elements for the elaboration of legislative projects, either with a new preparation or an amendment. There are certain elements that define the stages of RIAs and that must be addressed during the elaboration process to ensure the highest possible regulatory quality. Although these elements may vary according to the country, in general, most of them address the following elements considered by the Australian government (Commonwealth of Australia, 2020[1]).:

- Which is the issue intended to be solved?
- Why the government intervention is needed?
- Which political options have been considered?
- Which is the potential net benefit of every option?
- How was the public consultation carried out and how was it integrated to insights?
- Which is the best option of those considered?
- How will the implementation and assessment of the selected option be conducted?

Questions are directly related to the analytical elements of the proposed technical guidelines for their implementation at Sunass. These must be fulfilled in the intended order, since the content of each stage informs accumulatively the subsequent ones.

The process must start with a broad definition of the problem, the objectives and the possible solutions, and then limit them. The European Commission (European Commission, 2017[2]) recommends taking into account the following considerations before starting the RIA:

- When deciding on the focus and depth of the RIA, the analysis should focus on what is relevant to inform decision-making, leaving out what is not.
- The most appropriate methods for data collection and consequence analysis should be determined. When necessary, external studies can be contracted to provide input on specific elements, although, to the extent possible, it is recommended that these are conducted by the internal areas of Sunass.
- A public consultation strategy must be designed, by acknowledging the need for consulting on all the key issues related with the RIA. The conclusions of the RIA report outcomes must be supported with the analysis of comments from stakeholders and the rationale when significant differences exist. The outcome matrix summarizing the consultation of stakeholders must be integrated in the final RIA report, as a mandatory annex.
- Throughout the RIA, conclusions reached by Sunass should be supported with evidence (e.g., data, estimates, scientific findings) along with appropriate citations and, if this is not possible, should explain why. Sunass should also consider referencing stakeholder comments.

The guide will then present recommendations for carrying out the elements that are part of the development of the RIA.

Element 1. Public consultation and stakeholder participation

The involvement of stakeholders in the process of creating regulation is one of the fundamental elements of any regulatory quality process, particularly of RIA, as it improves the transparency, accountability, efficiency and effectiveness of regulatory decisions. Therefore, it is important to define the timing, form and scope of public consultation in the regulation-making process.

There is no specific model for conducting consultation since several factors depending on the legislative proposal intended to implement must be considered. Not all the public consultation processes must be

carried out in the same manner, this process must be fitted for each case, since each one has its specific elements requiring comments from stakeholders at the different points of the process.

This section develops the overall guidelines recommended by OECD to Sunass for implementing the public consultation processes with stakeholders. However, it is important to consider that throughout the consultation process, the following general principles must be observed:

- **Stakeholder participation:** Adopt an inclusive approach that allows for the widest possible consultation, ensuring the involvement of all sectors interested in or affected by the regulatory proposal.
- **Transparency and responsibility**: Make the parties involved aware of the public consultation process, as well as the available means for their participation and the impact of their involvement in the regulation development.
- **Effectiveness**: Perform a public consultation at some point in the regulation development process where the insights of the involved parties can influence the regulation, by respecting the proportionality criteria and the specific restrictions for each case.
- **Coherence**: Warrant the consistency of the consultation process, as well as the evaluation, review, and quality control.
- **Efficiency**: Develop the necessary tools to carry out a resource-efficient consultation which allows a higher participation of the stakeholders.

There are two moments in which Sunass can carry out the public consultation process: before having a regulatory proposal and once the process of elaborating the regulation has been initiated. That is, carry out an early public consultation and a second public consultation once Sunass has a defined legislative project.

Early public consultation process

Conducting an early consultation will allow Sunass to obtain information that will allow the identification of public policy problems and more technical information for the development of new legislative projects. For such purpose, it is recommended to carry out public consultation processes on a regular basis with the main stakeholders. In order to achieve more effective consultations, it is recommended that Sunass publishes advance agendas with specific topics, so that stakeholders can prepare as much information as possible.

Once a potential public policy issue is noticed, it is convenient to perform a focused public consultation, addressing the specific topic and a first group of affected parties, who can provide better information. This stage is prior to the design and presentation of the legislative proposal.

Early consultation should take place before identifying the need to regulate, at the stage where the problem is still being identified, so that it helps to determine whether Sunass intervention is really necessary. Early public consultation allows obtaining information and evidence on the identified problem. It also helps to define if the intervention of the regulator is necessary through regulation and not through other mechanisms.

European Commission proposes methods for executing early consultations with stakeholders. Table 4.1 gives an example of these methods and tools for public consultation.

Table 4.1. Examples of methods and tools for public consultation

Method	Description
Focus group	Discussion group of people with similar background or experience focused to a specific topic of their interest.
Conferences, public hearings, events with groups of interest	Form of direct interaction with a great number of stakeholders where different information is collected.
Meetings, workshops, and seminars	Way of direct interaction with a limited number of stakeholders where specific information is collected.
Interviews	Tool for data collection in a format of a deep conversation with one or several subjects.
Questionnaires	Tool for collecting information, usually in written, which can be used in any method of consultation, which must be adapted to the purpose of the consultation and to the group intended to be consulted.

Source: Adapted from (European Commission, n.d.[3]). Better regulation: guidelines and toolbox. *Stakeholder consultation* https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how/better-regulation-guidelines-and-toolbox_en.

Public consultation during the preparation process of the regulation

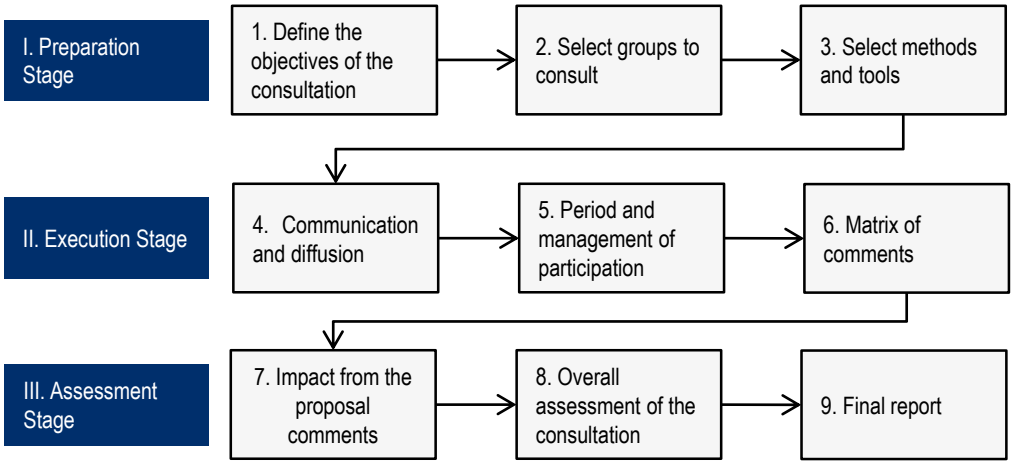
Once Sunass decides undertaking a project for issuing or amending a legislative project, it must submit the proposal to an open and transparent public consultation process. This, with the purpose of obtaining information contributing to the improvement of the legislative project.

It is important for Sunass to take into consideration that the public consultation process is not an element that is carried out only once per regulatory proposal, but that it may have to be carried out on more than one occasion during the entire life cycle of the regulatory proposal, according to the existing needs in each case and depending on the type of information sought. Thus, the same project may require a public consultation process both in its preliminary stage when a possible problem is hardly noticed and in the preparation process itself. Such decision must be adopted by those responsible for the legislative proposal. Performing public consultations will also help the regulated parties to understand the legislative projects and to have the enough time and elements to implement any change demanded by the regulation.

Public consultation elements

Public consultations must have an appropriate design. OECD recommends dividing the consultation in three stages, described at Figure 4.1.

Figure 4.1. Stages of public consultation



I. Preparation stage of the public consultation

The preparation stage of the public consultation is the baseline for developing the consultation. This stage sets the basic elements to be used throughout the public consultation process. However, this does not limit Sunass to be able to modify these elements during the subsequent stages of the process, once there is more information. In the preparation stage, it is recommended that Sunass prepares a guidance document for the consultation. Going beyond just presenting a legislative project will help the population to really understand what is intended, and Sunass will be able to have more productive discussions. The guidance document must be adapted depending on the stakeholders engaged in the consultation. This can range from very basic information to preparation of technical documents.

For the preparation stage, it is necessary:

1. To define the objective

This implies clearly setting the elements that Sunass seeks to achieve with the consultation (data, facts, technical information, opinions, and points of view, etc.). For such purpose, for early consultation, the current context and magnitude of the problem being presented must be considered; while in the case of consultation during the process, the current context, scope, expectations and impact of the initiative, as well as the timing of the consultation, must be taken into consideration.

2. Selection of stakeholders

Having clearly defined the objective of the consultation, as well as the moment in the regulatory cycle when it will take place, the stakeholders that may be consulted must be determined.

The more adequate is this selection, the higher success the consultation will have. However, a listing of the potential stakeholders will be presented below:

- Subjects affected by the potential problem in the case of early consultation, or by the regulation in the case of consultation during the process
- Subjects obliged to implement the regulation
- Subjects with a declared interest on the regulation

In the case of early consultation, it is essential to identify the subjects obliged to implement the public policy response, since they are the ones who will be able to contribute more to determine the existence and magnitude of the problem. Identifying specific groups will help Sunass to obtain valuable information for the development of the regulation. However, once Sunass has a legislative project, the consultation should include the publication of the RIA and regulatory project on its website, open to any person interested in submitting comments.

In the case of consultation during the process, to help identify the level of influence and participation of stakeholders, the European Commission generated a list of questions to help identify stakeholders for each regulatory project. Table 4.2 shows a guideline of questions to determine the stakeholders.

Table 4.2. Guideline for identifying the characteristics of stakeholders

Question 1: Who is directly affected with the proposed regulation?
What lives would be changed as a result of the implementation of the regulation?
Who cannot easily take action to avoid being affected by the regulation?
Who will change their behavior as a result of the regulation?
Question 2: Who is indirectly affected by the proposed regulation?
What lives would be changed as a result of the implementation of the regulation?
Who would result benefited or affected due to the changes created by the proposed regulation?

Question 3: Who would be potentially affected by the proposed regulation?
In certain circumstances, who will have a different experience as consequence of the adopted decision? Are there groups or individuals who will have to adapt their behavior if certain conditions are applied?
Question 4: What support is needed to make the regulation work?
Are there vital individuals or groups in the supply chain? Who has the possibility of preventing the implementation unless they collaborate? Who can understand the potential impact that the regulation will have on stakeholders?
Question 5: Who is considered to know about the topic to be regulated?
Who has conducted studies on the topic to be regulated and published opinions regarding it? Who has knowledge that must be shared/understood by those applying the regulation? Are there individuals or groups that will be considered as experts on the subject to be regulated?
Question 6: Who would show interest on the subject to be regulated?
Are there individuals or organisations considered interested on the topic to be regulated? Has someone been performing campaigns on the topic to be regulated? Is anyone publishing or expressing an opinion (in the media) on the issue to be regulated?

Source: Adapted from (Comisión Europea, n.d.[4]). Better Regulation Toolbox.

3. Selection of methods and tools

The third element of the preparation stage of the public consultation is the selection of the method and tools for public consultation. There is a great diversity of methods and tools that can be used for public consultation, therefore, the objectives intended to be reached with the consultation must be considered in order to be able to select the most adequate. Table 4.3 describes the types of consultation performed by Australia, depending on the characteristics of each legislative project.

Table 4.3. Public consultation methods in Australia

Type of consultation	When is it appropriate?	Forms of consultation
Complete public consultation *	1. When transparency and public accountability in decision making are the priority. 2. When the integrity of the decision-making process is not compromised by the early public screening.	• Public meetings • Calls for proposals • Sector or industry meetings • Direct communication with the affected parties. • Advertising and media campaigns • Social networks
Focused consultation	1. When the group of affected parties is small or well-defined in a geographic area or business sector. 2. When the consultation can be contained for preventing wasting resources by calling parties which are not affected.	• Meetings in person, phone calls, or *knocking on doors* of the affected parties. • Other ways of direct communication with the affected parties. • Effort of diffusion on social media. • Direct public participation of direct groups of representation.
Confidential consultation	1. When the sensitivity of the problem requires measuring the feelings of the public or reporting to the affected parties in a discrete manner without raising public concern.	• Close consultation with opinion leaders or representative bodies. • Quantitative research of the overall points of view and potential responses of the affected bodies or areas where two-way dialogue is not sought. • Alternative consultation forms must be used for the transition during the implementation.
Consultation after the decision	1. When the market is highly sensitive to the decision and some may gain an unfair advantage by being consulted 2.When a problem has already attracted a significant audience and there is a prolonged debate and consultation is not useful for the	• OBRP must approve this type of consultation before its execution. • The consultation may take any form of the above, but it takes place after the public policy decision has been made. • The consultation seeks dialogue with the

	purpose of public policy 3. When open public consultation could compromise the confidentiality of cabinet deliberations or good decision-making.	affected parties about the transition and implementation. • If the consultation results in significant changes, the proposal must be returned to decision makers for more considerations.

* Complete public consultation is the predefined option.
Source: Adapted from (Commonwealth of Australia, 2020[1]), The Australian Government Guide to Regulatory Impact Analysis, www.pmc.gov.au/regulation.

Once the type of consultation to be carried out is defined, Sunass must specify the best means to conduct the public consultation. It is important to consider the access to different means for stakeholders; each public consultation process must choose the appropriate means for its conduction. For instance, it is not adequate to choose a virtual media for a public consultation which will be conducted in a community with scarce access to electronic media. The means of conducting the consultation can be decisive for the final outcome of the public consultation process.

Considering the means to be able to participate, the consultation can be:

- Virtual: Through any electronic communication media.
- Physical: The person must be physically at the time of the consultation.
- Written: Every interaction between the regulator and stakeholders is in written.
- Considering the way in which comments can be issued, the participation can be as follows:
- Written: Responses or opinions are made through any written media.
- Orally: The participation and comments are done verbally.

Due to the number of tools that can be used for performing the consultation process, it is important to consider the following conditions to choose the correct tool: i) proportionality; ii) the extent of interaction needed with stakeholders (written consultations vs. events with stakeholders, online discussion forums, or other Internet-based tools); iii) accessibility considerations (language used, participation of people with disabilities, etc.), and; iv) time requirements.

Considering the current regulations applicable to Sunass, the tools can be:

- Public notice for comments, for written comments.
- Public audience for verbal comments.

The following tools may also be considered:

- Informal consultation: This type of consultation is intended to initiate contact with stakeholders. It can be carried out in different ways: telephone calls, written communications, informal meetings, and at any time during the process of designing and drafting the regulation. Favorable aspects of this tool are the speed of its execution and the variety of interests of the participants. However, considering that it would be the regulator who defines the groups called for this type of consultation, there is a risk of lack of transparency and possible lack of impartiality. This tool could be used during or before the process of developing the regulation.
- Circulation of the work document or the legislative proposal for comments: It is a tool that does not generate higher costs and allows to receive information on the subject matter consulted. It is flexible in terms of time, scope and forms of response. The circulation of the working document or proposal is carried out in a systematic and structured manner and is carried out in view of what establishes some mandatory regulation. It can be used at any stage of the regulatory process, but it is more common in cases where an elaborate proposal is available. Difficulties in using this tool focus on discretion in determining who will share the working document or proposed regulations.

Although the most important groups will be considered, there is the risk that the less organised sectors are not included.

- Public notice for comments: This option is more open and inclusive than the circulation process for comments, and usually is more formal and structured. In this event, all stakeholders have the chance of knowing the work document and the legislative proposal and of stating their opinions.
- Public hearings: This is a meeting where stakeholders can comment on the working document (in case of early consultation) or the regulatory proposal (in case of consultation during the process) in person, facilitating the dialogue. During these meetings, the regulator may be able to clarify some points, ask questions and gain a better understanding of the positions of the groups involved. There is a possibility that those responsible for addressing the public policy problem will ask the stakeholders to submit information and data. This tool usually is not used in an independent manner, on the contrary, it is applied as a complement to other consultation procedures. This, due to the fact that the presence of diverse groups can complicate the discussion and, consequently, there are sectors that are unable to express their position, so it is suggested to seek options to compensate this deficiency.
- Advisory bodies: These are also called committees, commissions or working groups. They are characterised by being in charge of a defined task within the public policy process, such as providing expertise or encouraging consensus among the parties involved. Depending on their status, authority, and position in the public policy process, they can influence decision-making or act as a source of information. Advisory bodies are involved in all stages of the regulatory development process, but it is more common in the initial stage to assist in defining positions and providing alternatives.

II. Execution stage of the consultation.

The second stage of the public consultation process is the execution process of the consultation. This stage includes the spread of the public consultation process, the reception of comments, and the development of the matrix of comments.

Once Sunass has defined the tools, methods, and target population to carry out the consultation, the execution stage must start. Thus, the following stages must be considered:

4. Communication and diffusion plan of the public consultation

The design of the communication and diffusion strategy of the public consultation process is essential for ensuring a high level of participation. The communication plan should facilitate the involvement of as many stakeholders as possible, so it is important to consider the following:

- The characteristics of the stakeholders to whom the consultation will be directed, in order to determine the ideal means of communication and dissemination in each case.
- The incorporation of several communication channels: e-mail, letters, press, social media, web pages, etc.
- The consideration for sending individual communications to stakeholders, notifying the onset of the public consultation process. In the case of early consultation, sharing with them the problems identified and, in the case of consultation during the process, the proposal to be analyzed. This is to provide them with the basic information to participate in an efficient way.
- The use of common language for citizens will allow a higher engagement, as long as the consultation is not addressed to technical groups, where it is recommended to use specialised language.

- If the work document is addressed to several stakeholders, it is important to consider having a complete and a short version of the same, that could be easily readable and understandable for all the participants of the consultation.

5. Deadline and treatment of the comments received

For early consultation, the deadline for receiving comments will depend on the type of consultation, tool and groups consulted to which the consultation is defined to be directed. Sunass should ensure that the actors consulted have sufficient time to analyze the information provided to them, as well as to provide feedback. For consultation during the process, the deadline for stakeholders to submit their comments must be at least 30 days, counting from the pre-publication in the official newspaper El Peruano, from the publication of the regulatory project on the Sunass website or, if applicable, from the date that Sunass establishes.

To establish a standardised procedure for the treatment of comments received, it is important to consider the ways in which the information in Table 4.4 is received:

Table 4.4. Mechanisms for receiving public comments

Written via	Through a document filed formally by the intake desk of Sunass
Virtual via	Through electronic media dedicated for this purpose (e-mail, institutional web page, social media, etc.)
Oral via	Through activities in person (public hearings, meetings, workshops, conferences, etc.). In this event, it is recommended to create a registry (audio and video preferably) to clearly identify the interventions from participants, who must receive the chance to provide more evidence supporting their comments.

Sunass can establish a standardised format for the reception of the comments, in order to adequately address all comments received.

Finally, during the time established for the consultation it is important to designate a person as responsible for providing the required clarifications and attending to the doubts sent by the participants of the consultation. This person must attend, within an established period of time, in a precise and simple way the communications received. This will contribute to the transparency of this process, generating confidence in the participants.

6. Preparation of the matrix of comments

The consultation process is not only about receiving comments from stakeholders, but Sunass must give a response to all comments received. This does not imply that all comments received should be accepted; however, it does imply that all comments should be addressed by Sunass. In the case of early consultation, if they are addressed in a positive way, the regulator must signal the acceptance of the comment, and, in the case of public consultation during the process, it must also make the changes leading to the regulatory proposal. If it is in the negative sense, it must indicate the reason why the comment is not appropriate. This practice generates confidence and promotes certainty for the participants in the public consultation process.

A database with this information must be created, with a proposed form to manage systematically the information received, which will allow managing the comments during the period set for such purpose. It is suggested to have in mind the information of Table 4.5.

Table 4.5. Elements of the matrix of comments

Participant
Representative
Section, article, or topic to be discussed (the latter for ongoing consultation, when there is already a legislative proposal)
Comment, which must be written in a clear language allowing to understand the main ideas
Rationale supporting the participation or contribution submitted
Period for publishing the matrix of comments received
Comments with offensive, inadequate content, or undermining, in any way, the participants' rights in the process of the public consultation or those of third parties. Likewise, it is suggested to assess the adequacy of the attention and response to this type of comments.

III. Assessment stage of the consultation.

The objective of this last phase is to evaluate whether the public consultation process satisfactorily met the proposed objectives, as well as to determine the quality of the comments received and their impact on the public policy decision made by Sunass. This stage allows assessing the effectiveness of the consultation, the comments received, and the changes performed to the legislative proposal based on the latter. Thus, this stage is essential to strengthen the trust and certainty of Sunass stakeholders.

7. Assessment process of the comments received

For early consultation, an analysis of the comments received should be made in order to determine the existence of a problem, the magnitude of the problem, and the possible regulatory and non-regulatory alternatives to attack the identified problem.

For the consultation during the process, an analysis should be made to assess the impact of the comments on the regulatory proposal. This process will allow for a thorough evaluation of all comments received that are appropriate to address, as well as how they may affect the original legislative proposal. The analysis of comments received will be used for this evaluation.

The analysis of comments received leads those responsible for the regulatory proposal to review all comments received and determine the relevance of incorporating them into the proposal, according to the support provided by the participants of the consultation. Likewise, and in the event that no comments are received, they must also provide a response.

The period to carry out this analysis should be sufficient to address all comments and assess the relevance of modifying the regulatory project derived from them. After this period, the decision taken regarding the comments should be communicated to the participants. This communication may be personal or through a general publication through the web page.

The responsible bodies for the legislative proposal must be also those responsible for determining if the review of the comments will be as they are received or at the end of the established period. This will be done considering the different workloads that exist in the area responsible for the regulation and without compromising the time frame established for the analysis.

8. Assessment of the public consultation process

In order to make an optimal assessment of the fulfillment of the objectives set out in the consultation, Sunass must carry out a critical assessment. It is necessary that the responsible area performs a series of questions to define the effectiveness of the public consultation process. The assessment of the public consultation must be a qualitative process serving as a feedback to increase the effectiveness on future public consultations. Table 4.6. Feedback questions on the public consultation process

shows examples of questions that can help to assess the process of public consultation.

Table 4.6. Feedback questions on the public consultation process

Do the opinions received were as expected?
Was the method selected for consulting stakeholders effective?
Is it considered that there was a good acceptance by the consulted groups regarding the process of public consultation?
Were the methods selected to achieve the objectives adequate?
What were the advantages and disadvantages of the methods selected?
Did the level of participation of stakeholders meet the expectations?
Was the work plan established for the consultation clear? Was it respected? If not, why?
Was the information used throughout the process effective?
Was relevant information by stakeholders provided?
Was the information accessible, relevant, and provided in a common language easy to understand?
How were the opinions collected by the consulted parties used?

9. Final report

Once the analysis of comments received is completed, Sunass must prepare a final report. This report should contain elements that will allow stakeholders to consult information from the public consultation process more easily. The report is important because it promotes transparency of information and stakeholder certainty about the legislative process. The final report of the public consultation process is the tool that allows for a clear and concise history of the public consultation processes of the regulator's legislative proposals. The following points are the minimum elements that the final report of the public consultation process should contain:

- Preparation date
- Title of the Legislative project
- Description of the public consultation process
- Objectives of the public consultation
- Bodies and/or directorates responsible for the public consultation
- Description of the participants in the public consultation
- The responses of the government agency or institution to each of the comments received, specifying whether or not they were useful.
- Description in case the consultation has fed the legislative project or if it resulted in substantial changes to the selection of the legislative project.
- This report should be published in the institutional web site of Sunass and this will be communicated to the participants so that they can consult the status of their comments.

Box 4.1. Questions to Develop the Public Consultation

- Which are the objectives of the public consultation?
- Which type of public consultation must be carried out?
- Which group of stakeholders are essential for the process of public consultation?
- Is it necessary to carry out a confidential or targeted consultation?
- Have informal hearings been performed for addressing the topic? What relevant information was obtained from these hearings?
- Which are the adequate diffusion tools to carry out the public consultation?
- How much time is necessary to carry out an adequate consultation?
- Did the original proposal was changed derived from the public consultation?
- Were all the comments received during the consultation period responded?

Element 2: Problem definition

Problem definition is the first step in the RIA development process. Its importance lies in the fact that a good problem definition determines the direction and quality of the result of the RIA, since it is the basis for all the other elements of the process. If the problem is not properly defined, the regulatory proposal may not mitigate or satisfactorily resolve the public policy problem.

If Sunass has conducted an early public consultation, this interaction with stakeholders can provide the inputs to develop the approach of the public policy problem. The public consultation process is a valuable tool to obtain insights and information from stakeholders, which is essential to properly define the public policy problem. However, Sunass must be careful in taking these comments to ensure an objective analysis to evaluate the issue at hand.

Additionally, Sunass must consider a collaborative process among the internal directorates, including those decentralised offices, in the stage of the definition of the issue. Having as much information as possible is essential for the preparation of a legislative project, and in most cases, the decentralised offices have the greatest interaction with users and service providers in regions outside Lima.

In order to define the problem adequately, Sunass must carry out a categorisation of the elements that must be included in the problem definition: **delimitation, causes-effects,** and **magnitude**.

Delimitation

The first element to properly categorise the public policy problem is the delimitation of the problem. The delimitation must address a first context of the perceived problem. In this phase, certain aspects of the problem must be defined; one aspect is the concrete definition of the problem, where the question "why is it problematic?" Although it may sometimes seem intuitive, an exercise of explicit definition must be carried out in order to lay concrete foundations for the rest of the RIA. Another aspect that should be considered in the delimitation is to define if there are related problems in order to have a complete perspective of the situation. Finally, in the delimitation, Sunass must establish a base line of estimation of the problem. This will serve both to establish the objectives and to achieve a measurement of the evaluation of the regulatory proposal.

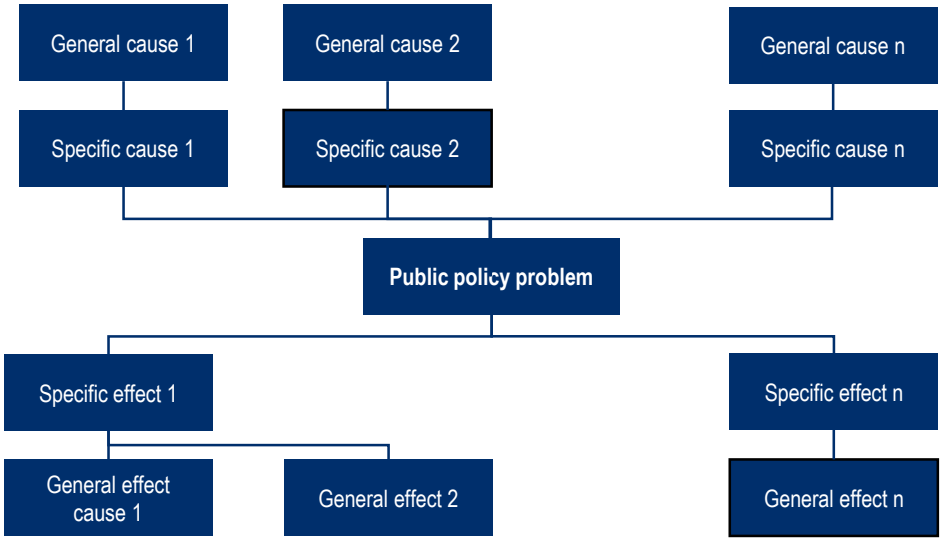
Causes and effects

It is recommended that a standard logical framework methodology be established to define the causes and effects of the problem to be addressed. Using a decision tree such as the one shown in Figure 4.2. Decision tree for identifying public policy problems

, Sunass should establish the causes and effects of the identified problem. The tree has two levels of causes and two levels of effects, where the effects can be more specific or general. For example, a general cause may be the culture of corruption, and a specific cause may be extralegal charges for public sewer cleaning. Specific causes or effects are those which are the direct causes or effects of the public policy problem. For example, a public policy problem is the constant blockage of public sewerage drainage, a specific possible cause may be high maintenance costs, a specific possible effect may be water-borne diseases, and a general effect may be higher public health costs.

Sunass must be accurate when establishing causalities. On one hand, two general causes can lead in the same specific cause, additionally to the fact that specific causes can produce a feedback effect with general causes. If causes are not identified correctly, the objectives will not be specific.

Figure 4.2. Decision tree for identifying public policy problems



Expected magnitude

Finally, determining the expected magnitude of the problem serves as a basis for the legislative design, so that it is proportional to the problem. If the magnitude of the problem is correctly captured, two potential problems are avoided: introducing limited regulation for a major problem or introducing strict regulation for a minor problem. The definition of the magnitude can be built from the following three variables:

- Affected parties: First, the kind of affected parties must be defined. These can range from people, companies, public infrastructure, environment, etc. Once defined, Sunass must quantify the number of affected parties. In this delimitation, definitions for geographic staggering must be considered. The problem would affect only some regions of the country or even certain areas of any city. Lastly, it must be specified if the public policy problem affects any vulnerable group (indigenous peoples, elderly population, disabled individuals, etc.).
- Severity: Severity refers to the degree of impact, that is, if the public policy problem is causing the damage to the affected groups. The regulation must consider the direction of severity; if the severity is as high as death of humans, this must be deeper than the scenario when the severity are delays on the delivery of formalities.
- Occurrence probability: The occurrence probability is a core part for designing preventive regulations. When the probability of a problem is understood, the efficiency of resources displayed by the regulation is achieved. One example is the construction requirements for areas with earthquakes. In a city with constant earthquakes, buildings must have the necessary infrastructure for preventing collapses, although this represents a higher cost. However, it would not have any sense doing it in cities where this is not a risk.

The European Commission (2017[2]) has identified four factors as the main causes of public policy problems. These are the existence of market failures, behavioral biases, regulatory inefficiencies, or failure to respect fundamental rights (see Table 4.7).

A public policy problem can have negative consequences or only represent a risk for such consequences. It is important to clearly understand these underlying factors, using specialised knowledge of internal and external parties.

It is likewise important to clarify in the RIA the way in which individuals, users, companies, or other bodies are affected by the problem:

- To which extent does the problem affect daily life?
- Who must change his/her/its behavior to improve the situation?

Addressing these questions will ensure that the analysis remains concrete, focused, close to stakeholder concerns, and aware of the practical consequences of any regulatory initiative. This will help facilitate subsequent identification of alternatives and analysis of impacts. Table 4.7. Types of public policy problems

gives a brief description of the factors causing the public policy problems identified by the European Union.

Table 4.7. Types of public policy problems

Category	Explanation
Market failures	Market failures occur when some deficiency in the structure generates inefficiency in the results, in other words, are those failures which the market fails to correct by itself. The main causes of market failures include: externalities, lack of competition, incomplete markets, asymmetry of information and principal agent problems
Inefficiencies of regulation	Situations where the regulation instead of refraining risks causes negative impacts. Main causes include: Obsolete regulations, regulations which did not achieve their objectives, regulation implying unintentional consequences, and regulations presenting legal controversies.
Social objectives	When goals of a higher level of equity are sought, usually it is necessary to introduce regulatory instruments. In general, it is related to human rights principles.
Behavioral biases	There are certain systematic psychological biases coming from consumers and companies from rational decision making or in pro of a better convenience. The main biases include: endowment effect, prominence of attributes, optimistic bias, predetermined options, hyperbolic discounting.

Source: Adapted from (European Commission, 2017[2]), Better Regulation Guidelines, https://ec.europa.eu/info/sites/info/files/better-regulation-guidelines.pdf.

Box 4.2. How to identify correctly the public policy problem?

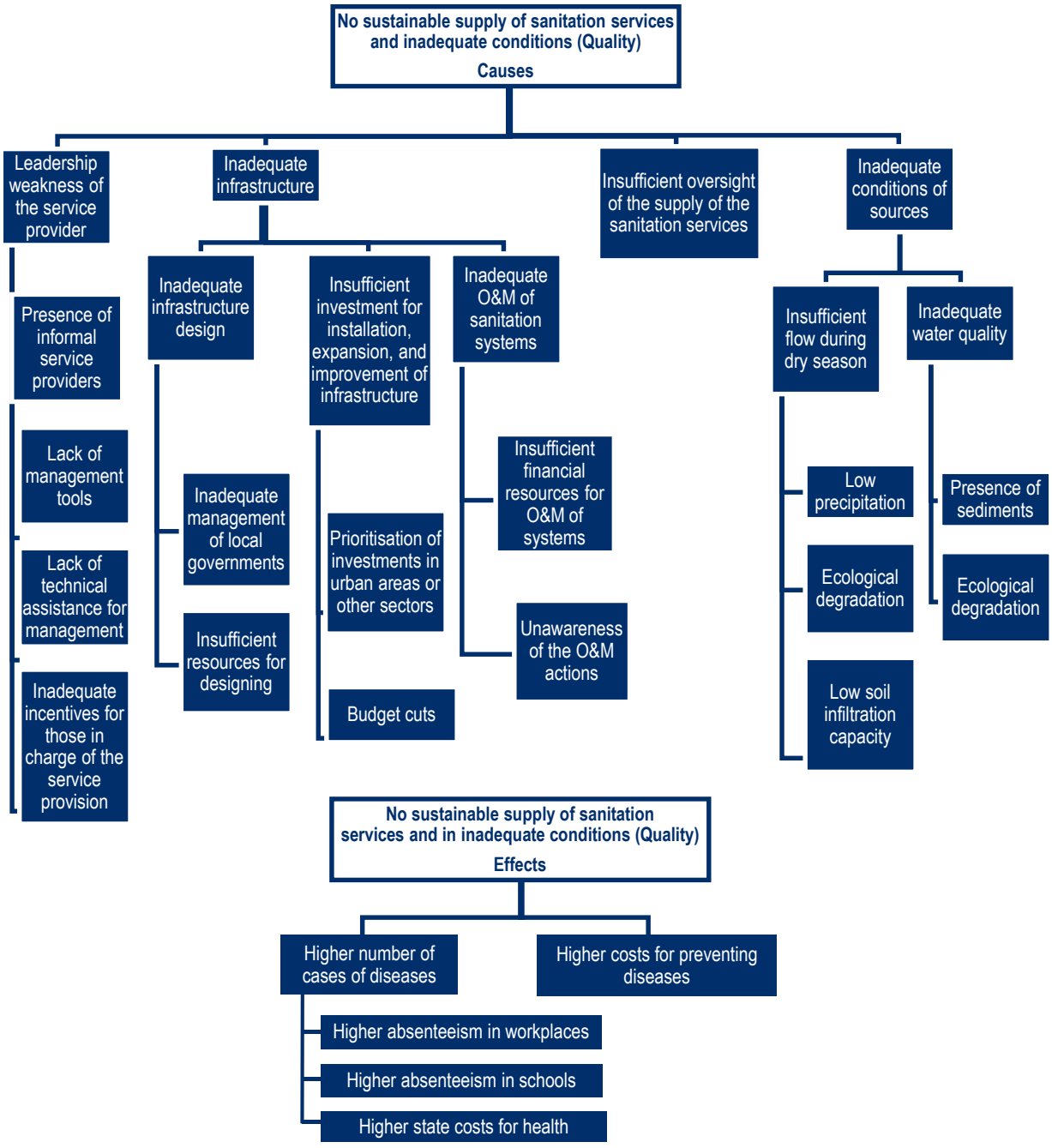
Guideline of questions

- What is the identified public policy problem and is there sufficient evidence?
- What are the causes and consequences? Are they relevant?
- Who is affected by the problem? How are they affected?
- Is this the first time that it occurs? If not, what have been the previous strategies for solving the problem?
- What is the magnitude of the problem?
- What risks are involved in the problem?
- Are there any regulations that address the problem?
- Is government intervention necessary? Why?
- Can the problem be quantified? What are the economic, political, social and environmental costs?

Note: There are other questions that Sunass can respond, this listing is only an example of the concepts that must be covered by the analysis for the appropriate definition of the problem.

Example: Problem tree prepared by Sunass for the assessment of the situation in rural areas

Figure 4.3. Problem tree for assessing the situation at rural areas of Sunass



Element 3: Regulation objective

Once the public policy problem has been identified as well as the possible effects and consequences and the regulatory intervention has been justified, the next step in the development of the RIA is the development of objectives. Sunass must outline the specific objectives intended to solve the causes of the

problem. The public policy objectives must be clearly identified, including the level of political ambition intended to be proposed, as well as the criteria by which the different alternatives will be compared.

To develop good objectives, which are specific and operational, Sunass can take into consideration the SMART methodology, prepared by the European Commission (2017[2]), referring to Specific, Measurable, Achievable, Relevant, and Time bound. Following, each one of them is briefly described.

- Specific: the objective must be specific enough so that it is not open to interpretation and that it seeks to solve concrete problems and not macroeconomic situations.
- Measurable: at this point of the RIA, one should start thinking about the monitoring and evaluation plan, so an objective should be set that can be subject to evaluation to determine whether the implemented regulation is working or needs to be reconsidered.
- Achievable: objectives that can reasonably be met should be set, avoiding optimistic biases that end up not being achievable. At this point, the economic resources involved in implementing the regulation must be taken into consideration.
- Relevant: the objective must be explicitly linked to the problem and its causes.
- Time-bound: it must be specified the times in which the objectives are expected to be achieved. It is very important to consider the development of a regulatory implementation plan.

Box 4.3 includes a series of questions which may serve as a guide to define the objectives of the regulation according to the criteria pointed above.

Box 4.3. How to define the objectives to solve the public policy problem?

- Considering the public policy problem identified, which objectives should the regulation seek?
- How do the identified objectives align to the elements of the SMART methodology?
- Are there objectives that have been established for similar situations? Did they work for achieving the intended purposes?
- Is the compliance of objectives plausible?
- How are objectives related to the causes of the defined problem?
- Which is the acceptable timeframe for attaining the objectives?
- Are objectives consistent with the strategic government policies?
- Which indicators can be associated with the compliance of the goal? Which is an acceptable progress of these indicators?

Example: Provision for specific water and sewage infrastructure projects in England; project developed by Ofwat

The UK water and sewage regulator, Ofwat, outlined a problem regarding the delivery of large or complex infrastructure in the industry. With climate change causing higher precipitations and on a greater scale, the current infrastructure is not enough to cover the needs. For example, this affects directly in London, where excessive raining has caused the overflow of the sewage network, thus, polluting River Thames, and causing fish death, and human intoxications, for which the European Commission has already imposed sanctions.

However, due to the fact that large infrastructure projects require high capital, this may cause Service Providers Companies (EPS) to have resources focused on the delivery of services for the construction of large infrastructure and then fail to provide the services that they are legally obliged to do or users may be

affected through significant increases in service fees. For that reason, OFWAT has determined that a legislative amendment is necessary, which is presented below.

Public policy objective

The public policy proposal aims to facilitate the delivery of large or complex infrastructure, while containing and minimizing the risks to water or sewerage customers and to UK taxpayers, which are associated with such delivery.

Another objective of the policy is to promote innovation in the infrastructure provision of high-risk water and sanitation water supply services. For achieving these objectives, the policy would allow financing and delivering these projects through an independent Infrastructure Provider (IP). This would isolate and contain the associated risks and consequent costs of financing and delivering these types of projects, and should to some extent encourage new entrants to deliver more innovative or cheaper infrastructure than the existing monopoly system. However, the policy would only affect large projects (of which there are few), so it will not have an immediate widespread impact on competition as a result of the introduction of the new regime.

The pilot test would be done with the construction of the Thames Tidal Tunnel, which is the only large or complex infrastructure project in the strategic vision for the next 10 years.

The objective is then evaluated with the SMART criteria.

- Specific: The objective presented is specific because it only refers to large or complex infrastructure projects, which require a high investment.
- Measurable: The efficiency of the public policy would be measurable through the costs that are generated throughout the project, once the pilot project is completed. Monitoring indicators can be generated to determine the impact on the tariff cost for water and sewage service users.
- Achievable: The objective is achievable since it would start with a pilot project that would assist to determine the feasibility for similar future projects. In the example, a specific case where the proposed regulation would be applied is outlined.
- Relevant: The objective of this regulatory proposal is directly linked to the problem, since the generation of large and complex infrastructure projects would help deliver better water and sewage services to users. In addition, it would allow the consequences of climate change to be addressed in the water and sanitation sector.
- Time-bound: The proposed regulation proposes as a pilot test the Thames Tidal Tunnel, which is a project that is estimated to be the only one to be implemented in the next 10 years.

Element 4: Identification of alternatives

In order to carry out an effective evaluation of public policy alternatives, it is important that Sunass considers different legislative options and different types of public interventions. This is one of the fundamental steps in the process of developing the RIA. Sunass must weigh the different alternatives before having a well-defined legislative project. On the contrary, there will be a natural trend in the legislative proposal for biases in the selection. It is important that Sunass maintains an open mind to receive new proposals for alternatives from different stakeholder groups. This may result in a better selection of legislative alternatives. It is important that when a legislative alternative is discarded, a solid justification is given, justified in terms of legislative impacts. Table 4.8 shows some examples of public interventions that can be taken as alternatives.

Table 4.8. Types of public interventions

Category	Concept
Self-regulation	Consisting of codes of voluntary behavior developed exclusively by the industry, where the government has minimal or no participation at all. It often occurs when private incentives of the industry align to the public policy incentives.
Information campaigns	It attempts to modify behaviors by providing businesses and consumers with more and better information in order to make better decisions. Its main goal is to eliminate information asymmetries. Without that information, consumers can make decisions without knowing the consequences or risks. Information can be provided by the government or businesses can be forced/discouraged to provide this information. It is considered a "light" public policy approach, as the degree of government involvement is limited.
Market instruments	Intended to modify the behavior of the regulated bodies through economic incentives. They are very useful by addressing externalities that arise from private activities, derived from the fact that much or very little is produced from a specific good or service. They can minimise costs for society to meet the policy objective and encourage innovation.
Co-regulation	Joint effort between an industry or association of professional bodies to develop regulations with the government coordination and consultation. The government grants legal support for the regulation. The industry or association oversees the compliance and sanctions for the breaching.
Performance-based regulation	It sets the objectives or standards for specific outcomes and allows the regulated bodies to comply with them by the means chosen by them. The process-based regulation specifies the characteristics that the process must have within the company to achieve the objectives. Its cost can be high because the technical elements for the design must be known.
Traditional regulation	Intended to change the behavior by detailing how regulated entities must act. In general, it imposes punitive sanctions if the regulated bodies do not comply with the provisions.
Ban	It seeks to eliminate a behavior, product, or service. One of the main risks is the creation of black markets.

The consideration of alternatives must be carried out through an iterative process:

1. Start by considering the widest possible range of legislative alternatives, both in terms of content and instruments. The Sunass must consider both legislative and non-legislative alternatives. The *status quo* should be always considered as an alternative, that is, not conducting a legislative project. This serves to establish a baseline to counterbalance costs and benefits of other legislative proposals.

When options are being defined, the guideline principle should be if a certain measure might influence on the causes of the issue and change the pertinent behaviors for achieving the desired objectives.

As mentioned, when considering legislative alternatives, the following should be always considered:

- The main alternative must be always the *status quo,* that is, not taking any action and let the things as they are. This base scenario should be used as a starting point against the different alternatives. This option should try to foresee the technological and social progresses, such as the role of Internet and the electronic government.
- The option of improving the implementation or application of the current legislation; or, otherwise, simplifying the existent regulation.
- Consider the options that involve new technological developments and TICs, to reduce implementation costs and administrative burdens to users or companies. Theoretically, all new proposals must consider their digital implementation, where applicable.
- Alternative public policy instruments such as the following: non-legislative alternatives, self- and co-regulation; market solutions; international standards; or a mix of several.
- Alternative scenarios such as considering the simplest option.

2. Examine previously identified public policy alternatives. In many cases, very little analysis will be needed to rule out several alternatives, for example, those that are not technically feasible, are not legally viable, are difficult to implement, do not respect fundamental rights, and have other unacceptable repercussions. Those options that go beyond what is needed to satisfactorily achieve the objectives should also be discarded, as they also fail to comply with the principle of proportionality.

3. Once the alternatives have been examined, the most relevant ones should be studied together with the baseline scenario.

- More costly or inefficient alternatives must be avoided since they are kept only to highlight the benefits of the preferred alternative. Maintaining such alternatives can undermine the credibility of RIA.
- It is difficult to identify at least two credible alternatives in addition to the baseline scenario. If no other alternatives exist, the focus of subsequent analysis should be on determining the detailed design of the retained options, for instance, considering sub-options within these alternatives for certain elements.
- After the first impact assessment, modifications to the original alternatives may be necessary. This usually happens when the selected alternatives fail to meet the objective in the first place.

The RIA does not require a detailed description of the alternative selection process. However, it must demonstrate that all relevant alternatives were considered. What the final RIA report should include is a description of the various alternatives retained. Box 4.4 includes a series of questions that can guide Sunass in identifying regulatory alternatives.

Box 4.4. How to identify different legislative alternatives?

- Which are the consequences of not performing a project of legislative issuance or amendment?
- What sort of alternatives of intervention, in addition to the traditional regulation, can be used to solve the problem?
- Have the ways in which similar situations have been addressed in the country and in other countries been analyzed?
- What is the current legal framework for each of the alternatives identified?
- How would compliance with each of the alternatives be reviewed? Are they feasible?
- How long would it take to implement each of the alternatives?
- Was the participation of other stakeholders taken into consideration to assess the universe of alternatives?

Example: Provision for specific water and sewage infrastructure projects in england; project developed by Ofwat

Ofwat's definition of the problem:

- Climate change, population growth, and higher expectations of users regarding environmental standards anticipate that a bigger and more complex water and sewage infrastructure will be required. For instance, it is expected that changes on precipitations result on more humid winters and drier summers, and that water scarcity aggravates in the south and east of United Kingdom.
- In addition, episodes of heavy rain are likely to be more frequent. In London, these events will strain an already overburdened sewerage system, leading to more untreated wastewater discharges into the River Thames. Just over 18 million cubic meters of wastewater will enter the Thames each year when storm water exceeds capacity. These discharges occur, on average, once a week and have a significant environmental impact on the river. These discharges increase the likelihood of fish dying, create a greater health hazard for river users and damage the aesthetic appeal of the Thames.

- Therefore, the water and sewage regulator of United Kingdom, OFWAT, outlined the possibility of a new regulation for the delivery of a large or complex water and sewage infrastructure through a third party called Infrastructure Provider (IP) instead of the Service Provider Companies (SPC). For them, it developed the advantage and disadvantages of the main alternatives to this public policy issue.
- Have in mind that the “delivery” of the infrastructure may mean the design, financing, building, and/or maintenance of these projects; in some cases, it can also include the operation.

To solve this issue, Ofwat outlined three alternatives:

1. Not performing any legislative change,
2. Implementing a new legislation applicable to all SPC enabling the creation of independent IP regulated directly, financing and supplying large and complex infrastructure projects.
3. Modifying the exploitation license of a single SPC to create a separate IP (Infrastructure Provider) financing and performing a specific large project (for instance, the Thames Tideway Tunnel) on behalf of the service provider company.

Below, a summary submitted by Ofwat about the advantages and disadvantages, as well as a brief description of each is presented.

Option 1 - Service Provider Companies (SPC) keep financing and deliver all the water and sewage infrastructure projects under the existing legislative regime.

Under this "do nothing" option, all water and sewage infrastructure would continue to be financed and delivered by the Service Provider Companies under the existing legistlative regime. This establishes companies with a protected monopoly in their designated service areas, including the delivery of infrastructure. The regime has allowed SPC to lure sufficient capital to finance almost 108 000 million GBP of infrastructure (at current prices) since privatisation in 1989. For most future infrastructure projects, the current regime will be enough. Table 4.9 lists the advantages and disadvantages of this legislative option.

Table 4.9. Advantages and disadvantages of the legislative option 1 of the OFWAT case

Advantages	Disadvantages
1. The financing system for water or sewage investments through SPCs has been established since 1989, yielding successfully almost 108 000 million GBP of private investment in the industry.	1. The current level and cost of services received by clients could be affected since they should include the finance and delivery of large and complex infrastructure projects, which in turn might threaten or saturate the capability of SPC to supply the required service level and the improvements already agreed of the current infrastructure.
2. The evasion of administrative burdens to issue a new legislation or the changes on licenses of companies for infrastructure needed in emergency.	2. OFWAT does not have any objective means to test if financing costs of a large or complex infrastructure proposal are appropriate or reasonable (less frequently).
3. No additional transaction costs between a SPC and IP in separate are introduced.	

Option 2 – To carry out a new legislation applicable for all SPC allowing the creation of independent and directly regulated IPs, financing and supplying large or complex infrastructure projects.

Under this option, a new regulation would be developed under the section 36A of the Water Industry Act of 1991. The regulation would apply to all SPC and would allow the creation of independent IPs established through competitive bidding to finance and deliver large or complex infrastructure projects within the "normal geographic" areas of existing companies. An IP would exist during the construction and operation phase of a project, which can be regulated directly by OFWAT as an entity distinct from the parent company. Table 4.10 shows the advantages and disadvantages of this option.

Table 4.10. Advantages and disadvantages of the legislative option 2 of the OFWAT case

Advantages	Disadvantages
1. Independent IP would be different bodies and would allow for a more transparent capture of the risks and costs associated with large or complex projects.	1. The establishment of IP for specific water and sewage projects is an untested and unproven model for this industry.
2. Independent IP would limit and contain the risks and potential higher costs for financing large infrastructure projects and thus, would help prevent those costs from being transferred to all other "typical" and less risky projects for which a company is responsible.	2. The new regulation is time-consuming, competes with other government regulatory priorities, and requires collective agreement among all government departments before it can be introduced into Parliament.
3. IP established through public bidding must aid to minimise the total costs of the final project, thus benefiting users of water services.	3. There is no guarantee that the creation of independent IPs would actually result in a project being delivered at a smaller cost than one delivered under the current regime.
4. OFWAT might directly regulate an independent IP and its sole project (separate and different from SPC).	4. It involves complex issues of interface between an SPC and the IP in the middle of a company's network.
5. The new regulation would provide more clarity to all companies about the delivery of future large infrastructure projects of water and sewage.	
6. Any contingent financial support from the government could be better directed to a single large project, rather than to a specific company with its range of services.	

Option 3 – Modify the operating license of a single EPS to create a separate IP to finance and implement a particular large project (for instance, the Thames Tideway Tunnel) on behalf of the service provider company

In this option, the OFWAT would modify the operating license of an SPC to allow the financing and delivery of a project through a competition. This would allow competition in the provision of infrastructure and give OFWAT an objective means of assessing whether the project costs are appropriate and reasonable. Table 4.11 lists the advantages and disadvantages of Option 3.

Table 4.11. Advantages and disadvantages of the legislative option 3 of the OFWAT case

Advantages	Disadvantages
1. The IP established through competitive bidding should help keep the actual total costs of the final project low, benefiting the clients.	1. It is an unproven option within the industry.
2. The existing legislative framework would be enough, and a new regulation would not be necessary.	2. The water regulator would have to agree or establish changes to a specific SPC. Agreeing amendments may create a larger period for negotiation, while the imposition of changes would be an extensive process with no guarantee of successful result since changes would have to be approved by the Competence Commission.
3. Although not as large as with option 1, any contingent financial support from the government could be better directed to a single large project, rather than to a specific SPC with its range of services as with option 0 (status quo).	3. It is not possible to establish an independent directly regulated IP: The regulation would be indirect through the SPC and it would not be possible to limit the project as it would occur to the rest of the company´s activities.
	4. As it is not possible to delineate the IP´s activities (and associated risks) from the SPC´s activities, the current level and cost of services to clients could be adversely affected as the PPS has to include the financing and delivery of a large infrastructure project. This could also threaten or overwhelm their ability to maintain their current level of service and already agreed upon infrastructure improvements at a reasonable cost.

Element 5: Impact evaluation

The impact evaluation is a stage that allows the regulator to explore the consequences of the legislative project proposals. This stage is the core of the RIA analysis, by being a space where direct and indirect impacts are identified, and legislative alternatives are contrasted in a qualitative or quantitative manner.

Although the most commonly used methodology in the RIA for measuring the impacts of the legislative proposal is the Cost-Benefit Analysis (CBA), this is not the only one used, and not necessarily the most appropriate in all cases. Sunass must consider the magnitude of the public policy problem in order to adequately select the impact evaluation method. While a detailed quantitative analysis is always valuable, not all legislative proposals require it. This would result in regulatory output cost overruns.

When it comes to low-impact regulation or in the face of a relevant shortage of information, it is not necessary or not possible to quantify and/or monetise the impacts. Given these scenarios, the desirable exercise is a qualitative identification of costs and benefits in order to carry out a reasonableness analysis of the regulation.

The CBA methodology compares the expected net impact of different regulatory and non-regulatory alternatives, through a detailed quantification and monetisation of the direct and indirect costs and benefits of the impacts. The complexity of CBA can vary, mainly for two reasons: the magnitude of the regulation (or policy problem) posed and the availability of information.

This section develops a practical guide for carrying out a CBA that considers the quantification and monetisation of impacts, based on the following elements:

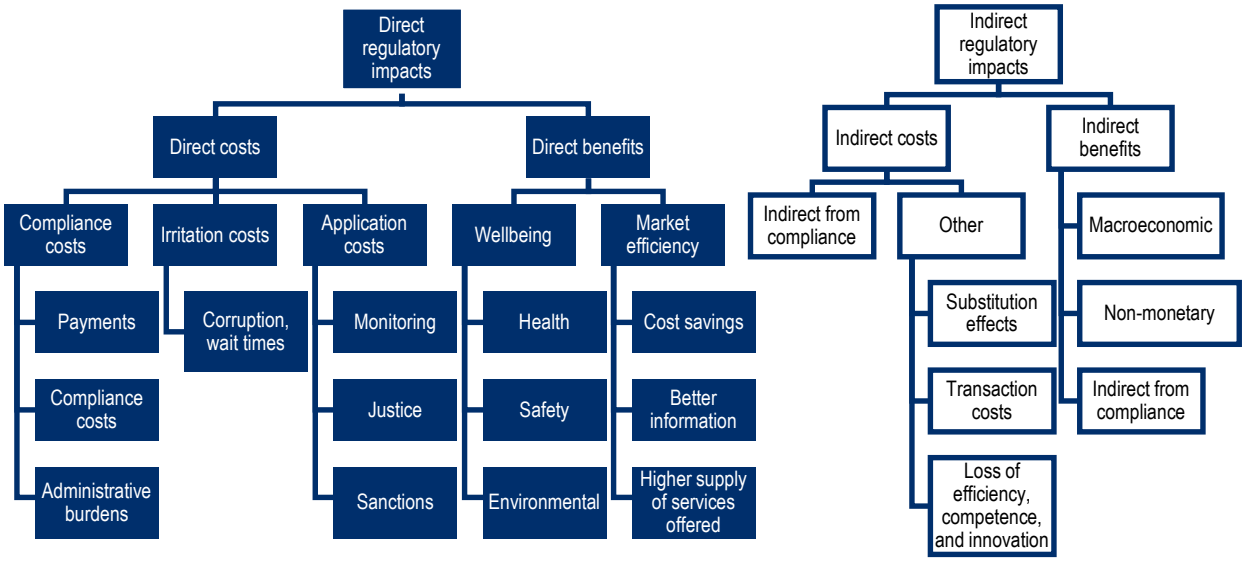
1. Identification of costs and benefits of the regulation;
2. Presentation of the impacts;
3. Assessment of impacts; and,
4. Comparison of legislative alternatives.

It also summarises two alternative regulatory impact methodologies that are also commonly used in the RIA: Cost-Effectiveness Analysis (ACE) and Multi-Criteria Decision Analysis (MCDA).

Identification of costs and benefits

For performing any type of cost-benefit analysis, either quantitative or qualitative, the first step must be to identify direct and indirect costs and benefits of the regulation. Technically, any regulatory activity implies a cost and should imply a benefit. Although indirectly, in almost all cases, the state, users, and companies are affected. In Figure 4.4 the main categories of costs derived from regulations, collected from the Centre for European Policy Studies (CEPS) are identified.

Figure 4.4. Regulation impacts



Source: Adapted from (CEPS, Renda and University, 2015[5]), Análisis normativo: Experiencia de la Unión Europea (Regulatory Impact Analysis: the European Union experience). https://colaboracion.dnp.gov.co/CDT/Mejora%20Regulatoria/Presentaciones/Cierre%20Pilotos%20Sept%202015/3.%20RIA%20Union%20Europea%20Andrea%20Renda.pdf.

The explanation of these is completed with elements of the Standard Cost Model (SCM) (SCM Network, 2004[6]), whose information is exposed in the following Box 4.5.

Box 4.5. International Standard Cost Model

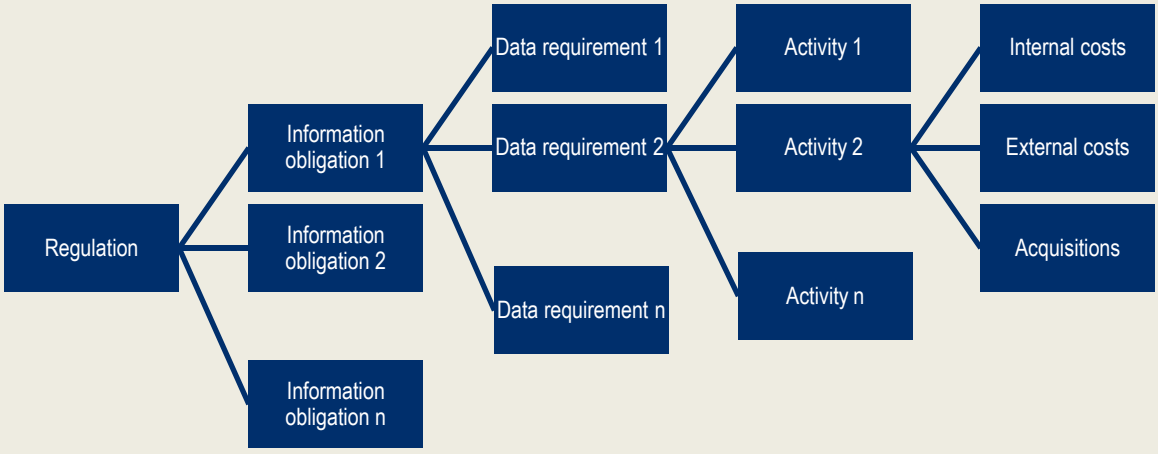
The Standard Cost Model (SCM) is the more frequently used methodology to measure administrative burdens. It consists of measuring the costs associated to the activities that companies and/or citizens must carry out to comply with the regulation, named administrative burdens. SCM is not focused in the policy objectives of each regulation, but the measurement is focused on the administrative activities derived from the compliance of the regulation.

The SCM is based on the fact that for the compliance of the regulation there are information obligations (IO), that is, the information requirements derived from regulations must be provided by the regulated party to the regulatory authority. Each IO has one or more data requests, which are each of the information elements that must be provided to comply with an IO. In order to provide information for each data request, a series of specific administrative activities must be carried out.

The SCM calculates the costs of carrying out each of these activities, which can be done internally or outsourced. Also, acquisitions made to complete a specific activity should be included in the calculation if they were acquired solely to meet the regulatory requirement. For each administrative activity it is necessary to collect a series of parameters to define the cost. These parameters are: Time, Price, and Quantity (Population and Frequency). By combining these elements, the basic formula of SCM is obtained:

Cost per administrative activity (or per data requirement) = Price x Time x Quantity (Population x Frequency)

Figure 4.5. Standard Cost Model structure



The core concept of SCM is a normally efficient business (NEB). This refers to those companies which solve their administrative tasks in a normal manner, that is, they are not the most efficient nor the most inefficient for solving. Thus, it is possible to identify general contexts that can be derived directly from the regulation. In order to specify the NEB, a series of interviews must be carried out with companies in the target group for each of the administrative activities. In this way it is possible to find out how much time they invest in a specific activity associated with a data request.

Source: Adapted from (SCM Network, 2004[6]), International Standard Cost Model. http://www.oecd.org/gov/regulatory-policy/34227698.pdf.

However, each of the different types of costs and benefits in Figure 4.4 will be explained below.

Direct costs of regulation

Direct compliance costs

Direct compliance costs are the group of costs incurred by parties to comply with regulatory obligations. These can range from specific financial charges to long-term investments or industry restructuring. Costs can be categorised into the following four items:

- **Collections**: Result from a transfer of financial resources directly from companies or consumers to the State, to solve obligations explicitly marked in the regulation. They are the type of costs that are easy to identify, by definition. They usually have several names, including: taxes, fees, payment of duties, among others.
- **Substantive compliance costs**: They derive from legal obligations imposed to companies to operate through any legal instrument in general. They reflect the resources that companies or citizens must assign to perform their activities in compliance with the requirements. These costs can be subdivided in one-time costs, recurrent costs, capital costs, operational and maintenance costs, and financial costs (costs related to financing investments).
- **Administrative burdens**: Costs derived from the collection, production, maintenance, or delivery of information derived from regulatory requirements.
- **Long-run structure costs**: These are the costs for the economy in general, resulting from an essential change in industries or complete sectors derived from the regulation; which are very difficult to measure due to their diffuse nature and the long periods of time in which they occur.

Irritation costs

Costs for “discomfort” or irritation are mainly derived from administrative burdens, and because they are subjective in nature and their specific origin is unclear, they are difficult to quantify or monetise (CEPS, 2013[7]). These costs include corruption costs, excessive waiting times for procedures (for instance, to receive a response in 60 days instead of 20 as regulations state), and the inconvenience of perceived regulatory overload. These elements can be used as a proxy to measure administrative burdens, as the SCM does; however, some countries separate them as an additional element. Usually these costs serve as an element for qualitative analysis.

Government implementation costs

Government implementation costs refer to the additional costs that the State has to incur in order to effectively implement the regulation. These consist of the following:

- **Adaptation costs**: Costs incurred to update human or material resources to implement a regulation (for instance, training courses for the personnel on new guidelines or purchasing computer equipment for digital procedures).
- **Information costs**: Costs generated in the production of statistical data to assess compliance with the regulation.
- **Monitoring costs**: Costs related to human and material resources to monitor regulatory compliance (for instance, costs to create a new crew of inspectors, including the necessary vehicles, salaries, etc.)
- **Adjudication costs**: Costs of using the legal system to resolve disputes over the new regulation.

Indirect costs of regulation

Indirect compliance costs

Indirect compliance costs arise when the prices of goods and services increase because companies must incur higher development or production costs due to new requirements that may be imposed by a given regulation. These costs might have a *domino effect* on the related goods. A clear example is when an aluminum production company raises the cost of electricity, it will pass that price increase on to the final cost of its product.

Other indirect costs

The costs categorised as “other” in Figure 4.4 mainly refer to those generated by changes in the behavior of individuals or firms in the market, either by direct effects of market rules or by changes in incentives. These are divided into the following categories:

- **Substitution effect**: A regulatory intervention can usually change people's behavior patterns, which can generate unintended costs. For example, if regulation results in an increase in the price of a product, people will usually respond by consuming less of that product or by switching to the purchase of a substitute product.
- **Affectations to competition**: Regulation can affect competition in three main ways: rules that make it difficult for new competitors to enter the market, mainly for small businesses; rules that reduce aggressive competition between competitors; and, rules that induce collusion, for example, by imposing changes in price.
- **Reduced market access**: There are regulations blocking the possibility for companies seeking market access. One example is when public bidding procedures have a bad design where a company trends to corner the market.

- **Investment and innovation restrictions**: The regulation might affect incentives for investing resources on research and development. One example is the absence of regulation associated with intellectual property or patents.
- **Uncertainty**: When the regulation is not clear enough, uncertainty can emerge regarding the scope of permit for the business activity. This can inhibit the investment due to the risk aversion of entrepreneurs. Additionally, uncertainty can arise when regulation is constantly changing.

Table 4.12 includes a listing of the potential costs of regulations, classified by category and with examples.

Table 4.12. Types and examples of regulation costs

Category		Explanation	Examples
Direct costs of compliance	Collections	Transfer of financial resources directly from the companies or consumers to the state, to solve obligations explicitly marked in the regulation	Taxes, fees, or payment of rights to carry out procedures, obtain licenses or permits, remuneration to the state for concessions.
	Substantive costs of compliance	Legal obligations imposed to companies to operate, through regulations, rules, and in general any legal instrument.	Obtaining certifications, costs for adequations in the workplace facilities or production processes to comply with the specific requirements to diminish contamination or to diminish risks of accidents
	Administrative burdens	Costs derived from regulatory requirements to collect, keep, or provide information on different aspects of business operation.	Costs for preparing financial situation reports, completion of registration forms, collecting requirements for a permit, preparation of a tender, etc.
	Long run structure costs	Costs derived from a change in industries or sectors due to regulation	Changes in the number and size of companies derived from the free trade and foreign investment
Irritation costs		Costs derived from administrative burdens	Corruption costs, waiting times for performing procedures
Government implementation costs	Adaptation costs	Embodied costs to update the human or material resources to implement the regulation.	Staff training on new guidelines
	Information costs	Costs generated in the production of statistical data to evaluate compliance with the regulation	Data gathering and systematisation
	Monitoring costs	Cost related to human and material resources to monitor regulatory compliance	Costs to create a new crew of inspectors, including the necessary vehicles, salaries, etc.
	Adjudication costs	Costs of using the legal system to resolve disputes under the new regulation	Costs for hiring legal services
Indirect compliance costs		They arise when the prices of goods and services increase because companies must incur higher development or production costs due to new regulatory requirements	Cost transferred to the goods for a new labeling requirement
Other indirect costs	Substitution effect	When regulation changes people's behavior patterns	The increased price of air tickets due to higher regulations reduces the demand of these services
	Affectations to competition	When regulations make it difficult for new competitors to enter the market, they disinhibit aggressive competition between competitors or induce collusion	Exclusive rights, territorial flow, restrictions to the entry, technical standards, etc.
	Less access to market	Regulation that blocks the possibility for companies seeking market access	Bad design of tenders where a company usually corner the market
	Investment and innovation restrictions	When the regulation affects incentives of investing resources in research and development	Regulation associated to intellectual property or patents
	Uncertainty	When the regulation is not clear enough	When a regulation creates ambiguity on the charge of certain tax or compliance of certain requirements.

Source: Adapted from (CEPS, 2013[7]), Assessing the costs and benefits of regulation. https://ec.europa.eu/smart-regulation/impact/commission_guidelines/docs/131210_cba_study_sg_final.pdf.

Regulation benefits

As mentioned above, the benefits are more difficult to categorise because they are generally presented differently in each case, depending on what the objectives of the regulation seek (CEPS, 2013[7]). In addition, some benefits are difficult to quantify since public policy often addresses problems that are difficult to monetise such as human health, environment, safety, etc. However, it is important to be able to identify both direct and indirect benefits in order to justify regulation. This is relevant in two ways: to ensure that the best alternative is taken and to defend regulatory proposals in public consultations.

Table 4.16 includes a list of potential benefits from regulations, classified by category.

Table 4.13. Benefits of regulations

Category	Explanation
Increase on well being	This category covers all the improvements that the regulation implies intending to protect the human life. Categories range from health, education, environment, mobility, etc.
Improvements in market efficiency	Positive impacts of the regulation on the market operation, mainly for improving the competition, the available information, limiting the externalities, and unfair practices.
Collateral effects	By applying regulations that improve practices in certain sectors, other related sectors might result benefited.
Macroeconomic effects	Macroeconomic effects are the general effects derived from the increase in welfare. These effects are difficult to measure as the particular impacts of regulation must be isolated.
Social objectives	Certain regulations intend to ensure human rights and other social objectives which had not been achieved in society

Source: Adapted from (CEPS, 2013[7]), Assessing the costs and benefits of regulation. https://ec.europa.eu/smart-regulation/impact/commission_guidelines/docs/131210_cba_study_sg_final.pdf.

Cost-benefit analysis

The Cost-benefit analysis (CBA) is one of the main tools used to analyze the regulation impact. The CBA is one tool for economic analysis that requires that the positive (benefits) and negative (costs) effects that public policies create are previously quantified in a monetary manner, in order to be able to compare them, mainly through two criteria: Cost-Benefit Ratio (CBR) and net benefits.

CBR is defined as:

$$CBR = \frac{Present\ value\ of\ benefits}{Present\ value\ of\ costs}$$

If the CBR is higher than one, it implies that the project will bring, in general, more benefits than costs, since the present value of benefits is higher than the present value of costs. If during the RIA process there are different alternatives with the CBR higher than one, the difference on present net benefits must be considered.

On the other hand, **net benefits** are the difference between benefits and costs brought to present value. In general, Sunass should only consider those projects with a positive net benefit. When considering different public policy alternatives and if only one can be implemented, the net benefits should be a main driver of decision. However, other variables must be considered, such as implementation feasibility, possibility of inspection, political feasibility, etc. In general, the net benefit criterion is more widely used than the CBR, which is more frequently used in cost-effectiveness analysis. The following steps describe the application of the CBA:

1. **Identify the Direct and Indirect Impacts of Regulatory Alternatives**

The first step of the CBA is to identify the costs and benefits of regulation. It is important to consider all impacts of the regulatory proposal, both positive and negative. An incorrect identification of costs and benefits could lead to wrong decisions, since the impacts of a regulatory alternative could be under- or over-estimated, making the comparison between regulatory options invalid.

2. Quantification and monetisation of costs and benefits

CBA implies that all impacts of regulation must be quantified in monetary terms. In some cases, mainly with the costs of regulation, monetisation is relatively simple since the existence of a market allows the use of market prices in this step. However, it can be difficult to identify a market for the benefits, so other methods of quantification are needed. Among the main methods for assigning a monetary value to impacts that do not have a specific market are hedonic pricing and contingent valuation, however, these are not the only options available.

In order to have an objective comparison of the quantification of costs and benefits, the following considerations must be taken into account:

- **Exchange rate**: Sometimes the inputs for companies to comply with regulation or for governments to enforce it are in foreign countries with different currencies. In these situations, costs should be expressed in a single currency to achieve comparability, preferably in U.S. dollars because of their ease of procurement and liquidity. In these cases, the exchange rate expressed for each currency and the source of the data must be clearly specified.
- **Average market prices**: When looking for prices for products that serve as inputs for regulatory compliance, an average market price should be approached. By obtaining quotations for the material good or service, the average price should be presented in a final manner; however, there should be total transparency when doing so, if possible in a RIA methodological annex. Publication of the price of a single brand should be avoided at all costs to avoid unfair market practices.
- **Standardisations**: The correct use of a method to standardise variables must be ensured. In particular, this is relevant for standardizing the temporality of the variables, for example, converting quarterly values into annual values. A common example is the calculation of financial annuities, such as the value of a credit. In this case it can be confusing to manage compound vs. simple interest. These conversions can usually be done through calculators on specialised websites.

3. Determine cash flows

To achieve comparability among alternatives, the same units of measurement and time must be established. This must be observed since it would be impossible to compare quarterly costs vs. annual costs of a compliance cost. For effective data presentation, the example of Table 4.14 can be followed, where costs and benefits per year are broken down. The following step is to define the time horizon when the regulation will be evaluated.

Table 4.14. Classification of costs and benefits

Alternative 1	Year 1	Year 2	Year 3	Year n
Cost 1				
Cost 2				
Cost n				
Benefit 1				
Benefit 2				
Benefit n				

4. Define the evaluation horizon

The definition of the horizon to be considered for the determination of cash flows can be carried out in different ways. It is important to emphasise that the choice of the evaluation horizon will impact the effects to be considered in the evaluation, as well as the preference of one regulatory alternative over another.

The horizon should reach the point where the contribution of discounted net benefits begins to be negligible. That is, when the benefits and costs, brought to present value, provide minimum amounts to the total net benefits. When there is not enough information to identify the periods in which the benefits and costs will occur, it is recommended that the period of time be long and use a perpetuity to discount the flows.

- Validity period of the legislative measure. This point is particularly relevant for regulations that have an established expiration period.
- Clearly identify the periods of costs and benefits. Budget restrictions have also temporary restrictions, so the feasibility of a regulatory project has to consider this as well.
- Expected life of capital investments required by the regulatory policy or the physical effects that cause the benefits.

5. Discount of Cash Flows

In general, regulatory alternatives generate different cash flows in different periods which must be compared when selecting the best intervention. In order to make an adequate choice, it is necessary to bring all cash flows to the present, that is, future income and expenses must be discounted to know what their value would be today. Cash flows are discounted with the following formula:

$$V_0 = \frac{V_t}{(1+r)^t}$$

Where:

V_0: Present value of the discounted cash flow

R: Discount rate

V_t: Cash flow expected to be received (or expended) in the period t

T; Number of periods

Since all cashflows, whether costs or benefits, must be discounted in order to be comparable, it is necessary to use the Net Present Value (NPV). The NPV allows to compare projects with different durations and different cash flows, and is given by the following formula:

$$NPV = \sum_{t=0}^{T} \frac{Benefits_t}{(1+r)^t} - \sum_{t=0}^{T} \frac{Costs_t}{(1+r)^t}$$

There are several methods to estimate the discount rate (r), including: the temporary preferential social rate, the discount rate of the weighted average cost of capital (WACC), the hybrid discount rate, and the shadow price of capital. The selection of any estimation method is subject to the judgement of Sunass and experts. Some countries or jurisdictions have defined discount rates that are used in most evaluations. Europe uses 4% in general, Australia 7%, and United States makes a sensitivity analysis using values between 3% and 10%. Regardless of which value is selected for the discount rate, a sensitivity analysis is recommended in order to obtain more robust results.

6. Impact assessment

In most cases, the costs and benefits that are part of the analysis involve uncertainty: costs may be higher than anticipated, benefits lower, etc. That is why it is recommended to include a scenario-based sensitivity analysis. To build the different scenarios, key assumptions must be taken into account that divide the results, traditionally into high risk, medium risk and optimistic. Some variables that regularly affect scenarios include interest rates, inflation, employment, economic growth, tax rates, foreign trade tariffs, etc.

The United Kingdom uses this method for estimating impacts for comparing several scenarios, and a reproduction of its presentation can be observed in Table 4.15. There are two scenarios for each type of impact, the optimistic (low costs) and pessimistic (high costs) costs and the high and low benefits. Here again, there should be full transparency in the calculation of the scenarios.

Table 4.15 shows the distinction between annual average and total cost of regulation. The annual average refers to all the costs and benefits that occur in a particular year. Tabulating this allows us to understand the gap between costs and benefits, and the amount of investment resources needed over the life of the project. This comparative element is relevant in cases where the regulatory alternatives under analysis have significantly different validities, thus causing a biased comparison with the total cost.

Table 4.15. Presentation of Costs and Benefits with Sensitivity Analysis

Alternative 1	Annual average	Total cost
Cost (optimistic)		
Cost (pessimistic)		
Benefits (optimistic)		
Benefits (pessimistic)		

Source: Adapted from (UK Government, 2020[8]), Impact Assessment Calculator https://www.gov.uk/government/publications/impact-assessment-calculator--3.

As a summary and to assess the impacts among the alternatives, impacts can be presented as suggested in Table 4.16.

Table 4.16. Presentation of net present value of regulatory alternatives

	Pessimistic Scenario	Optimistic Scenario
Alternative 1	NPV	NPV
Alternative 2	NPV	NPV
Alternative n	NPV	NPV

Source: Adapted from (UK Government, 2020[8]), Impact Assessment Calculator. https://www.gov.uk/government/publications/impact-assessment-calculator--3.

Last, the differentiated impacts for identified groups must be considered. This can include small and medium companies, elderly population, geographic areas, etc. This is relevant as a decision criterion, especially when the alternative with the best outcome in the cost-benefit analysis implies a high cost for a vulnerable group.

In the report from CONAMER (2013[9]), *Guía para evaluar el impacto de la regulación Vol. II, Casos de Estudio [Guideline for assessing regulation impact Vol. II, Case studies]*, real examples of RIA where the CBA is used can be found.

Alternate methodologies for estimating the impact

Cost-effectiveness analysis

The Cost-Effectiveness Analysis (CEA) is used when the costs of alternatives can be quantified and expressed in money terms, while the benefits, although they can be quantified, are difficult to be expressed in monetary terms. Thus, the CEA estimates the profitability of different public policy options and then, compares the results for choosing the most efficient option. It is used most often to analyze social

regulations, specifically those regulating public health and safety issues, in which valid measures of effectiveness can be developed.

This method is often used to compare a set of regulatory options with similar objectives. Therefore, while CBA may result in the rejection of alternatives if costs exceed benefits, this tool focuses on choosing the best alternative. Thus, CEA involves a more limited analysis than CBA and is less demanding in terms of resources and specialisation, so it may be easier to apply in a context of limited institutional capacities.

The steps to be followed for the application of cost-effectiveness analysis are detailed below:

1. **Quantify costs**: The categories and strategies presented above can be used to quantify the costs of each regulatory alternative. The costs must be in net present value and it must be specified to what extent the analysis was done (direct, indirect, etc.) and which categories were taken into account.
2. **Identify benefits:** Since it is not possible to monetise the benefits of regulation, an approximation is made to quantify them. However, it is strictly necessary that the benefits of different regulatory alternatives have the same measure of unity in order to make comparisons.
3. **Assess alternatives**: Once the direct costs and benefits of the legislative alternatives are obtained, the formula of the cost-benefit analysis is applied. Specifically, the Cost-Effectiveness Ratio (CER) is obtained by dividing the present value of the regulatory project costs by the quantitative measure of the benefits:

$$CER = \frac{Present\ value\ of\ costs}{Non\ monetary\ measures\ of\ benefits}$$

The regulator must choose the alternative with the lowest CER.

An example of this type of impact assessment is the case where costs are expressed in monetary terms but benefits in units. In this case one scenario may be the number of poisoning deaths prevented by a new regulatory program, such as limiting the number of wastes disposed of in water reserves.

CER is an estimate of the cost expressed in monetary values incurred per unit of benefit achieved by the implementation of the legislative alternative. The analysis does not evaluate the benefits in monetary terms but is an attempt to find the lowest cost option to achieve a desired quantitative outcome.

After applying the CER formula, the regulator must classify the alternatives considering their effectiveness. Thus, the criterion to be used will always be to choose the lowest CER, that is, the one that reflects the lowest cost option among the proposed alternatives.

In the report from CONAMER, Guía para evaluar el impacto de la regulación Vol. II, Casos de Estudio [Guideline for assessing regulation impact Vol. II, Case studies] (COFEMER, 2013[9]), real examples of RIA using the CEA can be found.

Multi-criteria decision analysis

Unlike the previous cases, not all the costs and benefits derived from different options can be quantified and/or monetised. In these circumstances, Multi-criteria Decision Analysis (MCDA) is the appropriate analytical tool since it is a technique for making decisions considering different criteria simultaneously.

MCDA involves identifying the objectives of the intervention and determining all the factors (criteria) that would indicate that those objectives have been met. There is no rule about the number of criteria to be selected, everything will depend on the problem to which the regulation is oriented, as well as the elements that allow understanding how the different options would operate in the face of the problem. This analysis can combine quantitative and qualitative elements to weight the criteria, thus reducing the subjectivity of the analysis.

As a first step, the objectives of the regulation must be listed, which are used to create the set of weighed criteria and must be in importance order. This creates the context to determine the preferences among the alternative options. The performance of each alternative is identified and then, it is assessed based on the criteria listed. The contribution to the criteria is assessed normally using a scoring factor. Weights and scores for each one of the alternatives are added to obtain a global value, by providing a classification of the different options.

Consequently, for conducting the MCDA, the following steps must be followed:

1. Identify the objectives: the purpose of a MCDA: find the option that better complies with the outlined objectives.
2. Establish the evaluation criteria: The criteria serve to weigh the compliance of secondary objectives.
3. Identify the options that will be assessed.
4. Scoring and assessing the expected performance of each option according to the evaluation criteria: The performance assessment can be summarised by means of a matrix, in which the evaluation of each option is presented according to the defined criteria (which can be quantitative and/or qualitative, see Table 4.17).

Table 4.17. Matrix for qualifying the assessment criteria

	Assessment Criterion 1	Assessment Criterion 2	Assessment Criterion n
Alternative 1			
Alternative 2			
Alternative n			

5. Weighting of criteria: Weights are assigned to each criterion in order to reflect its relative importance in the final decision.
6. Use a decision mechanism to identify the best option (usually the one with the highest score).

To be effective, the MCDA must meet the following standards:

- Assign an appropriate weight to the criteria: The weights assigned might have a significant effect on outcomes, for example, a high weight of the criteria regarding the benefits related to the costs causes biases on the results versus options with relatively low costs. Because of that, neutral weights of 50% must apply for criteria related with costs and 50% for criteria related with benefits, unless appropriate alternative weights can be warranted.
- Scoring scale to be used: A symmetric scale ranging from -10 to +10 is easy to apply and understand, as well as it allows a sufficient margin to differentiate the different options. It is recommended to use this range in the impact assessment.
- Indications on appropriate/inappropriate criteria: Criteria for MCDA should be closely linked to the problems and objectives identified. Cost criteria should be defined as "cost" rather than "cost minimisation". This specification allows costs to be properly evaluated relative to the baseline (a more costly option than the status quo will receive a negative score).
- As part of the MCDA the following elements must be addressed:
- Clearly explain the justification for the weights assigned to each criterion.
- The relative scores assigned to the criteria of each option must be consistent with the relative effects (for instance, if an option represents costs 10 million higher than baseline, while another represents 1 more million, it would be appropriate to assign scores of -10 to the first one and -1 to the second one).

- Consider whether the weighted total scores of some options are close, as in these cases the MCDA results are very sensitive to the weights chosen.
- When an option imposes a compliance cost (that is, a negative weighed score is assigned), the impact assessment should at least estimate the magnitude of those costs.

In the report from CONAMER, Guía para evaluar el impacto de la regulación Vol. II, Casos de Estudio (Guideline for assessing regulation impact Vol. II, Case studies) (COFEMER, 2013[9]), real examples of RIA using the MCDA can be found.

Summary of methodologies

Table 4.18 summarises the different methodologies presented in the selection.

Table 4.18. Comparison of impact assessment methodologies

Tool	Advantages	Disadvantages	When to use it?
Cost-Benefit Analysis (CBA)	Integral tool: It compares all costs and benefits of the regulation. It considers all positive and negative impacts. It answers if the regulation must proceed or not.	It does not consider factors that cannot be quantified. Data must be in the same units for the comparison. It may represent an important burden in terms of time and costs for the institution.	Benefits: When you have information and data to quantify the benefits in monetary terms Costs: When you have information and data to quantify costs in monetary terms
Cost-Effectiveness Analysis (CEA)	Relatively easier to conduct compared to CBA. It can be used for comparing alternatives with similar results.	It cannot answer with precision if the regulatory option must be performed or not because it does not indicate if there is a net benefit. It focuses mostly on a single benefit, being able to omit potential side effects.	Benefits: When you have qualitative information about the benefits, but it is not possible to quantify them Costs: When you have information and data to quantify costs in monetary terms
Multi-Criteria Decision Analysis (MCDA)	It can be used for qualitative data. It allows to compare different types of data	It is an analysis with a subjectivity component; therefore, results can vary from reader to reader. It does not allow to conclude with certainty if benefits overcome costs. Time preferences cannot be reflected	Benefits: When there is qualitative information about the benefits, but it is not possible to quantify them Costs: When qualitative cost information is available, but cannot be quantified

Example:

Following the example presented by Ofwat, its RIA carried out a CBA, including a sensitivity analysis to measure three net benefit scenarios for each of the two public policy proposals. Measured as low, high, and “best” estimates, Ofwat presents a range of comparison between them. Thus, it ends up choosing policy 2 as the best option since its expected net benefit from the best estimate is £237 million while the expected estimate from policy 3 is £87 million. The following is a summary of the results of the CBA.

> *Option 1 Make new regulations applicable to all SPC that allow the creation of independent and directly regulated IPs that finance and supply large or complex infrastructure projects.*

Assumptions:

- Base year: 2010
- Period: 30 years
- Discount rate 3.5%

Costs

All estimations refer to the only major infrastructure project planned for the next 10 years - the Thames Tidal Tunnel. OFWAT's costs in terms of additional regulatory effort amount to GBP 5 million. With an average of 0.08 million GBP per year during the period. The remaining annual costs (2.3 million GBP per

year, according to the best estimation, between 1.8 and 4.2 million GBP) are related with the management of IP as additional companies. Transition costs represent the cost for SPC bidding for IPs: They are estimated in 17 million GBP split in two years (which represents 0.4% of the total cost of the project Thames Tideway Tunnel). Table 4.19 presents 3 scenarios of the total costs of option 1.

Table 4.19. Total cost of legislative Option 1

	Annual average (constant prices, million GBP)	Total cost (present value, (million GBP)
Low	1.9	53
High	4.2	97
Better estimate	2.4	63

Benefits

The benefit is the isolation of the project risk within the independent IP, by preventing that this "spreads" to the SPC. Such risk might express financially and/or in the attention diversion of the administration, with a higher risk for regulatory and financial outcomes. This can lead the market to reassess the credit solvency of the SPC, which entails an increased capital cost. The monetised benefit (for information only) is referred to prevent an increase of the capital cost for the main business of Thames Water of 0.25% - 1% during the building period of the TTT (see Table 4.20). Note: Data are for information only, but based on market confidential information. Table 4.21 presents three scenarios of net benefits of option 1.

Table 4.20. Total benefit of legislative Option 1

	Annual average (constant prices, million GBP)	Total cost (present value, (million GBP)
Low	25	150
High	100	600
Better estimate	50	300

Table 4.21. Net benefit of legislative Option 1

Scenario	Net benefit (present value, million GBP)
Low	53
High	547
Better estimate	**237**

Option 2. Modify the operation license of a sole SPC to create a separate IP financing and performing a large regulatory project (for instance, the Thames Tideway Tunnel) on behalf of the SPC.

Assumptions:

- Base year: 2010
- Period: 30 years
- Discount rate 3.5%

Costs

Like Option 1, the estimates refer to the Thames Tideway Tunnel. Costs for OFWAT in the negotiation of the changes of license and the contractual terms amount to 5 million GBP, with an average of 0.08 million GBP per year. The remaining annual costs (best estimate of GBP 2.3 million; range GBP 1.8-4.2 million) are related with IPs in operation. Transition costs accumulate for water companies in the tender of IPs: They are estimated on 17 million GBP in two years. In general, costs are like those of Option1, with the OFWAT's regulatory costs replaced by licensing costs and negotiation of contracts of a similar magnitude. Table 4.22 presents the total costs estimated from Option 1.

Table 4.22. Total cost of legislative Option 2

	Annual average (constant prices, million GBP)	Total cost (present value, (million GBP)
Low	1.9	53
High	4.2	97
Better estimate	2.4	63

Benefits

The benefits in concept are similar to those of option 1, but option 2 (see Table 4.23) will be much less effective in isolating project risk within the IP, because the IP will not be a truly separate and directly regulated entity. This means there is a greater likelihood of risk "contagion" to the linked SPC, for example, through "market consolidation" (that is, including the IP value in the accounts of the SPC). As an assumption, the benefits of risk isolation (estimated in terms of capital cost reduction for the SPC) are half of those in option 1, due to the cost of a similar option. However, in practice, benefits can be even more limited than this. Table 4.24 presents 3 scenarios of net benefits from option 2.

Table 4.23. Total benefit of legislative Option 2

	Annual average (constant prices, million GBP)	Total cost (present value, (million GBP)
Low	0	0
High	50	300
Better Estimate	25	150

Table 4.24. Net benefit of legislative Option 2

Scenario	Net benefit (present value, million GBP)
Low	- 97
High	247
Better estimate	**87**

When comparing the range of benefit estimates, Option 1 goes from GBP 53 to GBP 547 million, with the better estimate in GBP 237 million, while in option 2 the range passes from –GBP 97 to GBP 247 million with the better estimate in GBP £87 million. Option 1 not only has a higher net expected benefit (better estimate) than Option 2, but the variability is less risky. A key point is that even the worst-case scenario yields a positive net benefit, contrary to Option 2. In this case it is important not only to look at the expected net benefit, but also at the range of uncertainty. There could be a case where the best estimate is higher,

but the range of variability is high with negative values. In these cases, the probability of the range of variability should be assessed.

Box 4.6. Elements to consider for impact assessment

- Which is the most appropriate methodology to assess impacts?
- What are the costs and benefits of each alternative?
- What costs and benefits are direct or indirect?
- What is the most appropriate way to quantify costs and benefits? Is there a bias in the quantification method?
- What are the groups facing costs and benefits? Does any particular group suffer disproportionate costs?
- What is the temporality of costs and benefits?
- What variables affect the estimated projection of costs and benefits?
- What is the level of uncertainty associated with impacts? Does uncertainty significantly affect the alternative selection?

Element 6: Regulation compliance

The impact of a regulation is directly related to the extent to which regulated regulators comply with it. A regulation without compliance will not solve the public policy problem that originated it, and therefore will not achieve the objectives set out. It is essential that Sunass design a regulatory compliance plan before it is approved. The RIA process loses value when a compliance strategy is not designed, as well as monitoring and assessment, since the design of the regulation can be very sophisticated, but when implementing the regulation, there are not sufficient human or material resources, or there is no body responsible for monitoring the standard.

The establishment of a correct compliance strategy should include the following:

- It minimises costs and efforts for the regulated subjects and the government
- It creates incentives so the regulated subjects comply with the regulation
- It establishes the adequate guidelines for those who oversee the regulation.

To determine the compliance with a regulation, the extent of voluntary or mandatory compliance that the regulation will have must be considered, that is, how easy or difficult it will be to comply with the regulation.

- **Voluntary compliance**: Encourages obligated subjects to change their conduct and comply with the obligations imposed. This compliance is related to the cost of compliance with the regulation to the subjects, as it is assumed to be minimal and therefore motivates compliance without the need for additional measures. It is assumed that both risk and compliance costs are low, which encourages compliance with the obligations imposed by the authority.
- **Mandatory compliance**: It will impose more work of surveillance and control from authorities. It is presupposed that both, costs, and administrative burdens imposed by the regulation for subjects obliged are high, which encourages to prevent its compliance.

The inspection and auditing strategy of the selected regulatory proposal should consider the following principles, which will guarantee an increase in compliance (OECD, 2018[10]):

- Evidence-based application: The assignment of a budget for inspections must be conducted using a cost-benefit analysis and depending on the level of risk of the topic. Regulators must consider evidence for assigning resources in an efficient manner.
- Selectivity: Having a budget restriction, regulators should select the subjects to be inspected through a risk assessment.
- Focus on risks and proportionality: Supervise with greater periodicity and/or rigidity the instances that imply greater risk. On the contrary, supervise with less frequency and requirements those that imply a lower risk.
- Responsive regulation: Determine the level of supervision considering the profile and specific behavior of the regulated subject.
- Long term vision: The regulatory compliance policy must be based on fulfilling general and specific goals.
- Coordination and consolidation: Inspection functions must be coordinated and consolidated, avoiding duplication and waste of public resources. Coordination between government agencies is necessary to avoid duplication.
- Transparent governance: Warrant stability with professional careers, as well as the interference of political cycles.
- Information integration: Use information technologies to share information, maximizing the risk focus and coordination.
- Clear and fair process: Parameters should be established to establish a fair process, as well as publish the requirements for each inspection process.
- Encourage the compliance: The government should implement the necessary mechanisms to achieve active compliance with the regulation.
- Professionalism: Ensuring the inspectors professionalism is critical to effective and transparent inspections that build trust.

Box 4.7. Questions to develop the compliance strategy

- Which are the incentives of the regulated parties for complying with the regulation?
- Is the strategy of a voluntary compliance reasonable, or is it necessary to appeal to traditional measures of mandatory compliance?
- What are the risks in case of non-compliance?
- What are the best tools to ensure compliance?
- What risk indicators can feed the compliance strategy?
- Can the current supervisory staff reasonably monitor regulatory compliance? Otherwise, what is the additional need for staff?
- What supervising methods, beyond inspections, can be used?
- Which is the necessary budget, including staff and technological tools, to achieve an adequate supervision of the regulatory compliance?

Element 7: Monitoring and assessment strategy

The monitoring and assessment of the regulatory proposal allows to clearly identify whether the public policy objectives are being achieved, as well as to determine whether the proposed regulation is necessary

or how it can be more effective and efficient to achieve the proposed objectives. Monitoring and assessment are usually underestimated steps in the public policy development process, but they are a fundamental part of the implementation of the regulatory proposal to achieve its objective.

Monitoring

Monitoring is a systematic process for the collection, analysis and use of information to measure the progress of public policy objectives established in the legislative proposal. Monitoring a legislative proposal allows to identify if a regulation is being applied as expected, or if applicable, if there is the need to implement other measures. In order to carry out adequate monitoring of our regulatory proposal we need to identify:

- What evidence do we need?
- When and how should we collect it?
- When to collect it and from whom?

To do this we must establish indicators that allow us to measure the performance of a legislative proposal. These indicators must be defined, measurable, and time-dependent. To obtain the information we must consider the following characteristics:

- Information research must be exhaustive, that is, we must consider qualitative and quantitative information.
- The cost for data collection should be proportional to the expected benefit of obtaining that information.
- Avoid requesting duplicate information, particularly information that has been previously requested. Internal coordination between Sunass areas is very important for this purpose.
- The collection and use of the information collected must be timely, otherwise there is a risk that the information will not be useful and excessive costs will have been generated.
- Finally, during this process, the transparency and usefulness of the information must be guaranteed.

As mentioned, monitoring is a fundamental element for complying with the regulatory objectives. Implementation and compliance are integral parts of the RIA process. However, there is evidence that most of the time, they do not get the due attention. Several analyses of RIA take for granted that the implementation and compliance are intrinsically involved in the process, something that will occur automatically. For the adequate implementation and compliance and a better achievement of the balance between efficiency and effectiveness, it is necessary that Sunass considers if inspections would be necessary, as well as the way in which they must be organised and planned within the budget (OECD, 2018[10]).

Assessment

The assessment is defined as an evidence-based judgement about a measurement in which a legislative proposal has been effective and efficient, relevant, and coherent. Mechanisms for regulatory evaluation need to be established from RIA´s part process where the regulatory proposal and implementation plan are being designed.

The assessment of the legislative proposal allows to identify if the decision was adequate for managing the initial public problem, if the intervention was enough, and if other ways to reach the same outcome exist in an equally or more efficient manner. With the evaluation, the regulatory cycle is closed, and it is what is known as *ex post* assessment. The *ex post* assessment must be performed sometime after the

legislative proposal has been implemented, usually a 5-year period, but it will depend on the impact of the regulation.

For conducting an *ex post* assessment, it is first necessary to identify and gather the information on indicators which allow to measure to which extent the objectives have been reached, as well as the level of compliance, and the effects of the regulation. Such indicators should normally be determined as part of an *ex ante* evaluation when applying any of the established methods for estimating impacts.

The objectives outlined with the regulation should fulfill two functions that should be covered when a regulation assessment is carried out. First, they must be achieved, that is, complying with the specific objective for which they were designed. If an objective has not been achieved, a decision must be made about changing the strategy for its compliance or the relevance of designing different objectives. If the objective has been achieved, Sunass must evaluate its contribution to solve the central problem identified in the RIA. If it has not been successful in contributing to solving the problem, it may be that the objective was poorly stated or that the identified cause of the problem may not have had any impact. In these cases, the objectives must be rethought. Second, it is required to use a methodology that allows to state if there is causality link between the estimated effects and the regulation.

Ex ante and *ex post* evaluation are similar in the sense that in both processes the quality of the regulation is evaluated. However, while the *ex ante* evaluation is a process based on available information and leaves some uncertainty about its effectiveness in the air, the *ex post* evaluation is a verification exercise that requires the collection of data regarding compliance and effects on the agents or market of the regulation over a given period.

Thus, while the *ex ante* evaluation aims at predicting the impact of a regulation on the basis of a prospective analysis, the *ex post* evaluation is defined as a critical judgment, based on evidence, of whether a regulation has satisfied the needs it was intended to satisfy and whether it has achieved the expected effects. *Ex post* evaluation goes beyond an assessment of whether something happened or not, and usually focuses on the cost and effectiveness of the regulation as a whole (OECD, 2018[10]).

Box 4.8. Questions to develop a monitoring and assessment strategy

- What are the key indicators for monitoring the status of the regulatory implementation?
- What are the potential costs of generating the information needed to monitor regulation?
- How often will monitoring be?
- Which are the indicators that would be used to assess the effectiveness of the regulation?
- How long after the regulation has been implemented will it be subject to assessment?
- What criteria would be used to consider if the regulation met its objectives?

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5 International case studies

This chapter describes the international cases of water regulators of Australia, Mexico, and United Kingdom on the use of the Regulatory Impact Assessment (RIA). The purpose of the case studies is to provide different perspectives on the use of the RIA tool by economic regulators in these countries, mainly on cases where it is applied, where a waiver exists, and the RIA process that each of them uses.

Case Study 1: National Water Commission, Mexico

Organisational structure and main functions

The National Water Commission (CONAGUA) was founded on 1989 as a decentralised body[1] of the Ministry of Agriculture and Water Resources. By 1994, CONAGUA was transferred to the Ministry of Environment and Natural Resources and Fishery which currently is called Ministry of Environment and Natural Resources.

In accordance with the Law of National Waters (LAN, for its Spanish acronym), CONAGUA is the highest body of the Federation that has a technical, normative and consultative character in the management of water resources, including the administration, regulation, control and protection of the hydric public domain. The LAN also states that CONAGUA is an institution with executive, administrative, budgetary, and managerial autonomy for achieving its purposes, the conduction of its functions, and the issuance of authority acts. In the exercise of its functions, CONAGUA is organised according with two modalities:

- National level (functions and activities on operational, executive, managerial, and legislative matters are performed through the Basin Organizations[2])
- Regional level (hydrologic-administrative, through its Basin Organizations)

The CONAGUA's attributions set forth in the LAN, are summarised below (CONAGUA, n.d.[1]):

- To formulate the national hydric policy and to follow it up.
- To act as the authority on water matters and oversee the compliance and application of the Law of National Waters.
- To manage and safekeep the national waters.
- To certify and support the organisation and participation of users to improve water management.
- To encourage the development of a water culture considering it as a vital and scarce resource with high economic, social, and environmental value.
- To issue titles of concession, deeds of transfer, or permits for disposal and keep the Public Registry of Water Rights.
- To execute the fiscal attributions on matters of collection, liquidation, and inspection of contributions and achievements.
- To propose Mexican Official Standards[3] on water matters.
- To build, operate, and provide maintenance of federal hydraulic works.
- To support the development of systems of drinking water and sewage, sanitation, treatment, and recycling of water.
- To support the development of irrigation or drainage systems.
- To lead the National Meteorological Service.
- To support the development of avenue control and flood protection systems.
- To participate in the National System of Civil Protection.

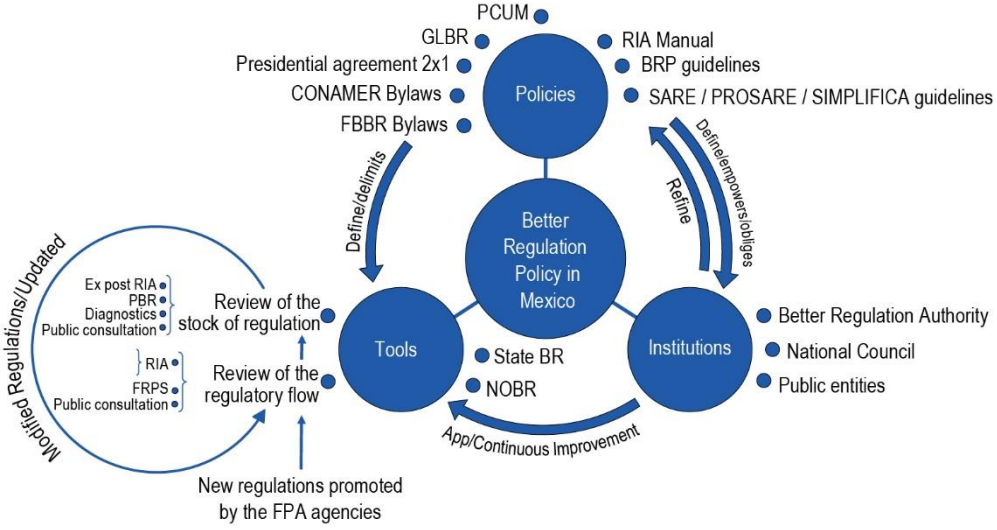
Regulatory impact assessment system in Mexico

The CONAGUA has the obligation to prepare a RIA when it intends to issue a legislative instrument that generates costs for citizens or companies. Because the CONAGUA is hierarchically attached to the Ministry of the Environment and Natural Resources, it must follow the RIA system that is required for the entire federal government of Mexico, and under the charge of the National Commission for Better regulation (CONAMER).[4]

CONAMER (2019[2]) acknowledges that the institutionalisation of the regulatory policy in Mexico has its origin in the recommendations established in the review on *Regulatory Reform in Mexico* (OECD, 1999[3]). Consequently, the system operating the implementation of the Regulatory Impact Assessment (RIA), as well as the public consultation process in Mexico, which accumulate over 20 years of experience in adopting best practices, have their rationale in this document.

The RIA was formalised in Mexico in 1996 when it was incorporated into the Federal Law of Administrative Procedures (LFPA), and by 1997 its use was mandatory and systematicwith the reforms to theFederal Law on Metrology and Standardisation (CONAMER, 2019[2]) (OECD, 1999[3]). However, in 2000, it was made compulsory the submission of a RIA by all agencies that prepare preliminary drafts of laws, legislative decrees and acts of a general nature. Nowadays the system of the regulatory impact assessment is embodied in several instruments and its implementation involves several institutions constituting the Regulatory Governance in Mexico. Figure 5.1 shows the regulatory governance system in Mexico, and in particular the way in which the RIA is part of the regulatory quality improvement process.

Figure 5.1. Regulatory governance in Mexico



Notes: Political Constitution of the United Mexican States (PCUMS), General Law of Better regulation (GLBR), National Commission for Better Regulation (CONAMER), Federal Board for Better regulation (FBBR), Fast Business Opening System (SARE), Recognition and Operation Program SARE (PROSARE), Program for Simplifying Proceedings (SIMPLIFICA), Better regulation (BR), National Observatory for Better Regulation (NOBR), Programs of Better regulation (PBR), Federal Register of Procedures and Services (FRPS).
Source: CONAMER (2019[4]).

In the federal setting, CONAMER is the institution assigned by LGMR to decide on legislative proposals and the regulatory impact analyses issued by the Federal Public Administration institutions. In Box 5.1 the main functions of CONAMER are outlined, pursuant to the LGMR. Analyzing the legislative proposals and regulatory impact assessments created by the subjects obliged by LGMR are included among these functions.

Box 5.1. National Commission for Better regulation

The National Commission for Better regulation (CONAMER) is an administrative and decentralised body of the Ministry of Economy with technical and operational autonomy. CONAMER's objectives incorporate the improvement of regulations and the simplification of administrative proceedings and services, as well as the transparency of their preparation and implementation.

CONAMER has different powers at national and federal level. At the national level, it encourages the regulatory policy. At the federal level, CONAMER is the body promoting and overseeing regulatory topics. CONAMER as the supervisory body at federal level has the following powers:

- Examine the federal regulatory framework, diagnose its application and, where applicable, prepare preliminary drafts of legislative and administrative provisions for better regulation.
- Analyse legislative proposals and the corresponding regulatory impact assessments.
- Propose, co-ordinate, publish, monitor, and assess Better regulation Programs written by the bodies of the Federal Public Administration and issue binding guidelines for the Federal Public Administration.
- Create, develop, propose, and promote specific programs of regulatory simplification and improvement.
- Propose reviewing the regulatory stock, procedures, and services.
- Estimate the economic cost of procedures and services, according with the information provided by the bodies of the Federal Public Administration.
- Oversee that the bodies of the Federal Public Administration have updated their corresponding part of the catalogue of regulations, formalities, and services.[1]
- Write, publish, and submit the annual performance report to the Congress of the bodies on better regulation matters.

[1] National Catalogue of Regulations, Procedures and Services (article 3, section III, article 38 and 39 of the General Law on Better Regulation).
Source: (Congreso de la Unión, 2018[5]) *General Law of Better regulation*, http://www.diputados.gob.mx/LeyesBiblio/ref/lgmr/LGMR_orig_18may18.pdf.

Regulatory impact assessment

The General Law of Better regulation (LGMR) sets forth that the RIA is a tool aimed to ensure that benefits of regulations are higher than their costs and that these represent the best alternative to manage a specific problem. Moreover, it states that the purpose of the RIA is to warrant that regulations safekeep the general interest, by considering the impacts or risks of the activity to be regulated, as well as the institutional conditions of the obliged subjects. The use of this tool is mandatory for all Federal Public Administration institutions when they intend to issue any regulation, including CONAGUA. In accordance with the LGMR, a regulation is any rule of general character whose denomination can be an Agreement, Memo, Code, Criterion, Decree, Directive, Provision of general character, Technical provision, Statute, Format, Instruction, Law, Guideline, Manual, Methodology, Mexican Official Standard, Regulations, or any other denomination of analogue nature issued by any obliged subject. Thus, CONAGUA, by being a decentralised body of the Federal Public Administration and adhered to the Ministry of Environment and Natural Resources is an obliged body that must comply with the RIA process and public consultation.

The Regulatory impact assessment (RIA) identifies several modalities, according with the level of impact of the regulation or the emergency that could arise. These modalities were implemented since 2010, using a calculator which measures the level of impact (CONAMER, 2019[2]). In other words, the institutions that make regulations need to use the calculator to know the impact they generate. The modalities of RIA are as follows (see Table 5.1 for types of RIA with compliance costs and (COFEMER, 2010[6]) for a formal definition):

- **High-impact RIA**. It is used when the potential impact of a regulation is high for the economy and population, based on the processes, activities, stages of the business cycle, consumers, and economic sectors affected by the draft bill.

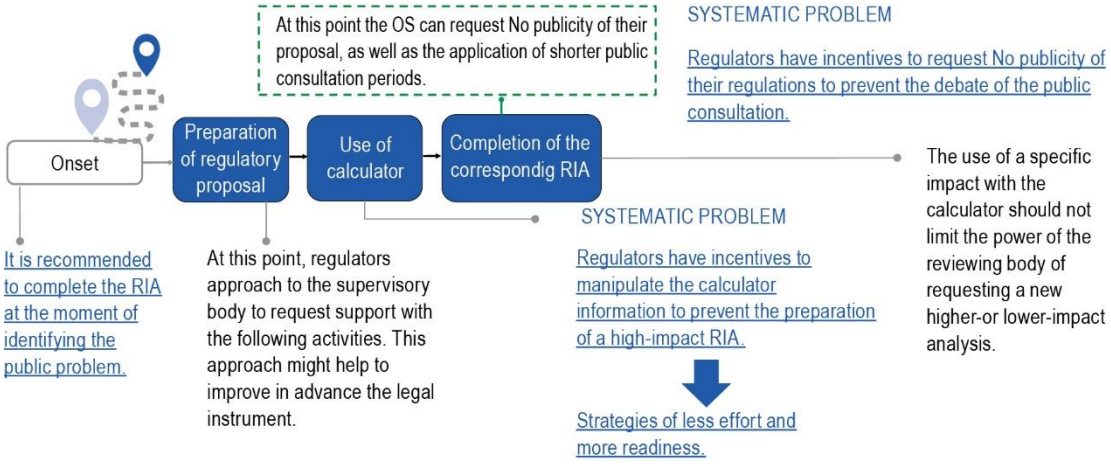
- **Moderate-impact RIA**. It is used when the potential impact of the regulation is medium for the economy and population, based on the processes, activities, stages of the business cycle, consumers, and economic sectors affected by the draft bill.
- **RIA for Periodic update**. It occurs when the draft bill must modify provisions which by their nature have to be updated periodically, but without imposing additional obligations to those already existing.
- **Emergency RIA**. It occurs when the draft bill complies with the criteria for the issuance of the emergency regulation, which are the following:
  - If it has a validity of not more than six months;
  - If the purpose is to prevent, mitigate or eliminate an existing damage to the health and welfare of the population, the environment, and natural resources.
  - If emergency treatment with equivalent content has not been previously requested.

For determining the compliance costs, the calculator currently used by CONAMER considers several elements (COFEMER, 2010[6]):

- Economic process(es) related with the regulation;
- The number of consumers, users, products, services, or population affected directly or indirectly by the regulation;
- The frequency with which a product or service is consumed;
- The number of units subject to regulation;
- The frequency with which the regulated subjects must comply with the regulation;
- The economic activity affected by the regulation;
- The type of costs assumed by the regulation;
- The type of legal ordering;
- The type of impacts on the competition and free concurrency;
- The impact on specific sectors;
- The incidence over some activities which might be considered anti-competitive or affecting the consumption decisions;
- The objective of the regulation of attention, prevention, or mitigation of a risk;
- The impact on economic activities;
- The impact on the issues related to the consumers' rights.

The Figure 5.2 shows the process that a regulation follows to identify the costs of regulation and the type of RIA that should enter CONAMER, according to the cost calculator. In the same figure, it can be observed that CONAMER has identified challenges for the correct implementation of the cost calculator and RIA.

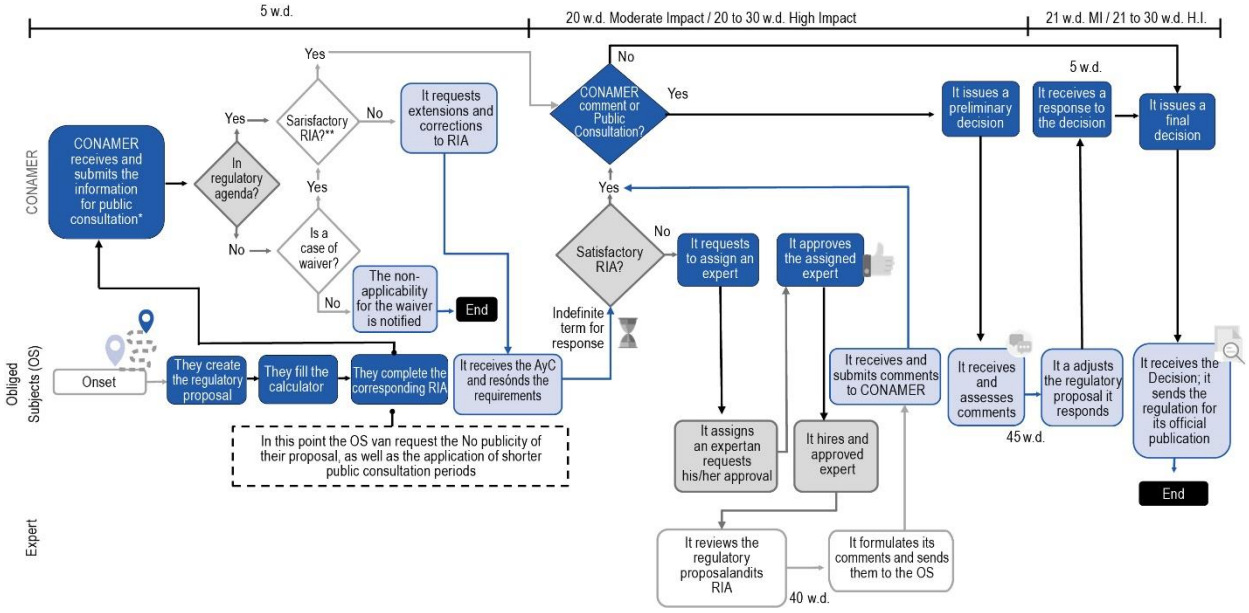
Figure 5.2. Identification of regulation costs



Source: CONAMER (2019[4]).

The process implemented to strengthen regulatory quality through regulatory impact assessment and public consultation in Mexico follows the flow described in Figure 5.3. In this figure the actors and their activities related during the RIA process are observed. In the case of CONAGUA, the steps that its legislative proposals should follow are observed in the row indicated for *obliged subjects*.

Figure 5.3. Better regulation procedure in Mexico



Note: wd.-Working days, H.I.-High impact, OS-Obliged Subjects.
Source: CONAMER (2019[4]).

In Mexico, the LGMR states the RIA must consist of six constitutive elements which are helpful to identify and warrant the establishment of new obligations or proceedings:

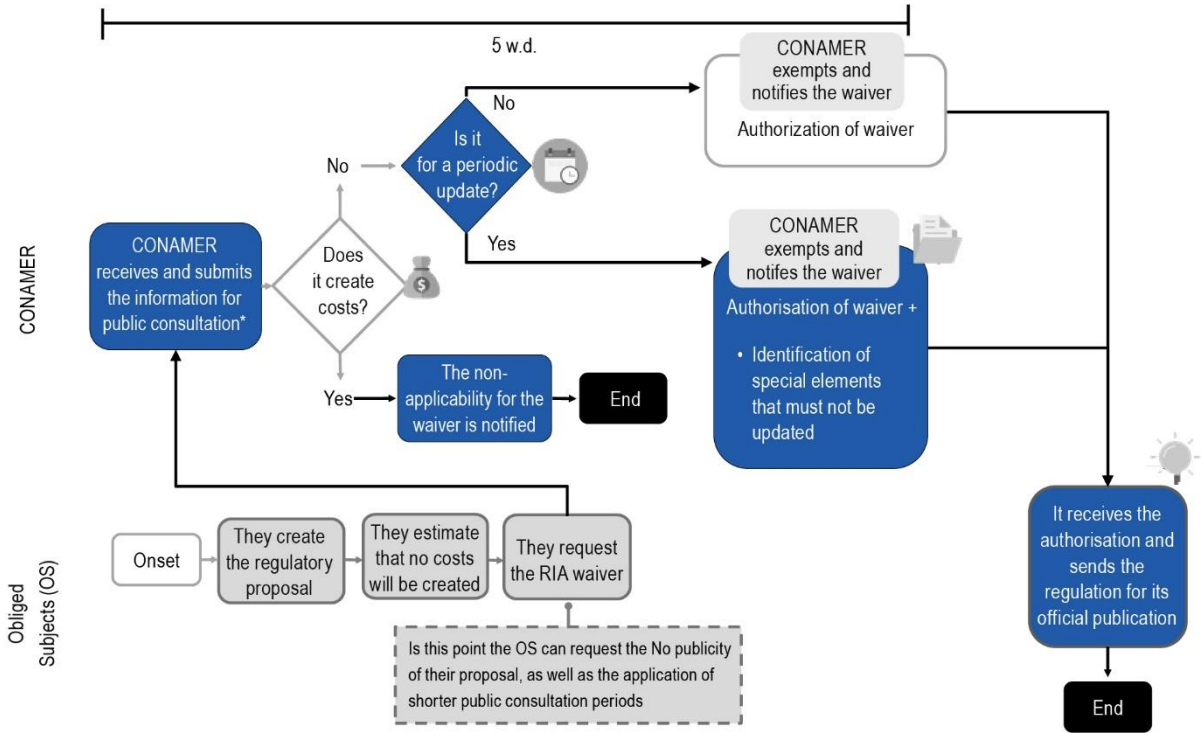
- Definition of the problem and general objectives of the regulation (which identifies and measures the problem, and helps to determine if it is necessary to update the regulatory framework)
- Assessment of regulatory alternatives (it identifies the potential solution mechanisms, assesses costs and benefits of alternatives, as well as the technical and legal feasibility)

- Regulation impact (it identifies the net benefit of the regulation)
- Implementation and observance (identification of mechanisms by which the regulation is intended to achieve its objective)
- Mechanisms of assessment and follow-up (those elements allowing to measure the progress of the compliance are identified)
- Prior public consultation (exercises of public involvement carried out in the processes for designing and applying regulations).

The LGMR also considers that in the assumption that an obliged subject considers that its regulatory proposal does not imply compliance costs, the CONAMER as better regulation authority in the federal setting in Mexico might authorise the waiver of this requirement in a period of not more than five working days, in accordance with the Operational Manual of Regulatory Impact Assessment. In Figure 5.4 the process that a legislative proposal requesting the waiver for the RIA follows is shown. Therefore, under the assumption that CONAGUA will request the waiver of the RIA, the institution should follow the flow set forth as *obliged subject.* Specifically, the criteria for determining the regulations imposing compliance costs are the following (CONAMER, 2020[7]):

- It creates new obligations for individuals or makes more stringent the current obligations;
- It creates or amends proceedings (except when the amendment simplifies and facilitates the compliance of the individual);
- It reduces or limits the rights or payments for individuals; or,
- It establishes definitions, classifications, characterisations or any other term of reference, which together with another provision in force or with a future provision, affect or may affect the rights, obligations, benefits or procedures of individuals.

Figure 5.4. Discrimination of regulatory impact



Source: CONAMER (2019[4]).

In Mexico, the RIA incorporates several approaches aimed to distinguish specific impacts such as competition, foreign trade, or impact on consumers. During the preparation of the RIA, the regulated subject is asked to explicitly indicate whether the legislative proposals have any impact on these issues. Consequently, since draft bills can create several levels of impacts on the population and economy on terms of costs and benefits, CONAMER has designed 12 different types of RIA (CONAMER, 2016[8]). See Table 5.1.

Table 5.1. Types of RIA for regulations with compliance costs

Type of RIA	Moderate impact with analysis	High impact with analysis:
Ordinary	Standard Impacting the competition Impacting foreign trade Impacting consumers Their combinations	Standard Of risks Impacting the competition Impacting foreign trade Impacting consumers Their combinations
Emergencies		
Periodical updates		
Ex post		

Source: CONAMER (2019[4]).

The forms that must be filled out by each of the different RIA are published in the section of annexes of the "AGREEMENT by which the Sole Annex is amended, Manual for the Regulatory Impact Statement of the article by which the deadlines are fixed for the resolution of the Federal Commission for Better regulation on draft bills and the Manual of the Regulatory Impact Statement is made known to the public published on July 26, 2010". (CONAMER, 2016[8]).

Public consultation in Mexico

Public consultation in Mexico has been part of the RIA process since 2000, first as a self-imposed practice, later incorporated into the Federal Law of Administrative Procedures (LFPA), and finally in the LGMR since 2018.

According to the LGMR, all the legislative projects must include an impact assessment and be subject to a minimum of 20 days in a public consultation process led by the authority for better regulation, which at federal level is the CONAMER, except those that apply for the waiver (Congreso de la Unión, 2018[5]).[5] CONAGUA must continue this procedure. Once a federal public institution, such as CONAGUA, submits a legislative proposal for the RIA process through the digital platform managed by CONAMER http://187.191.71.192/, it is automatically published for consultation.

The objective of the public consultation process is to gather information and opinions from stakeholders. Therefore, the platform collects and publishes all the comments to the legislative proposal. CONAMER is obliged by the LGMR to provide a response to all comments received during the consultation process to issue a formal decision of the legislative proposal. Consequently, the regulatory body should reply to the CONAMER's opinion to clarify the process.

Furthermore, the LGMR states that the RIA format must include a description of all the efforts regarding the public consultations undertaken to support the proposal, as well as the opinions gathered during the draft of the regulatory agenda to be developed by all regulated bodies.

Experience in Mexico on RIA in autonomous bodies

In order to enrich the presentation of international cases of RIA practices, this section explains the case of the Federal Telecommunications Institute (IFT, for its Spanish acronym), which is not subject to the RIA system supervised by CONAMER.

Mexico's 2013 telecommunications reform created the IFT as the body in charge of the regulation and competition in the sector. The constitutional reform provided autonomy to the IFT, which is why it is not sectorised to any Ministry of State or public institution, under any scheme of hierarchical subordination. The Telecommunications and Broadcasting Law establishes the powers of both the IFT and the Ministry of Communications and Transport (SCT, for its Spanish acronym), the former market regulator.

The IFT is presided by seven commissioners who form the plenary (board of directors or management) and who are chosen through an open and public competition, based on the experience of the candidates and their knowledge of the sector, as well as of competition, economic regulation and engineering aspects of telecommunications.

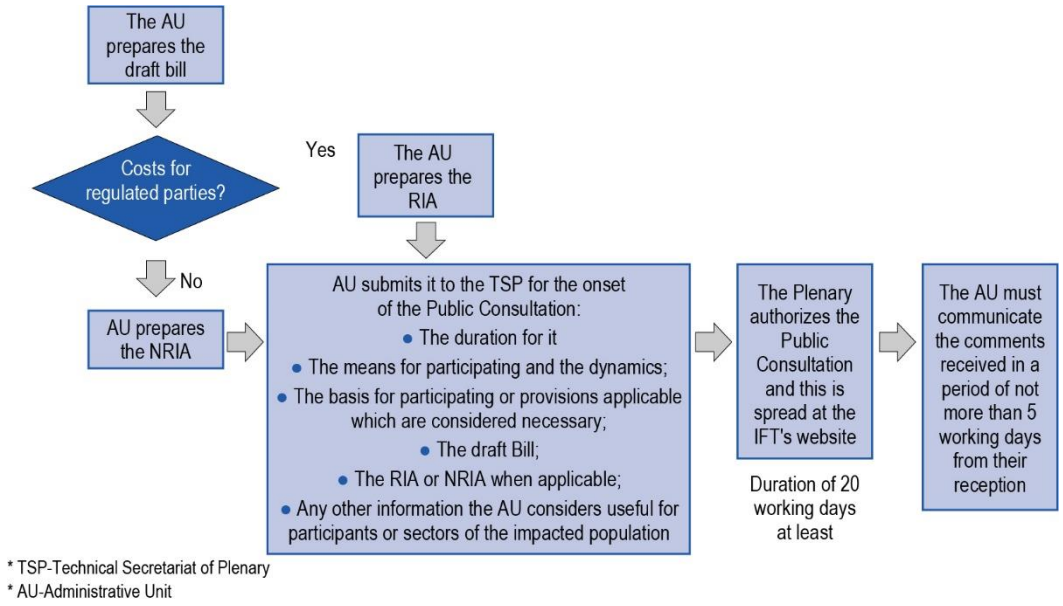
The IFT is an autonomous public body, independent in its decisions and functioning, with its own legal personality and assets, whose purpose is to regulate and promote competition and the efficient development of telecommunications and broadcasting.

The IFT is responsible for regulating, promoting, and overseeing the use, exploitation of the radioelectric spectrum, orbital resources, public telecommunication networks, and the concession of broadcasting and telecommunications. It also regulates the access to active and passive infrastructure and other essential inputs. The IFT is responsible for technical guidelines regarding infrastructure and equipment that are connected to the telecommunications network, as well as being the competition authority for the telecommunications market. The tasks of the SCT are aimed at promoting the market. This includes activities such as planning policies to ensure universal coverage, collaboration in international telecommunications agreements, acquisition of infrastructure, among others.

As regards to the regulatory quality process through the RIA, the Federal Telecommunications and Broadcasting Law (LFTR) states that “For the issuance and amendment of rules, guidelines, or administrative provisions of general character, as well as in any case determined by the Plenary, the Institute must perform public consultations under the principles of transparency and public involvement, under the terms set forth by the Plenary, except for those cases that publicity might compromise the effects intended to be solved or prevented in an emergency”. And it continues stating that “Prior to the issuance of rules, guidelines, or administrative provisions of general character, the Institute must perform and make public a regulatory impact assessment or, where applicable, request the support of the Federal Commission for Better regulation.”

Additionally, the Organic Statute of the IFT states that the General Coordination of Better Regulation will be in charge of the better regulation program of the institute. And, for such purpose, it will prepare and propose to the Plenary the guidelines for public consultations and the Regulatory Impact Analyses of drafts of regulations, rules, guidelines, or administrative provisions prepared by the administrative units of IFT. Moreover, the General Coordination will issue a non-binding opinion on the regulatory impact assessment or on the null regulatory impact assessment of such drafts, prior to their submission, and, where applicable, the approval of the Plenary (IFT, 2020[9]). The public consultation process in the IFT is presented in Figure 5.5.

Figure 5.5. Public consultation process of a draft bill in the Federal Telecommunications Institute



Note: AU – Administrative Unit, TSP-Technical Secretariat of Plenary, NRIA-Null Regulatory Impact Assessment.
Source: (IFT, 2019[10]).

The IFT is an autonomous body that promotes and oversees its own regulatory quality process, which includes public consultation on its regulations and the RIA. For this reason, this represents a relevant example of a national authority that, internally, an Administrative Unit proposes a legislative proposal (together with the corresponding RIA), which must be dictated by the General Coordination of Better Regulation of the IFT itself. As it might be identified, one of the main challenges in this model is the autonomy of the General Coordination to decide correctly and without the influence of the IFT on the RIA. In the Guideline for integrating Regulatory Impact Assessment (IFT, 2019[10]) the approach of the IFT on the implementation of the public consultation and the RIA can be referred.

CONAGUA's experience on the elaboration of regulatory impact assessment

CONAGUA is an obliged body of the LGMR, for this reason, when it intends to publish any regulation in accordance with its functions, it must follow the procedures indicated in the law. In CONAGUA there is no structure or personnel that transversally facilitate the preparation of RIA for the whole institution, instead, each administrative unit uses its own human resources to prepare its legislative proposal, as well as follows the regulatory quality process defined by the LGMR.

As of June 2020, CONAGUA has submitted 40 regulatory proposals to CONAMER, from which 7 have been waivers of RIA, 1 format for operational rules, 3 RIA of moderate impact, 2 RIA of moderate impact impacting competition, 14 operational rules, and 13 applications for waivers of RIA. Of these, three are currently in the process of analysis, one was discharged, and the rest are already managed (see Table 5.2). CONAGUA, since it does not have a unit or person responsible for the internal process of developing RIA, does not have statistics on the total number of regulations that enter CONAMER. The statistics are focused on each administrative unit.

Table 5.2. CONAGUA's files at CONAMER from 2012 to the date

Concept	Number	Percentage
Waiver of Regulatory Impact Assessment	7	18%
Format for operational rules	1	3%
Moderate Regulatory Impact Assessment	3	8%
Moderate Regulatory Impact Assessment impacting competition	2	5%
Operational Rules	14	35%
Application of Waivers of Regulatory Impact Assessment	13	33%
Total	**40**	

Source: Elaborated by OECDE with information of CONAMER.

Some examples of CONAGUA's files at CONAMER can be found in Table 5.3. The links give access to the complete file of the regulatory proposal or changes in CONAGUA regulations, according to the type of request.

Table 5.3. Examples of regulatory impact assessment in CONAGUA

Concept	Name	Access
Waiver of Regulatory Impact Assessment	Agreement by which the suspension of terms and periods of procedures carried out by the National Water Commission, foreseen in the Agreements published in the Federal Official Gazette on March 26 and 28, 2019 were postponed for prevailing the causes of Act of God caused by the fire dated on March 23, 2019.	http://187.191.71.192/expedientes/23052
Format for Operational Rules	Operational rules for the program to support the hydro-agricultural infrastructure under the National Water Commission, applicable from 2020.	http://187.191.71.192/portales/resumen/49004#
Moderate Regulatory Impact Assessment	Agreement by which the agreement is reformed to establish the procedures that will be presented, attended and resolved through the conagu@-digital system, the electronic notification in the water inbox, the non-exigence of requirements, or the way in which they will be considered met and for notifying to the public the days that will be considered as non-working for purposes of proceedings managed by the National Water Commission	http://187.191.71.192/portales/resumen/47385
Moderate Regulatory Impact Assessment impacting the competition	General rules establishing the requirements to be complied by the verification units to obtain and keep the approval of the National Water Commission for the assessment of Conformity in terms of that set forth in the Mexican standard "NMX-AA-179-SCFI-2018, Measurement of National Water Volume Used, Exploited, or Harnessed"	http://187.191.71.192/portales/resumen/49695#
Operational Rules	Agreement by which the several provisions of the operational rules for the program of drinking water, drainage, and treatment in charge of the National Water Commission are added, applicable from 2020	http://187.191.71.192/portales/resumen/48760#
Waiver Applications of Regulatory Impact Assessment	Agreement amending the articles, published in the Federal Official Gazette on February 10, 2011 and June 6, 2012, amended on March 6, 2014 referring to proceedings of the National Water Commission	http://187.191.71.192/portales/resumen/45903#

Source: Preparation of the OECD with information of CONAMER.

Case Study 2: Regulatory Authority of Water Services, United Kingdom

Regulatory context

The Department for Environment, Food and Rural Affairs (Defra) is the institution outlining the regulatory framework of the industry of water and sewage in England and Wales. Defra is in charge of defining standards, preparing laws, and creating special permits among other things. On the other hand, the body responsible for the economic regulation of the sector is the Department for Environment, Food and Rural Affairs (Ofwat) in the United Kingdom. Ofwat is a non-ministerial body created in 1989 from the privatisation

of the water and sewage industry in England and Wales. By being a non-ministerial body, the Ofwat has some features such as operational independence and control on the policies it issues, in addition to having a highly technical component (Cabinet Office, 2016[11]). The Authority has the following objectives (The United Kingdom, 1991[12]):

- Protecting the consumers' interests
- Ensuring that service provider companies comply with their obligations
- Ensuring that the service provider companies can finance their operations
- Warranting that licensees comply with their obligations

Although Defra is the sector department (or ministry) linked to the Ofwat, the HM Treasury is the agency in charge of supervising the finances of the regulator, and the latter must be accountable directly to the Parliament, allowing for a very close relationship between the regulator and the ministry (Department for Environment, 2020[13]). This is why the Water Industry Act (1991) states that Ofwat must conduct its functions with technical independency and competence, impartiality, and transparency (The United Kingdom, 1991[12]).

Regulatory policy in the United Kingdom

In the United Kingdom, the regulatory policy, and specifically, the RIA system, is mainly determined by three institutions which complement each other (Department for Business, 2020[14]):

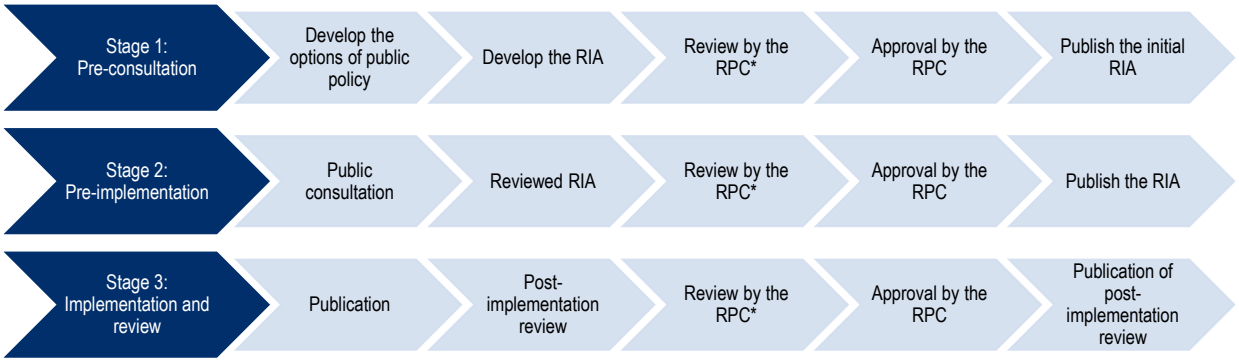
- Better Regulation Unit (BRU) is the office at the interior of each department or ministry supervising and advising on the compliance of the requirements on matters of better regulation.
- Better Regulation Executive (BRE) is in charge of leading the Better Regulation Policy throughout the government. Additionally, it is also responsible for adopting better regulation on the development of public policies.
- Regulatory Policy Committee (RPC) is an independent body supervising the evidence and analysis warranting any regulatory amendment.

The Small Business Enterprise and Employment Act (2015), outlines the goals and guidelines to be followed on matters of regulatory policy, as well as the attributions of the several bodies involved in the regulatory process in the United Kingdom. In particular, it sets the business impact target (BIT), which represents an objective for the government under the terms of economic impact on the business activity of the regulatory provisions introduced or derogated in a specific period.

Under the guidelines established in the Companies Act (2016), the RIAs[6] produced by regulators, including Ofwat, must have the validation of the RPC.[7] The RPC opinion is mandatory if the proposal generates costs higher than 5 million (GBP) annually for companies. For regulatory amendments underneath this threshold, the regulator must perform a proportional analysis in order to notify its decisions (Department for Business, 2018[15]).

Moreover, the Better Regulation framework promotes the development of evidence-based quality regulations through three main elements: public consultation, impact assessment, and post-implementation review (Department for Business, 2018[15]). Each of these elements is reflected in the stages that constitute the regulatory cycle in Figure 5.6.

Figure 5.6. Framework for Preparing Regulations, BRE



* The review by the RPC is optional in the pre-consultation stage and is not mandatory for those legislative proposals with an impact lower than ±5 million (GBP) in direct annual cost to companies.
Source: Department for Business, Energy & Industrial Strategy (2020[16]), *Better Regulation Framework, Interim guidance*, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/872342/better-regulation-guidance.pdf.

RIA system

As mentioned before, the Companies Act (2016) sets forth that Ofwat must comply with the RIA process for all those regulatory provisions with an annual net impact on companies of ±5 million (GBP). For events where the impact is lower than ±5 million GBP, a proportional analysis of costs and benefits should be carried out to warrant the decision-making, as well as showing that the net impact is lower than that amount (Department for Business, 2020[16]). That is, for those regulations creating a net impact lower than ±5 million GBP, a proportional assessment should be done only, in contrast to a complete impact assessment when it exceeds ±5 million GBP. When it is lower than ±5 million GBP, the agency itself approves the proportional impact assessment and should not be included in the Impact Business Target (IBT). All regulations should undertake the pre-consultation process since it is the step prior to determining the net impact of the regulation.

Additionally, regulators must consider the guidelines established in the Regulator's Code. The Code sets forth the principles of flexible and proportional regulation focused in promoting the growth without generating excessive burdens for regulated agents (Department for Business, 2014[17]). For more details on the Regulator's Code see Box 5.2.

Box 5.2. Regulator's Code

The Regulator's Code establishes a series of principles focused on the flexible regulation and based on the Regulatory Compliance Best Practices. The Code presents six criteria or principles that regulators should follow when developing public policies, in order to guarantee the achievement of the policy objectives, as well as to reduce administrative burdens and promote regulatory compliance. The six principles contemplated in the Code are:

1. Regulators must carry out their activities in a way that promotes regulatory compliance and helps the growth of the regulated parties.
2. Regulators must provide simple and direct ways for having relationships with their regulated parties and to listen their points of view.
3. Regulators must base their regulatory activities on risk.
4. Regulators must share and interchange information on the regulatory compliance and risk.

5. Regulators must ensure the availability of clear information, guidelines, and recommendations to help regulated parties to comply with their regulatory responsibilities.
6. Regulators must ensure their approach to regulatory activities is transparent.

Source: Department for Business, Energy & Industrial Strategy (2014[38]), Regulator's Code, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf.

RIA obligations

Ofwat conducts RIAs when its regulatory proposals generate significant modifications to existing policies or represent changes to the way the agency conducts its business. The agency is governed by the principles of transparency, accountability, proportionality, consistency and targeting of regulatory interventions (Ofwat, 2011[18]). Therefore, the Ofwat involves stakeholders from the early stages, consults its RIAs, an includes plans for the development of Post-implementation Reviews (PIR) before publishing the legislation| (Ofwat, 2017[19]).

Ofwat proposes regulations based on its attributions and objectives established in its strategy (Ofwat, 2019[20]). That is, the agency performs a RIA when its proposal implies (Ofwat, 2011[18]):

- A significant impact on clients (in general terms or specific clients) of water or sewage service
- A significant impact on the environment
- A significant impact on the structure of the water and sewage sector
- Impact on the companies of the sector or licensees (in general terms or specific types of companies or punctual companies)

The RIA obligation applies for those proposals with an annual impact on companies over five million (GBP). However, Ofwat (and other institutions) must conduct a proportional assessment of the impact of its regulations for those outside the parameters mentioned above.

The RIA is based on the ROAMEF system, which considers the following elements: rationale, objectives, analysis, monitoring, assessment, feedback which will be described thoroughly in the following section (Department for Business, 2020[16]).

RIA supervision

RPC reviews and issues formal an informal (not publicly) opinions about the Regulatory Impact Assessment prepared by the regulatory agencies. The main objective of these reviews is to ensure that public policy decisions are made based on adequate evidence. The types of opinions and recommendations issued by the RPC vary according to the stage of the regulatory cycle; a description of these is presented below:

- RIA prepared for the pre-consultation stage: RPC issues recommendations on the elements to be considered in the RIA during the stage of consultation and which to be considered in the final stage. Typically, these recommendations are informal and are not available to the public; however, it is also possible that RIA for public consultation follow a formal verification process by the RPC.
- RIAs prepared for the pre-implementation stage: In this type of RIA, RPC focuses more on estimating the costs and benefits of the regulatory proposal. The RPC may issue three criteria based on the information and analysis proposed in the RIA:
    - Initial review notice (IRN): RPC issues the IRN when the quality of the RIA proposed does not comply with the requirements established by the committee. The review includes an informal recommendation, which is not public. If the Department responsible for preparing the RIA does

not comply with recommendations of the RPC, this may cause a red rating, which is formal and is available to the public.

- Red-rating: This is the second step in case the regulatory agency fails to make the necessary corrections outlined in the IRN. Red-ratings are published at the time of publication of the RIA.
- *Green-rating*: If the RPC considers that the RIA complies with the necessary quality, it issues a green-rating. This does not mean that the RIA is perfect, but it reflects that the committee does not have significant concerns or considers that the elements to be improved are minor.

Additionally, the RIAs are assessed by taking into consideration the impact of the legislative proposal on the companies. The RPC assesses the estimation of the annual net impact of the regulation on the companies, if the evidence provided is adequate, the estimation is endorsed by the committee.

Once the RPC receives the RIA, it is evaluated by a technical team, which issues an opinion. The criteria considered by the RPC include:

- The proposal does not assume that the regulation is the solution of the public policy problem
- All the regulatory and non-regulatory alternatives are considered
- The RIA has the sufficient evidence
- The estimations of costs and benefits are reliable
- Non-monetary impacts were assessed thoroughly
- The outcomes are clearly explained and presented
- The regulatory costs of companies are adequately reflected

The opinion is peer reviewed within the RPC with the purpose of ensuring the quality of the same. The RPC should issue a formal opinion within 30 days, however, for particularly complicated cases, the process may take a little longer.

Content of RIA

The Office of Better regulation has made available to the relevant bodies a predetermined format for RIAs. The same is found on the website gov.uk, specifically in this link.

Sections included in the RIA

- Description of the public policy problem
- Objectives of the action or intervention and its expected effects
- The alternatives that were considered, including non-regulatory alternatives. Additionally, the preferred alternative must be specified as well as a plan of implementation
- Monetised and non-monetised costs and benefits of each one of the alternatives considered
- Direct costs and benefits to businesses and companies
- Risks and assumptions considered in their analysis
- Impact on SMEs
- Proposal for monitoring and assessment

Public consultation

The participation of stakeholders is a particularly important element for Ofwat. The agency not only performs consultations, workshops, and meetings to know the opinion of the regulated companies and final users, but also establishes the principles that the regulated companies must follow by the time of engaging with their clients. The principles on Figure 5.6 are the seven identified principles of best practices

for the relationship with users. It is important to mention that Ofwat includes the regulated parties and final clients throughout the regulatory process, which allows it to perform adjustments and modifications to the legislative proposals based on the information collected by public consultations. An example of how the agency includes the relevant stakeholders is the process for reviewing water and sewage tariffs (*Price reviews,* PR), explained below.

Ofwat performs a review of the tariffs that service provider companies of water and sewage supply can charge in England and Wales every five years. This process implies balancing the interests of final users of the service with the financial health of the licensees, for which it is vital to consider the points of view and interests of all the stakeholders. Although the agency publishes the tariffs to be followed for a couple of months before their entry into force, their development is a process that takes some years and involves the stakeholders from the beginning.

The comments and observations that Ofwat receives are published and incorporated (whenever considered adequate) in the legislative proposals. For example, the review process of tariffs for the period 2020-25 included the publication and consultation of numerous discussion documents, methodologies, and proposals for estimating water and sewage tariffs before submitting the final document.

RIA administration

For the implementation of the RIA, the Office of Better Regulation, the HM Treasury, and Ofwat have issued guides and guidelines to facilitate the preparation of the analysis, as well as to ensure its quality. Among the documents to note, the following are found:

- *Better Regulation Framework*: This document presents the guidelines that govern the better regulation system in the United Kingdom. This guide includes all the steps that must be followed by the regulatory entities to comply with the principles of better regulation. Additionally, it includes references to specific guidelines and manuals according to the requirements that must be met by the institutions according to the type of regulation intended to be implemented or assessed (Department for Business, 2020[16]).
- *The Green Book*: The Green Book is a document prepared by the HM Treasury, which details a series of methodologies, assumptions, and considerations to carry out the analysis and quantification of the legislative proposal impacts (United Kingdom HM Treasury, 2018[21]).
- Ofwat's policy on impact assessment: This document provides the basic guidelines for assessing regulatory impacts, as well as the characteristics that the legislative proposals of the agency must have (Ofwat, 2011[18]).

In addition to various guides and guidelines for the development of the RIA, RPC and BRE offer help and support to regulatory agencies, including Ofwat. For instance, RPC has a document specifying the interaction areas with regulatory bodies (Regulatory Policy Committee, 2019[22]).

Example of the RIA

In 2016, Ofwat published the RIA of the tariffs regulations for new connections to the water and sewage service network (Ofwat, 2016[23]). The document specifies the public policy problem under scope, as well as the reasons for which the intervention of the government is necessary. In addition of specifying the objectives of public policy, the RIA must understand the effects expected of the same. It is important to note that among the regulatory alternatives, the option of maintaining the *status quo* and not performing a legislative intervention is found.

Each of the regulatory alternatives is analysed to determine its costs and benefits. In this example the following regulatory options are analysed: i) deregulation with a minimum number of rules, ii) introduction of a regulatory framework based on the principles set forth in the Water Act (Water Act, 2014), iii) establishment of prescriptive and standardised rules, iv) not performing changes to the regulation in force.

In addition, the final RIA incorporates the comments received to the first version of the RIA, which was submitted to public consultation for one month. The public consultation allows stakeholders to comment on the regulatory alternatives and the assumptions considered in calculating the costs and benefits of each one.

Finally, the RIA includes a section explaining the regulation impact on companies and SMEs, in addition to incorporating the measurement of greenhouse effects of the regulatory provision.

Notes

[1] Article 17 of the Organic Law of the Federal Public Administration States that the decentralised bodies are hierarchically subordinated to state secretariats (equivalent to the Ministry) and that they will have specific powers to make decisions on the matters and within the territorial setting determined for each case.

[2] Basin Organizations are autonomous units with technical, administrative, and legal capacity attached to the head of the Conagua; they have as main powers formulating and proposing the regional hydric policy, managing regional hydric programs, as well as operating, studying, regulating the policy, and managing infrastructure projects and resources.

[3] The Mexican Official Standards (NOM, for its Spanish acronym) are technical regulations of mandatory observance whose essential purpose is to increase the quality for the economic development and the protection of legitimate objectives of public interest foreseen in this regulation, by establishing rules, denominations, specifications or characteristics applicable for goods, products, processes, or services, as well as those related to terminology, branding or labelling, and of information, according to article 4 of the Quality Infrastructure Law.

[4] In contrast, the Federal Telecommunications Institute (IFT, for its Spanish acronym) is entitled to a level of independence as an economic regulator body very similar to SUNASS. Because of this independence, IFT has established a RIA system independent of the rest of the Mexican federal government. The case of the IFT is outlined later.

[5] Where the regulated entity considers that publicity could compromise the intended effects of the proposed regulation, it may request the Better Regulation Authority to determine this situation. In the event that the Better Regulation Authority determines that publicity would indeed compromise the results, other authorities will not be consulted, nor will the information be made public until such time as the regulation is published in the dissemination media (See Art 74 of the General Law on Better Regulation).

[6] RIA (Regulatory Impact Assessment, often shortened to IA –Impact Assessment).

[7] The RPC is an independent body not adhered to any department or agency in the United Kingdom. Thus, it is sought that the RPC opinions are free from undue influence of the government and external agents. For more information about the operation of the RPC, check (OECD, 2018[24]), *Case Studies of*

RegWatchEurope regulatory oversight bodies and of the European Union Regulatory Scrutiny Board, OECD, Paris, http://www.oecd.org/gov/regulatory-policy/Oversight-bodies-web.pdf.

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6 Peruvian case studies

This chapter is aimed to make a recount and analysis of the existing efforts to implement the RIA in Peru. On one hand, it shows the work of the central government, mainly by means of the Presidency of the Council of Ministers and the Ministry of Economy and Finance. The chapter also shows three case studies detailing the work of three independent regulators: Ositran, Osiptel, and Osinergmin. The purpose of the chapter is to allow Sunass to learn some lessons and best practices of their peers.

Cross-sectional elements of RIA in Peru

In 2016, under the Country Programme, the OECD conducted a review of Peru's regulatory policy to assess the policies, institutions and tools used by the government and regulatory bodies in Peru for the design, implementation and implementation of high-quality regulations. The report provides an overview of the political context of regulatory reform by surveillance agencies and regulatory agencies (OCDE, 2016[1]).

This section describes the legal framework for regulatory production in Peru in the entities of the Executive Branch that precede the implementation of the Regulatory Impact Assessment (RIA), as well as the actions that have been taken with a view to achieving this objective.

Legal framework for the regulatory production of the executive branch

At a general level, the Executive Branch has the following rules that establish mandatory provisions for the entities of this branch for regulatory production:

- Organic Law of the Executive Branch (LOPE, for its Spanish acronym). It establishes the principles and basic rules for organisation, jurisdiction, and roles of the Executive Branch,[1] including the Presidency of the Council of Ministers (PCM, for its Spanish acronym), the ministries, and regulators. The LOPE also sets forth, among other functions, regulatory functions of the Executive Branch.[2]
- Unique Ordered Text of the General Administrative Procedure Law (TUO LPAG, for its Spanish acronym). It establishes the regulations that must be followed by the instances of the Executive Branch in their administrative functions. The TUO LPAG regulates the administrative procedures developed by the public bodies and establishes the legal regimen applicable in order that their proceedings serve for protecting the public interest.[3]
- Transparency and Public Information Access Law (LMPSL, for its Spanish acronym). It requires that all legislative proposals include an explanation of their purposes, by appointing the rationale supporting them (explanatory memorandum). The Regulation of this law detail thoroughly the content of the explanatory memorandum (description of reasons for dictating the regulation), which must include the information of the reviewed technical reports. The Regulation of the LMPSL also requires that the Supreme Decrees on economic and financial matters include a cost/benefit analysis,[4] and an impact assessment of the proposal on the national legislation.[5]
- Guide of Legislative Technique for the elaboration of normative projects of the entities of the Executive Power, which aims to guide the entities of the Peruvian public administration in the elaboration of normative projects of general character.[6]

Likewise, participation and consultation case, the entities of the Executive Branch are governed by the following rules:

- (OECD, 2019[2])Political Constitution of Peru. It is the most important legal instrument of the Peruvian ordinance and prevails over any other legal regulation. This regulation sets the importance of the publicity for the enforcement of all State regulations.[7] According to it, the LMPSL establishes the guidelines for the preparation, denomination, and publication of laws.
- The TUO LPAG also contains important provisions for public consultation, ordering authorities to open a period of public information, especially before approving any administrative regulation affecting the rights or interests of citizens.[8]
- The Transparency and Public Information Access Law (LTAIP, for its Spanish acronym), promotes the transparency of the State proceedings and regulates the right of the administered parties to access public information.[9] The LTAIP establishes the obligation of the public entities to

disseminate in their web pages different provisions and communications, to promote the transparency of their acts and the access to their information.

- Framework Law for Regulators (LMOR). Applicable for Peruvian economic regulators, states the creation of User Councils, which are a mechanism for the participation of the stakeholders in the regulated sector. The regulations of this law establish that the regulators must ensure adequate transparency in the development of their functions, establishing mechanisms that allow citizens access to the information managed or produced by them and the participation of citizens in the decision-making process and in the evaluation of the performance of these bodies.[10] Furthermore, regulators are subject to provisions of transparency and procedures of public consultation considered in their rules.
- The rules of the LMPSL develops the provisions of the LMPSL related with the structure that must be observed for the preparation and publication of the national legislation.
- By-law that establishes the provisions regarding publicity, publication of legislative projects, and diffusion of legal regulations of general character (PPD By-law). This Regulation requires that all legislative proposals of the Executive Branch – except for Legislative Decrees and Emergency Decrees, with the category of law – are available for the public for a period not less than 30 days before the scheduled date of their entry into force. Likewise, the PPD Regulation establishes the reception of stakeholders comments and promotes the permanent diffusion of these rules using web pages of the Public entities of the Executive Branch and other institutional tools.

Progress in the implementation of the RIA in the executive branch

PCM role in the RIA implementation process

The PCM is responsible for the co-ordination of national and sectorial policies of the Executive Branch. In accordance with the LOPE, the PCM co-ordinates with the other state Branches, constitutional bodies, regional governments, and civil society.[11] Furthermore, it is entitled with the functions granted to other Ministries of the Executive Branch, including the formulation, planification, co-ordination, execution, and supervision of the national and sectorial policy under its jurisdiction; the approval of legislative provisions; reaching the compliance of the legislative framework, and perform the follow-up of the performance and the achievements reached at national, regional, and local level.[12]

In the same line, the Regulation on Organization and Functions of PCM (ROF PCM, for its Spanish acronym) determines that the PCM is the governing instance of the Administrative System of the Modernization of Public Management,[13] which promotes reforms in all areas of public management, applicable to all entities and levels of government, with competence in matters of State operation and organisation, administrative simplification, ethics and transparency, citizen participation, and the promotion of the quality of regulations issued by the public administration, among others.[14]

The Secretariat for Public Administration, an independent body of the General Secretariat, is responsible for the management of this system.[15] In turn, to fulfill its functions, the Secretariat of Public Administration has, among other, the Undersecretary of Simplification and Regulatory Analysis. The functions of this Undersecretary focus mainly on topics of administrative simplification and regulatory quality, including:

- Designing, preparing, updating, proposing, and implementing policies, plans, and strategies on matters of administrative simplification, and actions on regulatory quality in the area of its competence.
- Preparing reports of technical opinion of the law and autographs on matters on administrative simplification, services provided exclusively and regulatory quality.
- Performing the supervision and inspection of the compliance of the regulations of administrative simplification and regulatory quality.

- Designing and proposing indicators and tools that facilitate the follow-up and evaluation of the plans and other instruments related to administrative simplification and regulatory quality in the area of their competencies.
- It also has the function of implementing methodologies and actions for the RIA of procedures in the legislative training process, and issuing an opinion and advising public entities on the adequacy of the RIA in the legislative training process, in matters of its jurisdiction.[16]

RIA design for the executive branch

The legislative production in the Peruvian state is excessive. Between 2015-19, 574 laws, 289 Legislative Decrees, and 76 Emergency Decrees were issued. This last two are types of regulations classified similarly as a law. At the level of minor level regulations, in the same period, 4,598 Supreme Decrees, 6,819 Supreme Resolutions, and 26,223 Ministerial Resolutions were issued.[17] In the specific case of the PCM, during the afore mentioned period, 664 Supreme Decrees in total were issued.[18]

The process of drafting regulations of general nature in the Peruvian Executive Branch includes several stages, summarised below: analysis of constitutionality and legality, need of the regulation, analysis of the content of the legislative proposal, cost-benefit analysis, and analysis of the impact of the validity of the regulation in the current legislation. These elements are considered in the explanatory memorandum of the legislations that are approved. However, this process has several opportunities for improvement.

Even when public entities have data collection strategies to assist in the analysis of legislative proposals (OECD, 2019[2]), the explanatory memorandum generally do not have evidence of the existence of a public problem requiring state intervention, nor do they contain appropriate identification of public policy objectives. Furthermore, the analysis of the content of the legislative proposal is a repetition of the provisions contained in the draft legislation and these do not contemplate an evaluation of legislative alternatives. In the case of the cost-benefit analysis, in those cases where it is included, it is more qualitative than quantitative. Nor do the explanatory memorandum contemplate mechanisms for compliance with the regulation, or for monitoring and evaluation that would make it possible to follow up on the effectiveness of the regulation.

Additionally, with regard to public consultations, although there is a procedure for the participation of stakeholders through the early publication of draft legislative projects,[19] each public entity uses different consultation methods at different times and there is no standardised procedure for dealing with the comments received.

Therefore, the PCM encouraged the approval of the Legislative Decree that approves additional measures of administrative simplification, and perfects the institutional framework and instruments governing the regulatory quality improvement process (RIA Law).[20] This regulation includes provisions regulating instruments governing the regulatory quality improvement process, among others, the *ex ante* and *ex post* RIAs. The RIA Law established the obligation for the PCM, Ministry of Economy and Finance (MEF), and Ministry of Justice and Human Rights (MINJUS) to issue a regulation legislating RIA.

Based on that, the PCM has prepared a proposal of the regulation for implementing RIAs for entities of the Executive Branch which, by the time of preparing this report, was not approved yet, developing the guidelines for applying this tool for ensuring that the proposal of legislative intervention is the best option to contribute for solving the public problem identified based on evidence. The PCM carried out workshops with public entities belonging to the Executive Branch to notify the content of the regulation proposal and to gather their comments. Concurrently, the PCM has been preparing manuals that facilitate the implementation of the RIA. These manuals correspond to the public consultation process and the use of methodologies to perform the cost-benefit analysis.

Practices consistent with RIA: regulatory quality analysis

On 2016, the PCM encouraged the approval of the Legislative Decree approving additional measures of administrative simplification (RQA Law).[21] The RQA Law sets forth the obligation of performing a regulatory quality analysis to all the legislative provisions of general nature issued by the Executive Branch where administrative proceedings or procedures are established (OECD, 2019[2]). This process is aimed to identify, review, or eliminate those proceedings resulting unnecessary, unjustified, disproportional, ineffective, redundant, or inappropriate to the laws for which they are the support; reducing burdens and contributing to the transparency of management.[22]

In accordance with the RQA, the entities of the Executive Branch should perform three actions: an *ex ante* assessment of impacts of administrative proceedings, a review of the existing regulations, and a review of regulations every three years, in order to reduce burdens. However, the RQA only assesses administrative procedures and not all the legislative measures issued by the government entities.

Even when the RQA has a different purpose and dynamics compared to the RIA, it coexists with this tool as an additional *ex ante* assessment mechanism of regulations, specifically, of those establishing unnecessary burdens through administrative proceedings, thus creating a cost overrun for society.

The Supreme Decree approving the Regulation for applying the Regulatory Quality Analysis of administrative proceedings set forth in article 2 of the Legislative Decree No. 1310 (RQA Regulation)[23] establishes that the administrative proceedings are assessed through the RQA by applying four criteria: legality need, effectiveness, and proportionality. The outcomes of this assessment are validated by a Multisectoral Commission of Better regulation (CMCR, for its Spanish acronym) established as a permanent body that issues opinions on the assessments of the PCM.[24] The opinions of the CMCR, proposed amendments to be implemented by the governmental entity, as well as the acceptance or rejection of the administrative procedure if the principles of legality or necessity are not met.

Once the CMCR endorses the RQAs, the government entities are obliged to perform a new RQA of the validated procedures three years after the date of validity, and to submit it again for consideration.

The RQA took more than 2 years, during which 2432 procedures were reviewed. Of these, 1439 were validated, 319 eliminated, and 674 declared inappropriate.[25] This implies a saving for natural persons, companies, and non-profit organisations since approximately four million requests of procedures will no longer be submitted. Furthermore, 73% of eliminated procedures have impact on the micro, small, and medium enterprises (MSMEs). According with the PCM, the reduction resulting from the implementation of RQA is equivalent to S/. 286.3 million (Presidencia del Consejo de Ministros, 2019[3]).

In addition, as part of the activities of implementation of the recommendations of the OECD Review of Regulatory Policy for Peru, regarding the implementation of the RIA in the country, in 2017 the “Pilot RIA” program was installed under the direction of the MEF, PCM, and MINJUS. This pilot program allowed to review legislative projects, including the legislative decrees approved by the Executive Branch in the framework of the powers delegated by the Congress of the Republic, before their entrance into the Vice-ministerial Coordinating Council (CCV, for its Spanish acronym).[26] Through this review, the need of a legislative project not breaching regulations of administrative simplification (under the direction of the PCM), constitutionality, legality of the regulation proposal (under the direction of the MINJUS), as well as the information of the costs and benefits identified (under the direction of the MEF) is analysed.

RIA in executive branch bodies

While PCM is encouraging the implementation of the RIA at the Executive Branch, the MEF and three Peruvian economic regulators have taken actions to implement RIA in their entities.

Peru has four economic regulators: the Supervisory Agency for Investment in Energy and Mining (Osinergmin), Supervisory Organism of Private Investment in Telecommunications (Osiptel), Supervisory

Agency for Public Transportation Infrastructure (Ositran), and National Superintendence of Sanitation Services (Sunass). These bodies are adhered to the PCM and are entitled with technical, administrative, economic, and financial autonomy. Furthermore, these bodies are governed by the LMOR which, among other functions, grants them the authority to dictate legislations of general and specific nature, for regulating the interests, obligations, or rights of the entities or activities supervised or their users.

The case studies are aimed to detail the progress in the implementation of RIAs and the best practices of the MEF and of those peer regulators of Sunass. Each of the case studies is divided in six parts. In the first one, the legal framework implemented by the regulator to carry out the RIA is detailed; in the second, the RIA implementation process is described; in the third one, information of the developed RIAs is provided; in the fourth, the elements constituting the RIA for the regulator are described; in the fifth, there is information about the examples of the RIA performed and their consultation processes; and, in the sixth, information about other practices relevant for the regulatory policy is provided. From this description, it is intended to rescue the lessons on the RIA implementation in these bodies.

Case study 1: Ministry of Economy and Finance

Context

The MEF is a body of the Executive Branch whose field is the Sector of Economy and Finance. In accordance with the updated Integrated Text of the Regulation of Organization and Functions del Ministry of Economy and Finance (ROF of the MEF), this Ministry enforces its powers at national level in the following fields: economic, financial, and fiscal; scales of remuneration and benefits of all nature at the public sector; public and private sector welfare policy in its scope of jurisdiction; public and private investment; public budget, public debt, treasury, accounting, multiannual programming and management of investments, fiscal management of human resources and supply; tributary, non-tributary incomes, customs, duties, and public hiring; and the harmonisation of the national economic and financial activity to promote its competitiveness, ongoing improvement of productivity, and the efficient operation of markets.

The MEF has two Vice-Ministries, Finance and Economy. The latter has, among other functions, to co-ordinate, enforce, and oversee the application of policies, strategies, plans, programs, and projects on macroeconomic and microeconomic matters, including, topics of competition and productivity (ROF of the MEF).[27]

One of the bodies of this Vice-Ministry is the Directorate General of International Economic Affairs, Competition, and Private Investment (DGAEICIP, for its Spanish acronym), in charge of proposing, addressing, and formulating policy measures and plans promoting more production and productivity. Among other functions assigned, the DGAEICIP formulates and proposes measures to improve the processes for issuing regulations, in order to be consistent with the efficient allocation of productive resources and not constituting obstacles to the mechanism of competition and to the market performance (ROF of the MEF).[28]

Likewise, the MEF —through the Vice-Ministry of Economy— is one of the bodies that integrates the CMCR analysing the RQAs.

Legal framework for performing the regulatory impact assessment in the MEF

The MEF was the first Peruvian entity in implementing mechanisms for better regulation in the country. In 2006 the “Manual for the Economic and Legal Analysis of Normative Production at the Ministry of Economy and Finance” (MEF’s RIA Manual) was prepared. Its objective is to improve and make more efficient the processes for issuing economic legislations, in order that they do not constitute obstacles to the mechanism of competition and the market performance. The MEF’s RIA Manual is applicable for the preparation of all

the devices issued by the MEF, except for those legal provisions stating otherwise. Likewise, the MEF's RIA Manual must be followed by the General Directorates of the MEF, in addition to those regulations that establish the procedures and obligations regarding the preparation of the legal devices.

Moreover, the MEF prepared some Guidelines for the quality improvement of rules and regulations; however, these have not been approved to the date. The RIA in the MEF is based on the following principles dictating its legislative policy highlighted in Table 6.1.

Table 6.1. Principles of the regulatory policy of the MEF

Principles	Scope
Need	For the design of an intervention should have the greatest amount of prior evidence to demonstrate the need for the standard and should explore all intervention alternatives to solve the problem
Effectiveness	The purpose of the regulation must be clearly defined, as well as the potential economic impacts and performance over the time; it also requires an exhaustive examination of the necessity and adequacy of the regulation.
Proportionality	It implies the conduction of the cost-benefit analysis, in order that the costs created by the regulation are not higher than the costs of the problem.
Transparency	The legislative projects, except for exceptional cases, must be published previously to collect comments of the public and achieve the improvement of the legislative regulation with the feedback
Consistency	The regulations must be consistent with the overall objectives of the entity

Source: MEF's RIA Manual.

According with the MEF's RIA Manual, the preparation and approval process of legislative instruments must follow certain guidelines and controls for ensuring the issuance of high-quality regulations. The Regulatory Impact Report (RIR) describes the stages of the preparation process of the regulation in the MEF and contains the impact assessment of the proposal. The RIR is aimed to apply the necessary controls and filters for the legislative analysis and incorporate the principles of the best regulatory practices.

The MEF's RIA Manual also establishes the need to formulate consultations in the process for preparing legislations and pre-publishing the regulations, as a mechanism to increase transparency in decision-making.

RIA implementation in the MEF

One of the main reasons for the broad spread of the RIA is that it helps to improve the decision-making process defining the regulation. The RIA promotes a systematic process with a comparative approach about political decisions and raises the awareness of legislation issuers about the accurate identification of the problem to be managed, in addition to the different alternatives to achieve. Additionally, the RIA asks about the economic feasibility to implement a regulation. Another advantage of the RIA is that it provides an evidence-based analytical method that compares several proposals or alternatives; it promotes the identification of (direct or indirect) benefits and costs derived from the regulation; it sets a rational system of decisions and assesses the regulation in a cross-sectioned manner (OECD, 2019[2]).

Preparation process

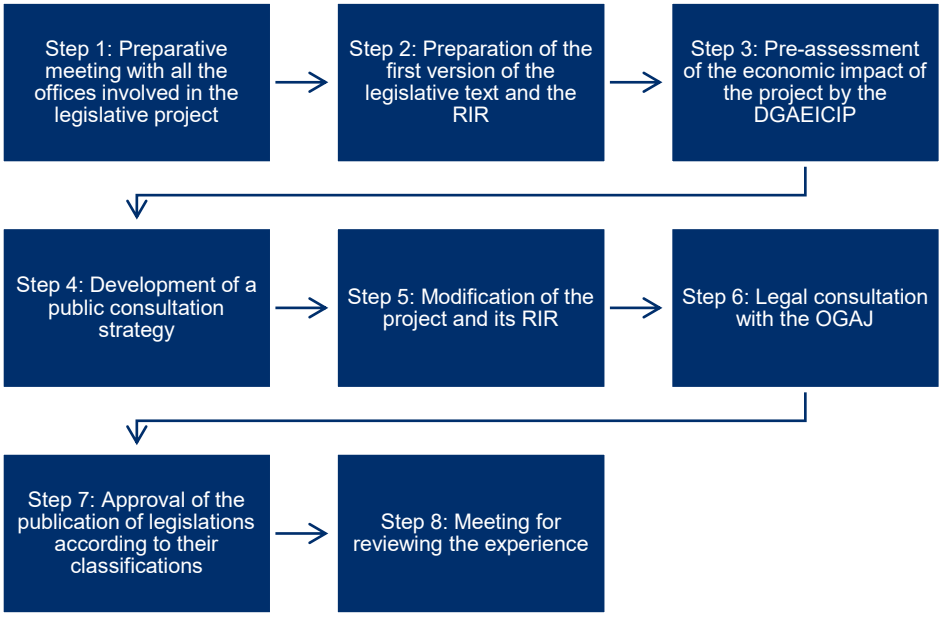
The MEF's RIA Manual has foreseen a special procedure for the approval of the eventual regulation with controls or filters to ensure the compliance of the principles governing the legislative policy of the MEF. A first control is carried out by the MEF´s Senior Management, which must approve the beginning of the

preparation process of the regulation. Once the approval is obtained, the line agency of the MEF which proposes a regulation is in charge of performing the preparation of the legislative proposal and the RIR.

The quality control of the regulation is performed by the DGAEICIP, which also provides advice in the formulation of the RIR. Meanwhile, the General Office of Legal Advice (OGAJ, for its Spanish acronym) performs the legal control of the legislative proposal to ensure the constitutionality of the legislation and its coherence with the valid legal ordinance. Finally, the publication of the legislative proposal for comments is considered a control mechanism while it intends to ensure the transparency of the legislative process.

The preparation process of a legislative project entails eight stages, as seen in Figure 6.1.

Figure 6.1. Preparation process for legislative instruments in the MEF



Source: MEF's RIA Manual.

Although the process has several controls, it is intended to prepare a legislative proposal, which is subject to resistance tests to identify the potential failures; that is, the process comes from the premise that the decision to be implemented is a regulation. The assessment of other alternatives to the regulation is an element that can emerge as part of the assessment that the DGAEICIP conducts as part of the quality control of regulations. In the same sense, the analysis of legality is produced on the legislative proposal before this is published in the Official Gazette.

An outstanding element of the MEF's RIA Manual is the final step, aimed at reviewing the experience of the formulation of the standard in order to identify improvement opportunities to be implemented in other processes.

RIA training for MEF staff

In May 2017, the MEF organised a Training Workshop on Regulatory Impact Assessment. The workshop consisted of 22 meetings performed for 3 days and leaded by officers of the OECD and 2 international experts of Mexico and United Kingdom's Office of Regulatory Services. The objective was to provide training for officers of the MEF and other government bodies on the preparation and assessment of the RIA.

The workshop covered each of the elements constituting the RIA: problem definition, objective of the policy, alternatives, impact assessment, participation of stakeholders, assessment of competition, and implementation of the RIA, as well as the analysis of 9 case studies.

Furthermore, the officers of the MEF, over 90 officers of the Peruvian government of the PCM attended to this workshop, MINJUS, Ministry of Commerce and Tourism, Ministry of Culture, Agriculture and Irrigation, Ministry of Health, Ministry of Labor and Promotion of Employment, the agency on competition (Indecopi), Osiptel, Osinergmin, Ositran y Sunass, among other.

RIAs developed by MEF

Ordinarily, the MEF issues few regulations. Most of the regulations are approved in tax matters, which are exempted from the RIA. For all other regulations, the MEF has approved the MEF´s RIA Manual. However, there is no obligation to apply the MEF´s RIA Manual, so in practice the RIA is not applied systematically. Therefore, in general, the legislative formulation processes of the MEF have not followed the guidelines established in the MEF´s RIA Manual.

RIA elements

The MEF's RIA Manual includes the principle of proportionality as part of the RIA analysis, which implies that the analysis of the costs and benefits of the proposal must be carried out in such a way as to verify that the latter exceed the costs. Unlike what is seen in economic regulators, the RIA MEF Manual has not incorporated different types of RIAs by level of impact. However, the MEF's RIA Manual provides exclusions for the application of the RIA. These are the following:

- Regulations with no direct or indirect impact on the market competition.
- Minor amendments not altering the legal ordinance and the market performance.
- Operational rules for the State purchases.
- Regulations associated with budgetary systems, debt, accounting, treasury, and public investment.
- Regulations related with the administrative area of the Ministry.
- Regulations associated with situations of an urgent nature in terms of timely attention to a need of public intervention, such as the prevention of an irreparable economic damage or the elimination of administrative obstacles.

As set before, the MEF does not apply systematically the RIA in practice; however, the information covered by the MEF's RIA Manual is provided on each of the tool's analysis elements that should be considered in the regulatory process.

Problem definition

According to the MEF's RIA Manual, the diagnosis of the problem requires all relevant and available information that can be collected on the functioning of the market involved and the behavior of the regulated parties; and when it is not possible to find evidence in the country, others can be considered or qualitative studies on the problem can be employed.

Even when the MEF lacks from a systematised process to identify the problem —such as a list of questions or criteria — the definition of the problem carried out is compatible with the RIA practices (OECD, 2019[2]). The explanatory memorandum of the regulations issued by the MEF include a description of the problems that encourage the state intervention.

Policy objectives definition

The MEF's RIA Manual includes several principles that govern MEF's regulatory policy, some of which are linked to the definition of policy objectives. On the one hand, the principle of effectiveness demands that the standard has a clearly defined objective and the mechanisms to achieve it. On the other hand, the application of the principle of consistency implies that the standards issued must be consistent with the general objectives of the MEF, which implies the co-ordination between the different departments of the entity. In addition, the MEF's RIA Manual establishes that the RIR must include as an analytical element, the objectives that the regulation seeks to achieve.

However, the clear definition of the public policy objective has been one of the aspects that deserve more attention at the time of the legislative formulation (OECD, 2019[2]).

Alternatives to regulation

This stage of the analysis allows to identify other tools different to regulations that might be used to reach specific objectives determined in a more efficient and efficacious manner. One of these options implies keeping the status quo and analysing the consequences of this scenario. A good practice for applying the RIA methodology is to consider all the potential alternatives, including performance-based regulations, process-based regulations, co-regulation, measures for information and education, and the application of behavior science (OECD, 2020[4]).

The MEF's RIA Manual establishes the need as a principle that governs the MEF legislative policy, which implies the exploration of all the alternatives of intervention intending to solve a public problem, including the evaluation of the possibility of reaching the desired public policy results without the need of changing the valid legal framework. However, this assessment is not routinely considered in MEF's analyses.

Analysis of the available alternatives

The cost-benefit analysis is one of the most useful methodologies for the realisation of the RIA, because it allows to compare quantitatively the expected net impact of the different regulatory and non-regulatory alternatives. To do this, the direct and indirect costs and benefits of the impacts of these alternatives must be quantified and monetised. This evaluation ensures that regulation is only done when its benefits exceed the costs it imposes (OECD, 2008[5]). In some cases, monetary quantification of costs and benefits will not be possible, for example, when information is not available. In these cases, a conceptual identification of costs and benefits can be made to carry out a reasonableness analysis of the regulation.

The MEF's RIA Manual states that the assessment of alternatives is one of the main components of the required pre-analysis of the process, requiring the quantification of economic impacts and possible performance over time of the evaluated alternatives. The Manual includes the cost-benefit analytical methodology. The purpose is that the costs generated by the regulation for society due to the legislative intervention are not higher than those costs created by the existing problem. The RIR considers this assessment, which must include the identification of the effects on the market competition, national and international trade, consumers, business performance, among others.

However, the MEF's RIA Manual does not develop guidelines for conducting the analysis and, even when it is stated that a quantitative analysis should be conducted, in very few occasions the MEF has conducted such an analysis. Additionally, qualitative analyses have not been performed systematically. Likewise, as stated, the MEF does not consider in the analysis other measures apart from that of the regulation (OECD, 2019[2]) although in some cases it has considered the scenario where no legislative change is conducted.[29]

Regulation compliance

The establishment of the compliance strategy of the regulation creates, among other benefits, the minimisation of costs and efforts for the regulated individuals and government, the generation of incentives for the regulated individuals to comply with the regulation, as well as adequate guidelines for those who oversee the regulation (OECD, 2019[2]).

The MEF's RIA Manual acknowledges the importance of identifying the mechanisms chosen for implementing the legislative project as part of the analysis, however, it lacks from an explanation guiding the MEF's officers to perform such identification. The Manual also does not have provisions related to the need to ensure compliance with the regulation. In practice, in the process of the regulation preparation, the MEF does not consider this element as part of its analysis.

Monitoring and assessment mechanisms

The monitoring and assessments mechanisms of the implemented proposal allow identifying if the public policy objectives are being reached and to determine if the proposed regulation is necessary or if it can be more efficacious and efficient for achieving the proposed objectives (OECD, 2019[2]). Therefore, the assessment mechanisms must be thought from the time when the regulation is being designed.

As in the case of regulatory compliance mechanisms, the MEF's RIA Manual acknowledges the need for identifying the follow-up mechanisms for the legislative project; however, it does not provide guidelines to be followed by the MEF's officers to carry out the *ex post* assessment of the regulation. Likewise, the MEF does not conduct the analysis of this aspect during the process of the legislative formulation.

Public consultation

Public consultation is one of the most important elements of RIAs since it allows improving the transparency on decision-making, and provides efficacy and legitimacy to them (OECD, 2008[6]), therefore, it is necessary to identify the time, manner, and scope for its conduction.

The MEF's RIA Manual establishes that consultation can be conducted through the publication of the legislative project in the institutional web page of the entity and/or in the official gazette "El Peruano", as well as by means of panels or other means, where applicable for each case. However, consultations, when carried out, are performed only by means of the publication of the legislative project. Frequently, the MEF does not publish the legislative projects to collect comments before their approval (OECD, 2019[2]).

Likewise, the MEF's RIA Manual grants a maximum of two-week period from the publication of the legislative project in order that stakeholders can issue their opinions, comments, or remarks. This period is shorter than that set forth by the PPD Regulations, which states the obligation of publishing legislative projects in the official gazette, El Peruano, or in the web pages during a period of not less than thirty days. Furthermore, in the practice, publications of legislative projects have been carried out considering different deadlines, which are shorter than the one established by the PPD Regulations.

Additionally, the MEF's RIA Manual does not consider consultations prior to the development of the legislative proposal; nor does it contain specific provisions on the criteria that can be used to determine the form of the consultation and the identification of potential stakeholders, as well as the handling of public comments.

Legality analysis

This assessment is performed once a legislative proposal exists and aims to verify the consistency of the proposal with the existing legal framework. The MEF's RIA Manual has not included guidelines to develop such analysis, which is limited to the legal technique used.

Examples of RIA and its consultation process

RIA: “Amendment of the General Customs Law Regulations”

In 2018 the Law amending the General Customs Law (LMLGA) was approved aimed to accelerate foreign trade operations, guarantee the security of the logistic chain, and adequate the customs regulations to international standards. The LMLGA also set forth the adaptation of the General Customs Law Regulations (RLGA) for the changes introduced. The regulation analysed in the RIA framework is the Decree introducing the amendments to the RLGA (DMRLGA), approved by the MEF. This is one of the few regulations that tried to apply the MEF’s RIA Manual.

RIA elements

The MEF assessment is contained in the DMRLGA explanatory memorandum.[30] The explanatory memorandum explains that the regulation has been performed to amend the RLGA according with that set forth by the LMLGA and to approve the measures intended to simplify proceedings for the entry and exit of merchandise and ensure the logistic chain. This document explains the problem that motivates the amendment and that it is linked to the high costs that Peru faces in the logistic chain, which exceed costs of the same services in the main economies of the region and the world, and that reduce competitiveness to Peruvian operators, importers, and exporters. Additionally, threatens to the security of loads were identified as a problem that raises the prices of logistic services, the control of operations performed related to the cargo and customs control. These threats to the logistics chain mean that Peruvian exports are treated with greater rigor by the control services in the destination economies, which makes it difficult for products, means of transport and people to enter, and has repercussions on the competitiveness of Peruvian exports and the country's economy.

Additionally, in the development of each of the provisions of the RLGA which have been modified, the underlying problem and the reasons for amending each one of these provisions are explained. The changes to the RLGA provisions are based on the compliance or adequacy with international trades and best commerce practices. While these changes could have been optimal, the explanatory memorandum does not consider other potential alternatives that could have been assessed by the MEF as means to comply with the adequacy to these best practices and which were discarded. The explanatory memorandum only develops the final amendment proposals.

The explanatory memorandum of the DMRLGA also includes the general and secondary objectives which are sought with the adopted decision and it is concluded that there is no alternative mechanism to reach the proposed objectives since the only one possible is the amendment of the RLGA.

Regarding the cost-benefit analysis, the MEF made a calculation of the time and costs that could be saved by incorporating the proposed modifications in the processes of entry and exit of goods to the country.

Regarding the effect of the regulation over the national legislation, the explanatory memorandum only mentions that the legislative proposal is framed in the Political Constitution of Peru and in the valid regulations.

The explanatory memorandum does not include the mechanisms for complying with the regulation or for performing an *ex post* assessment of the regulation.

Consultation process of the RIA

According with the MEF’s RIA Manual, the MEF published the legislative project, its annexes, and the explanatory memorandum in the official gazette El Peruano, and granted a period of fifteen calendar days in order that the public issue comments and remarks to the project. Additionally, the MEF published the Ministerial Resolution determining the period for comments in the sole digital platform of the State of Peru,[31] and made available an e-mail in order that the public could submit their comments.

The legislative proposal received comments from the public which were assessed by the MEF to be included in the regulation to be finally approved. However, those comments and the assessment by the MEF are not available for the public. The web page where the DMRLGA was published only provides the consultation documents, but does not show the information of the comments which were submitted, or the evaluation performed by the MEF, in contrast to that perceived as the practice for Peruvian regulators.

Other relevant practices on regulatory policy

Implementation of a RIA pilot program

As part of the "Pilot RIA" programme, under the direction of the MEF, PCM, and MINJUS which was implemented in 2017, the MEF has been performing reviews for the legislative projects. Within this review, the legislative decrees approved by the Executive Branch in the framework of the powers delegated by the Congress of the Republic were included.

These reviews have as purpose to improve the identification of the public problem and identify the need of the legislative proposal. In this sense, the regulations which were issued under this review scheme depicted better the public problem intended to be solved.

Case study 2: Ositran

Context

Ositran monitors private transport infrastructure investments for public transportation for four sectors, by inspecting contract concessions granted by the Peruvian government according with the Law of Supervision of Private Investment in Infrastructure of Public Use Transportation and Promotion of Air Transportation Services (Law of Supervision of Infrastructure). Originally, the sectors supervised by Ositran corresponded to airports, ports, railways, and roads. As of 2011, by means of Law No. 29754, it was entitled with additional powers to supervise the services of the Electrical System of Mass Transportation of Lima and Callao (Lima's subway). This is the only sector where the Ositran can regulate the service provision, but has not the powers for setting and reviewing tariffs for passengers, which is the jurisdiction of the Ministry of Transport. Then, in 2017, the Ositran was entitled with powers to supervise the Amazonic Hydro-route, the first of the country, because it is a transport infrastructure of national scope pursuant to the Law of Supervision of Infrastructure.

In addition to the supervisory powers of the concession contracts, Ositran is entitled for setting and reviewing service tariffs, state non-binding technical opinions on the transport infrastructure at national level, set and impose sanctions and corrective measures, and issue regulatory instruments.

Ositran has the power to dictate regulations regulating procedures under its authority, including regulations of supervision, breaches, and sanctions, controversy solutions, and attention to users. Additionally, it also has powers in other regulations of general nature applicable to the regulated individuals, the supervised activities or users, such as the regulations to regulate access tariffs of essential facilities, infrastructure and service quality standards, among others.

Legal framework for performing the RIA in Ositran

Ositran has regulatory principles that, although they do not implement the RIA, require to apply practices consistent with this tool and served as a basis for adopting the RIA within the regulator. The General Regulation of the Supervisory Agency for Public Transportation Infrastructure (General Regulations of the Ositran) addresses these principles.[32]

- The principle of action based on the cost-benefit analysis establishes the need of assessing benefits and costs of decisions before their adoption, and their adequate support under the criteria of rationality and efficacy.
- The principle of the regulatory impact assessment has as purpose that the legislative and/or regulatory assessment must consider the effects on issues of tariffs, quality, investment incentives, innovation incentives, contractual conditions, and any other issue relevant for the market development and the satisfaction of the users' interests, therefore, the impact of each one of these issues must be assessed on the other topics involved.
- The principle of transparency states that every decision must be adopted in such a manner that all the criteria to be used are known and predictable.
- The Ositran's proceedings are also governed by the principle of efficiency for the resource allocation and the achievement of objectives at the lowest cost for society as a whole.[33]

RIA regulation in Ositran

The implementation of the RIA in Ositran has been progressive and implied the approval of several regulations.

- Resolution constituting the Better regulation Committee (RCMR[34]). Issued in August 2016 by the Ositran's Presidency of the Board of Directors (PCD). The Better regulation Committee (CMR, for its Spanish acronym) is conformed of the Ositran's President of the Board of Directors, who presides it; the General Manager; Manager of the Legal Advise Department (GAJ, for its Spanish acronym), who serves as secretary; Manager of the Regulation and Economic Studies Department (GRE, for its Spanish acronym); Manager of the Enforcement and Supervision Department (GSF, for its Spanish acronym); and Manager of the User Protection Department (GAU, for its Spanish acronym). The CMR has as function to analyse the standards, best practices, and recommendations of the Review of Regulatory Policy of Peru and other applicable to regulators.
- Better regulation Policy. In October 2016, Ositran approved the Better regulation Policy. According with it, Ositran is committed to adopt and enforce the OECD's principles, standards, best practices, and recommendations to warrant high-quality regulations. For such purposes, three action lines were installed:
  - The adoption of a regulatory quality management system based on the OECD's principles, on the governance of the regulatory cycle, and standards of regulatory quality. This system incorporates gradually, the RIA and alternatives to regulations.
  - The preparation of directives, guidelines, manuals, or other documents to implement the Better regulation Policy.
  - The constitution of work teams to perform the RIA for specific cases, such as the RIA Assessment Committee (CEAIR, for its Spanish acronym) responsible of supervising its quality, accountable to the CMR.
- Regulatory Impact Assessment Manual (RIA Manual). Approved in December 2017. This document orientates the Ositran in the conduction of each one of the stages conforming the RIA. With the approval of the RIA Manual, the Board of Directors also mandated the review of the procedure to prepare and review the regulations of the entity.
- Procedure for Preparing and Reviewing Rules in the RIA framework (PROAIR, for its Spanish acronym). Approved by the General Management on May 2018. PROAIR incorporates two important elements for assessing RIAs:
  - Responsible body: it is the body or unit that identifies the need before beginning the RIA procedure; it proposes the regulation under its jurisdiction, and prepares the RIA Report.

- Ositran's RIA Evaluation Committee:[35] In charge of reviewing the quality of RIAs performed by the Responsible body. This committee is constituted by a representative of the General Manager, GRE's Manager, GSF's Manager, GAU's Manager, and GAJ's Manager.

Framework for public consultation

Policy consultation is a strategy that strengthens the effective participation with the regulated parties and other stakeholders. This, in turn, will increase the trust of the public and stakeholders on the decisions and actions taken by regulators, which is the main objective of the good governance of such bodies (OECD, 2008[6]).

In addition to the general regulations applicable to the entities of the Executive Branch, explained before, the Ositran's General Regulation also regulates the participation of stakeholders, by establishing that it is a requirement for the approval and amendment of regulations and rules.[36]

The RIA Manual also has detailed provisions on public consultation. Ositran has included early public consultations (used to obtain information allowing to correctly identify the public policy problem) and the public consultation during the regulatory process (which is carried out when the decision was made for issuing a regulation and it is required to obtain information to improve the proposal). The RIA Manual describes the principles governing public consultations, details their elements and stages, and develops criteria for identifying stakeholders and choosing the more adequate consultation methods.

The consultations are carried out as part of the activities of the Development and Review Procedure of the Regulations under the RIA.

RIA implementation in Ositran

Unlike other Peruvian economic regulators, Ositran verifies the compliance of obligations derived from concession contracts of national transport public infrastructure. The regulations that it issues are linked to topics about the compliance of these obligations and the compliance of the tariffs system, tolls, or similar charges that the Ositran must set or derived from the concession contracts. Therefore, the assumption for preparing a RIA is the modification, approval, or elimination of any of the elements of these regulations.

RIA preparation process

The RIA process is divided in two main elements: preparation and oversight. The first is carried out by the responsible body proposing the regulation, preparing the RIA, and starting the procedure. The second is carried out by the CEAIR, in charge of assessing the RIA quality.

Once the responsible body identifies the need for starting a RIA, the process to be followed is shown in Figure 6.2.

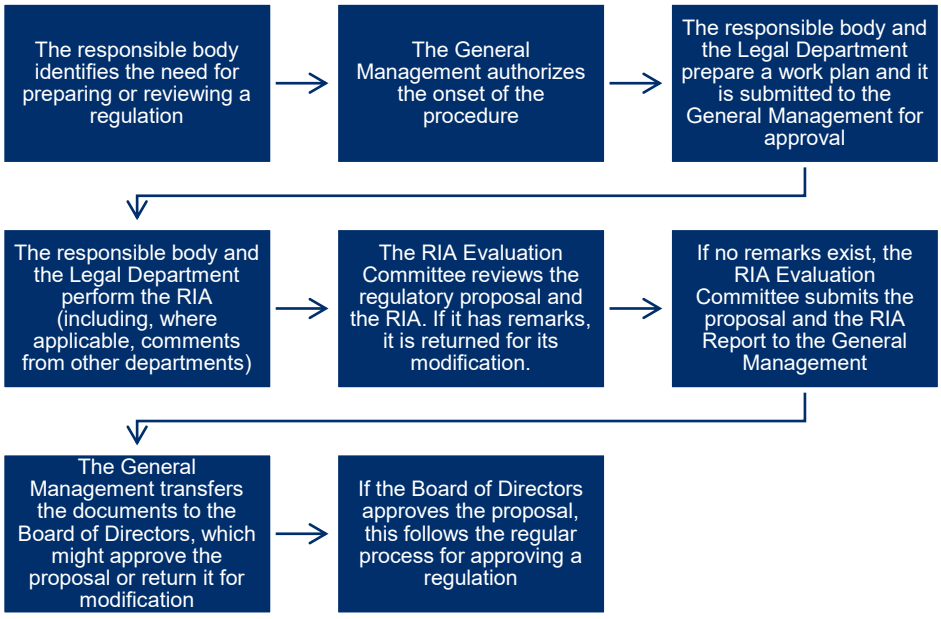
All RIAs are reviewed by the CEAIR before their submission to the General Management and the Board of Directors. As set previously, the CEAIR is a group constituted by a representative of the General Management, GRE's Manager, GSF' Manager, GAU's Manager, and GAJ's Manager. CEAIR is entitled with the power of blocking and returning for review those deficient RIAs before their approval.

If the CEAIR has no remarks of the proposal, it is submitted to the General Management, responsible for transferring it to the Board of Directors for its assessment. The Board of Directors can approve the proposal or request changes, which implies returning this proposal to the responsible body. Once included the modifications, it follows the same process to be submitted to the Board of Directors. The regulation must be approved by the Board of Directors and published in the official gazette in order to entry in force.

Ositran has continued to provide staff training on the implementation of the RIA, which has been carried out by GRE staff. The Procedure for the Preparation and Review of regulations within the framework of

the RIA establishes that the Head of Economic Studies of the GRE is responsible for dealing with the queries made by the body in charge of preparing the RIA Report.

Figure 6.2. Approval Procedure of RIAs in Ositran



Source: PROAIR.

Training on RIAs for Ositran's personnel

In February 2017, Ositran organised a RIA Workshop with conferences with OECD experts.[37] The workshop had as purpose to develop the skills of the Ositran's officers to prepare and perform high-quality assessments through the evaluation and debate of real case studies, and discussions with the course facilitators. The course was carried out in compliance with the OECD recommendations on regulatory policy contained in the report on Regulatory Policy of Peru published on August 17, 2016 and which is part of the Country Program.

RIAs developed by Ositran

Ositran, like other economic regulators of Peru, has been pioneer on the RIA implementation and the application of this tool at the Peruvian Executive Branch. However, to the date, the entity has performed only one RIA, corresponding to the review procedure of the General Regulation of Tariffs of Ositran (RETA).[38]

Ositran is currently revising the Framework Regulation on Access to Public Transport Infrastructure (REMA) and the General Oversight Regulation, under the parameters of the RIA Manual.

RIA elements in Ositran

Impact assessments should be addressed towards those proposals expected to create greater impacts on society and to warrant that all those proposals are subject to the screening of the RIA. The extent of the assessment depends on the importance of the regulation to analyse, that is, not all proposals should undergo the same extent of assessment. One of the principles of RIA best practices consists on

recognizing that the RIA methodology should be as simple and flexible as possible, while ensuring that certain key characteristics are covered (OECD, 2020[4]).

Ositran has adopted the recommendation of the OECD that the extent of the RIA depends on the level of complexity of the proposed regulation (OECD, 2019[2]). In this study, the RIA Manual regulates two types of RIA: Basic RIA and Full RIA.

Both RIAs are different, mainly, due to the cost quantification and the level of complexity in the impact assessment and the scope of the public consultation. Basic RIAs are thought for regulations with a limited scope. On the other hand, Full RIAs are used for regulations with significant impacts requiring a quantification and monetisation of costs and benefits. Public consultation in these cases is thorough and requires more significant resources. Likewise, the compliance, monitoring, and assessment is stricter when the regulation is more complex. Table 6.2 details the differences.

Table 6.2. Elements of the basic and full RIA

Basic RIA	Full RIA
Identification of the problem	Identification of the problem with cost quantification and estimation of risks
Definition of the public policy objectives	Definition of public policy objectives by considering the metrics of the expected impacts
Alternatives to the regulation	Alternatives to the regulation
Legality analysis	Legality analysis
Impact assessment through a quantitative analysis of costs and benefits, if possible; otherwise, Cost-Effectiveness Analysis, Multi-criteria Decision Analysis, or at least a conceptual analysis of costs and benefits	Impact assessment through a quantitative analysis of costs and benefits
Regulation compliance	Compliance of the regulation, quantification of compliance costs, risk-based assessment strategies , scheme of sanctions due to the impact
Monitoring and Assessment	Monitoring and assessment with an exhaustive *ex post* assessment plan
Ideally, early public consultation. At least a consultation during the process	Early public consultation and consultation over the process

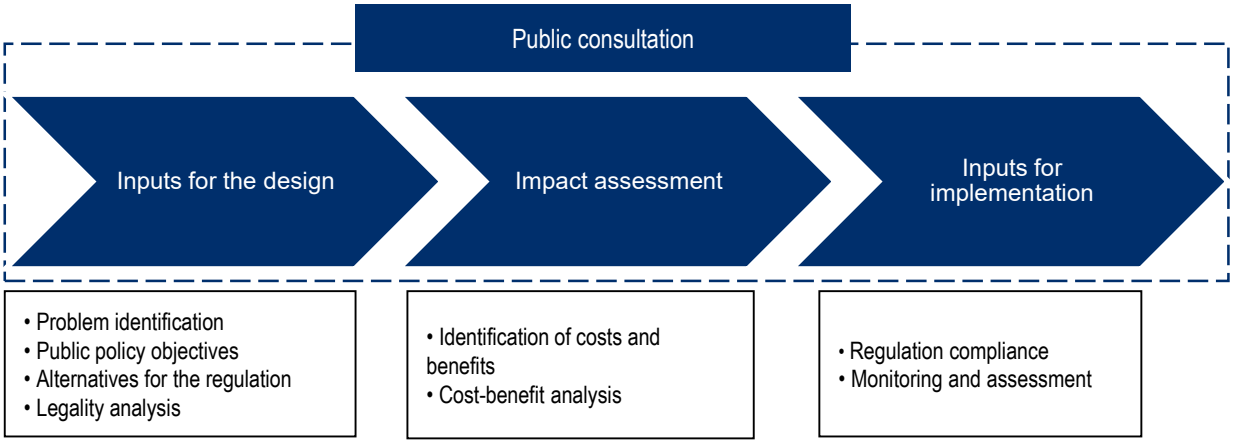
Source: Ositran's RIA Manual.

To identify which of the two RIAs will be conducted, Ositran considers some criteria that are helpful for deciding. These are:

- Compliance costs of the regulation for the regulated individuals. For example, long-term structural costs should be assessed by a Full RIA.
- The relative importance of economic units subject to the regulation. Depending on the contribution regarding the GNI a threshold can be established for performing a Full RIA.
- Level of stakeholder interest in the proposal. For example, when it comes to a controversial topic, there must be a Full RIA.
- Sectors affected by the regulation. If the regulation can affect critical sectors, a Full RIA should be done.
- Level of impact on competition. To determine the impact, Ositran uses a checklist including the analysis of the following impacts: limitations to the number of suppliers, limitations to the capacity of suppliers, reduction of incentives of suppliers to compete intensely, and limitations to the alternatives and information available for consumers.

The design of the RIA implemented by Ositran includes three blocks for analysis. In turn, each of these incorporates any of the RIA elements. In the first block the elements working as input for the design of the legislative proposal are analysed; the second block contains the elements for the impact assessment itself; and the third block includes the inputs for implementing the legislative proposal. The public consultation constitutes an element of the RIA tool which is not part of a specific block, but that stays constantly and cross-wised during the analysis.

Figure 6.3. RIA elements in Ositran



Source: Ositran's RIA Manual.

The practices of Ositran regarding each one of these elements is described below.

Problem definition

The identification of the problem is a core analytical component in the Ositran's methodology for Basic RIA and Full RIA. The methodology considers three elements to define the problem: Delimitation, which assumes a explicit definition of the problem; causes-consequences, using the methodology of the logical framework; and magnitude. The RIA Manual grants a special importance to the latter because it works for designing a regulation proportional to the problem analysed. The definition of the magnitude is constructed from three variables:

- The definition of the affected parties. This a broad-spectrum analysis and considers geographical aspects or specific groups in specific areas.
- The degree of affectation caused by the problem, including the effective materialisation of damages.
- The occurrence probability of the problem, which allows to design a preventive regulation.

Furthermore, the RIA Manual includes questions guiding the problem identification, applicable for Full RIAs and Basic RIAs.

Policy objectives definition

The RIA Manual of Ositran follows the recommendations formulated by the European Commission to set public policy objectives which are optimal and efficient (summarised in the acronym SMART[39]). Therefore, objectives must be specific, measurable, achievable, relevant, and time-dependent. Like in the case of the problem definition, for establishing the policy objectives, the RIA Manual includes questions guiding officers of the entity to perform this assessment.

Alternatives to regulation

Ositran has developed questions to guide its officers in the identification of several alternatives that can be considered in the assessment for the Full RIA and Basic RIA. Regulatory alternatives considered by Ositran in its RIA Manual are found in Table 6.3.

This stage of analysis allows to identify other tools, apart from the regulation, which can be used for attaining the set objectives in a more efficient and efficacious manner. One of these options implies maintaining the *status-quo* and analysing the consequences in this scenario. A good practice for applying the RIA methodology is to consider all the potential alternatives, including performance-based regulations, process-based regulations, co-regulation, measures of information and education and application of behavioral sciences (OECD, 2020[4]).

Table 6.3. Alternatives to regulation

Types of Intervention
Self-regulation
Information campaigns
Market instruments
Co-regulation
Performance-based regulation
Traditional regulation
Banning

Source: Ositran's RIA Manual.

Legality analysis

This is a specific analytical element of Ositran since other Peruvian economic regulators do not include it, and because most of the time, the legal quality of the legislative proposal is linked to issues of legal technique. Therefore, the assessment of proposals requires a co-ordination of the legal and technical departments.

The legality analysis regulated by the Ositran entails a verification of the coherence of the proposals with the legal system. For such purpose, the regulator has developed two criteria that allow to perform the assessment: Performing a broad legal analysis to identify the potential problems, such as duplicity or excessive regulations; and considering the principle of hierarchy to avoid the risk that the proposal creates controversies impeding its implementation or that cause the annulment.

Additionally, the RIA Manual has also considered questions guiding the analysis that the Ositran's officer must carry out when assessing this element.

Impact assessment: cost-benefit analysis

The Ositran's RIA Manual has developed a Cost-benefit analysis considering the quantification and monetisation of impacts, which includes four steps:

Figure 6.4. RIA elements in Ositran

Source: Ositran's RIA Manual.

The RIA Manual requires identifying direct and indirect costs and benefits from the regulation for the State, companies, or citizens. Even when they are not taxable, the Manual considers some costs and benefits which can incur in the above mentioned three groups, for guiding the task of the assessment. Table 6.4 details the costs considered by the Ositran as a reference.

Table 6.4. Regulation costs considered by Ositran

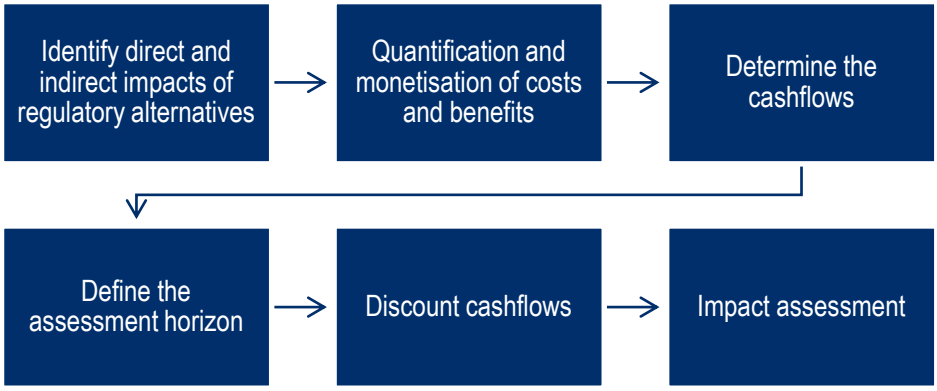
Direct compliance costs	Charges
	Substantive compliance costs
	Administrative burden
	Long-term structural costs
Irritation costs (derived from administrative burdens)	
Application costs	Adaptation costs
	Information costs
	Monitoring costs
	Cost of adjudication (linked to the use of the legal system to solve a controversy by the regulation)
Indirect compliance costs	
Other indirect costs	Effects of substitution
	Affectations on competition
	Reduced market access
	Restriction to investment and innovation
	Uncertainty (when the regulation is not clear enough)

Source: Ositran's RIA Manual.

Regarding the benefits, in a general manner, Ositran has considered the increase of the wellbeing, improvements of the market efficiency, collateral effects, macroeconomic effects, and social objectives.

The Ositran's RIA Manual develops thoroughly each of the steps that the cost-benefit analysis entails. The following graph describes the application of such methodology.

Figure 6.5. Steps for applying the cost-benefit analysis



Source: Ositran's RIA Manual.

In addition to the methodology of the cost-benefit analysis, the Ositran's RIA Manual considers alternative methodologies to estimate the impact of regulations, as it is recognised that it will not be possible to apply the cost-benefit analysis methodology in all cases, aligned with the international practices (OECD, 2008[5]). These methodologies are the cost-effectiveness and Multi-criteria Decision Analysis. The application of

these methodological alternatives must follow the guidelines included in the RIA Manual. This manual also contains a comparison of the methodologies (advantages, disadvantages, and when they must be used). This is an element that facilitates Ositran's officers to identify that methodology fitting better to an specific case under assessment.

Even when the three methodologies are available, the standard assessment for a Full RIA is stricter than that for a Basic RIA. The RIA Manual establishes that the Full RIA must follow the methodology of cost-benefit analysis, while the Basic RIA can use any of the three methodologies, depending on the information available. Likewise, the analysis of costs and benefits in the Basic RIA must be, at least, conceptual if it is not possible to obtain quantifiable data at a monetary level.

Regulation compliance

Ositran is one of the Peruvian bodies that emphasises the follow-up of a regulation once it is approved. The Ositran's RIA Manual has dedicated a special section to develop in detail the RIA elements linked to the regulation implementation where the principles for inspection actions are established, in order to warrant and increase regulatory compliance. These principles are based on the best practice principles to achieve the compliance of regulations and performing inspection processes of the OECD (OECD, 2018[7]). Table 6.5 shows the inspection principles of Ositran.

Table 6.5. Principles for inspection actions

Types of intervention
Evidence-based application
Selectivity (individuals to be inspected)
Scope of risks and proportionality
Responsive regulation
Long-term vision
Co-ordination and consolidation of inspection functions
Transparent governance
Information integration
Clear and fair process
Encourage compliance
Professionalism of inspectors

Source: Ositran's RIA Manual.

Additionally, Ositran has developed some guiding questions to define the compliance strategies.

Monitoring and assessment mechanisms

Monitoring and assessment are elements thought to be applied in the Ositran's Basic RIA and Full RIA.

The Ositran's RIA Manual considers three necessary aspects to perform an efficient monitoring: To identify the evidence needed; to determine the time and way in which evidence should be gathered, as well as to identify the person responsible for its collection, and the person who should provide the information. In addition, it sets the need for establishing indicators that allow to measure the performance of the legislative proposal, that must be defined and measurable through a specific period of time.

Ositran establishes important guidelines to obtain the best information for monitoring:

- Search of exhaustive information at a qualitative and quantitative level.
- The expected benefit from obtaining information should be proportional to the cost of data collection.

- Avoid duplication of information.
- The collection and use of information should be appropriate, thus preventing cost overruns.
- Transparency and usefulness of information must be guaranteed.

Ositran has also established guidelines for performing *ex post* assessment of regulations. For performing the assessment, this regulator has considered two actions:

- To identify and collect information on indicators that allow measuring the achievement of the objectives planned by the regulation, as well as its level of compliance and effects, which are established during the *ex ante* assessment, when applying the impact assessment methodologies.
- Methodologically determine the causal link between the estimated effects and the regulation. The Ositran's RIA Manual recognises the methodology used by the OECD and Australia.[40]

Furthermore, Ositran has set criteria for establishing the framework for the *ex post* assessment. These are shown in Table 6.6:

Table 6.6. Criteria for e*x post* assessment

Overall criteria	Relevance or adequacy of the regulation for managing the problems
	Efficacy of the regulation for successfully managing the perceived needs and complying with the proposed objectives
	Efficiency of the regulation on terms of resources
	Usefulness, that is, if the data reached match the foreseen objectives
Additional criteria	Transparency, that is, if the publicity was carried out and the information was available
	Equality on the distribution of the regulation effects among stakeholders
	Positive and negative impacts of the regulation
	Sustainability of the regulation allowing to reach its long-term objectives
	Ongoing assessment
	Assessment by theme, that is, assessment for a specific element of the regulation

Source: Ositran's RIA Manual.

As for other elements of RIA, some questions are integrated for guiding officers through their assessment.

Public consultation

The Ositran's RIA Manual acknowledges that public consultation does not follow a single model since this is determined according to the legislative proposal intended to be implemented. However, for the optimal development of consultations, these must observe the following overall principles: participation, transparency and accountability, effectiveness, and coherence. Furthermore, Ositran has developed extensive public consultation provisions to guide its officials in their development.

Ositran has regulated two stages for performing the consultation: early stage and during the process.

- *Early public consultation:* It is performed before designing and submitting a legislative proposal, when the problem arises that requires the intervention of the regulator. Consultations are useful for obtaining information allowing to identify the public policy problem and if the regulation is the best alternative. Not limited to the following, the methods considered for performing this type of consultation are:[41] focus groups, conferences, public hearings, events of stakeholders, meetings, workshops and seminars, interviews, and questionnaires.
- *Public consultation during the process:* It consists of the consultation performed on the legislative proposal to obtain information contributing to improve the project. Moreover, it is acknowledged that the public consultation can be performed in more than one timepoint, according to the needs of the case and the type of information intended to be obtained.

Ositran has designed a public consultation scheme applicable for consultation at the early stage or during the process, constituted by three stages.

Table 6.7. Stages of public consultation of Ositran

Stages	Elements
Preparation stage	Definition of the objectives of the consultation Selection of groups to be consulted Selection of methods and tools for the consultation
Execution stage	Communication and spread of the consultation Determination of the period for the consultation and treatment of participation Preparation of a matrix of comments
Assessment stage	Assessment of comments on the legislative proposal Overall assessment of the consultation process Preparation of final report including the outcomes of the public consultation

Source: Ositran's RIA Manual.

One element highlighted in the Ositran's RIA Manual is the Communication and Diffusion Plan of Public Consultation which is part of the execution stage. This plan aims to achieve the highest possible level of participation in the public consultation, which in turn affects its level of effectiveness, legitimacy and transparency. The Plan seeks to acknowledge the several characteristics of stakeholders that can participate in the consultation and to identify the communication channels that must be used to reach each of the stakeholders.

Another element of Ositran's public consultation that stands out is the feedback of the consultation, which is done to identify whether the proposed objectives were met, which is a best practice on regulatory matters (OECD, 2020[4]). This aspect allows to identify improvements for future consultation processes and achieve a better effectivity of the tool.

The Ositran's RIA Manual regulates several methods and tools that can be used within the consultation process, explained below:

- In the case of methods, open public consultations and specific public consultations are considered. The first ones are carried out when the problem may affect several sectors and, therefore, a broad participation is required; while the second ones are conducted for a focalised economic sector, social group, or group of companies; when it is about well-defined.
- Regarding the tools, the RIA Manual considers a broad variety, among which the following are found: Public notice for written comments; public hearings for oral comments; informal consultation; circulation of work documents (for early consultations) or legislative proposals (for consultations during the process), and advisory bodies. These types of tools allow the participation through written and oral comments.

The methods and tools for public consultation respond to the roles of the regulator and the stakeholders who might be involved in its regulatory processes. In addition, considering the means that currently exist, the RIA Manual acknowledges that the consultation can be done virtually, in person, or in written, thus allowing a broad basis for public participation. In the same manner, comments can be submitted in written, electronically (virtual) or verbally, according with the mechanism used for the public consultation. Ositran has set a minimum period of 30 days for consultations during the process in order that stakeholders can submit their comments, which – as a common practice of Peruvian economic regulators— are collected and assessed through a matrix of comments.

Examples of RIA and Its Consultation Process

In this section the RIA performed by Ositran is analysed, corresponding to the review procedure of RETA and the public consultation activities developed as part of this RIA.

RIA: "Review Procedure of the General Regulation of Tariffs of Ositran (RETA)"[42]

In this RIA Ositran analyses the main problems that raised in the application of the RETA, valid since 2004[43] in order to identify if an amendment is applicable. The RETA establishes the principles and general rules for the execution of the regulatory powers of Ositran and the obligations of the service provider entities regarding the setting and application of tariffs for the offered services. Likewise, the regulation defines the general rules for the participation of users and organisations representing them. The report containing the RIA was approved in January 2019 and published for receiving comments from stakeholders. Moreover, on 21 March 2019, a public hearing was held to present the draft regulation and RIA Report, in order to gather the comments of the interested parties.

In January 2021, by Board of Directors Resolution No. 0003-2021-CD-Ositran,[44] the new Ositran General Tariff Regulation and annexes, including the RIA Report, were approved.

RIA elements

With the application of the RIA Manual, Ositran determined that there were provisions in the RETA that required to be fitted to the valid regulations and to be specified to grant a greater predictability to users of the regulation. It also found that the provisions regulating the dissemination of fares, prices, offers and other concepts did not guarantee adequate and timely access to users on all the necessary information required for the proper use of public transport services, which generated unnecessary burdens for providers and users.[45]

These problems were defined based on the regulator's experience for applying the RETA and the information collected during the early consultation that was carried out. Likewise, the RIA analysed thoroughly each of the problems identified, specifying their causes and consequences. The assessment also considered the existing competition conditions and features for the application of methodologies of the regulation.

The definition of the problems allowed Ositran to clearly establish the general and specific objectives of the intervention. In general terms, the aim was to generate greater predictability, transparency and efficiency in the application of RETA. At a specific level, the intervention had four objectives linked to the problems identified: to reduce uncertainties in the application of the RETA; to establish greater predictability in tariff procedures; to improve efficiency in the processing of tariff-setting procedures; and to reduce the burdens and extra costs generated for regulated subjects.

Regarding the potential alternatives to the regulation, Ositran assessed to introduce specific improvements for each identified problem for improving the implementation of RETA, which are thoroughly explained in the RIA. The constant alternative in the assessment was no intervention (*status quo*).

Following the guidelines of the RIA Manual, prior to the impact assessment of alternatives, Ositran performed a legality analysis to warrant that the intervention was consistent with the valid legal framework to that date.

Considering the problems identified and the objectives sought with the modification of the RETA, it was determined that the proposed modifications linked to the adaptation of the RETA to the regulatory framework and the incorporation of clarifications for greater clarity for users did not require an impact assessment, since these modifications did not generate substantial changes in the existing procedures, did not create new obligations or burdens for the administered, and did not generate costs for the regulated subjects and users.

In the case of the proposals related to the dissemination and entry into force of the Tariff and the obligation to include information on surcharges in the Tariff, it was considered that these involved modifications that have an impact on the costs for providers, users and the regulator. Considering the information available, as well as the type of costs and benefits of the regulatory proposals, it was decided to apply the multi-criteria analysis methodology.

RIA consultation process[46]

In accordance with the RIA Manual, Ositran conducted an early public consultation process (i.e., before the development of the draft standard), to obtain information and opinions from stakeholders, in particular, users and service providers, and to broaden knowledge about the problem identified, as well as possible alternative solutions.[47] Early consultation had also as objective to warrant the transparency on the process of review and modification of the RETA. The early consultation was looking to know the opinion of the users of RETA through data and specific experiences, regarding the main problems linked to its application, aspects that required modification, and proposals for modification.

The means used was to send an online questionnaire to all the service providers supervised by Ositran, which are obliged to comply with RETA, and associations representing users and members of Ositran's User Councils. The questionnaire consisted of 14 questions related to the main aspects of RETA and an open question for stakeholders to submit additional information.[48]

The early consultation involved airport and port service providers (main users of RETA) and members of the Port Users Council. Comments were received and analysed in a matrix of comments. Ositran also carried out internal co-ordination with GAU and GAJ of Ositran, regarding topics linked to their jurisdictions in the application of the RETA.

Furthermore, Ositran carried out a public consultation on RETA proposal, by publishing the document for comments for stakeholders in the web site of the public entity and in the official gazette El Peruano.[49] The publication in the web site included, in addition to the legislative project, the explanatory memorandum for the legislative proposal and the RIA Report. The regulator enabled two channels in order that stakeholders could submit their comments: in written at Ositran's main office in Lima and by e-mail. However, Ositran established a term of 20 working days for the submission of comments, which is less than the period established in the RIA Manual.

In addition to the publication of the proposed regulations, Ositran called for a public hearing.[50] During this hearing, Ositran explained each of the RIA elements. The presentation and minutes are published on the entity's website; while the comments formulated are systematised and answered in the matrix of comment, that is part of the documents published with the approval of the regulation (Resolution of the Directive Counsel No. 0003-2021-CD-Ositran).[51]

Other relevant practices in the regulatory policy

Ex post assessments

The *ex post* regulatory assessment is not a reglementary practice at the Peruvian central government bodies (OCDE, 2016[1]). Recently, with the issuance of the Legislative Decree that modifies the article 2 of the Legislative Decree No. 1310 (RIA Law) aimed to approve additional measures for administrative simplification and to improve better regulation instruments, the *ex post* Regulatory Impact Assessment established as an instrument for improving regulatory quality (OECD, 2019[2]). However, this tool has not been developed at the regulatory level and has therefore not yet been implemented.

The Better regulation Policy of Ositran establishes that a systematic and periodic review of regulations is part of the Regulatory Quality Management System whose purpose is identifying and eliminating inefficient loads and requirements. Considering this and given that Ositran has started to apply the RIA in its

regulatory decision-making, the *ex post* assessment should become an essential and automatic assessment component of the entity's regulatory formulation.

Accountability

Ositran has implemented as a management practice the submission of an annual report on its main activities, even though it is not required by law to share annual reports with Congress or any other body (OECD, 2020[4]). The regulator was committed to voluntarily deliver annual reports to the Consumer Defense Commission and the Regulatory Bodies of the Congress of the Republic to strengthen the transparency and accountability, as part of the actions to implement better regulation mechanisms in the entity. The submission takes place every year in April. The first annual report (corresponding to 2017) was submitted in April 2018, with no Plenary. On that occasion, no questions were asked about Ositran's performance.[52]

Likewise, in July 2018, Ositran held a public accountability hearing, at which the presidency presented the annual report to various stakeholders.[53]

Case study 3: Osinergmin

Context

Osinergmin is the regulator in charge of supervising the safety and compliance of energy and medium and large mining infrastructure. Additionally, it has the functions to set tariffs for regulated energy markets, supervise the hydrocarbon sector, and manage renewable energy auctions. In addition to its functions as regulator, the Law that creates the Hydrocarbons Energy Security System and the Social Inclusion Energy Fund entitled Osinergmin with the function of managing the Social Inclusion Energy Fund (FISE) and supervising its deployment.[54] Likewise, through the Emergency Decree mandating urgent and exceptional measures to preserve the value of goods of the concession of the project "Improvement to Energy Security of the Country and Development of the South Peruvian Pipeline", it was entitled with the function of appointing an administrator of the assets of the South Peruvian Pipeline concession, once the contract was terminated (OECD, 2019[8]).

The LMOR legislating the Peruvian regulatory agencies -among these, the Osinergmin- grants them powers to set and review tariffs, establish and impose sanctions and corrective measures, resolve disputes and user complaints and issue regulatory instruments. The regulatory and legislative function of Osinergmin includes the power to fix prices and tariffs on electricity and natural gas, as well as to dictate regulations and rules to regulate procedures under its jurisdiction and others of general nature.

In the electricity sector, Osinergmin warrants the enforcement of the provisions of the Law of Electric Concessions (LCE, for its Spanish acronym) and approves the procedure to establish the conditions of use and open access to electricity transmission and distribution systems o that they are consistent with the legislation in force and avoid discriminatory conditions in the access and use of the transmission and distribution systems. The regulator also establishes procedures to request or make use of the electricity transmission and distribution systems for the provision of the energy transport service. In the hydrocarbons sector, Osinergmin regulates downstream tariffs for transportation services (OECD, 2019[8]).

Legal framework for performing RIA in Osinergmin

The General Regulation of the Supervisory Agency for Investment in Energy and Mining (Osinergmin's General Regulation) establishes the regulatory approach based on the cost-benefit analysis, so that the benefits and costs of the decisions taken by this public entity must be evaluated before they are adopted, in addition to being supported by studies and technical evaluations that prove their rationality and

effectiveness. For this evaluation, the regulation considers short- and long-term assessments, as well as direct and indirect costs and benefits, monetary and non-monetary, including those costs imposed by the regulation to other State entities and private sector.

This regulation, although it does not implement the RIA, it states the application of consistent practices with this tool and served as a basis for the adoption of the RIA within the regulator described below.

RIA regulation at Osinergmin

The RIA implementation in Osinergmin has been progressive and required the following actions:

- Institutional Operational Plan 2015 (IOP 2015). In 2015, Osinergmin incorporated among its institutional goals the implementation of RIAs.[55] The strategy designed to comply with this goal was based on the development of three activities:
  - The gradual adoption of the RIA methodology through a trial period, initially, of one year.
  - The application of a RIA manual in 2 legislative proposals during the trial period, whose results would be assessed at the end of the period.
  - The establishment of minimum conditions for applying a moderate-impact RIA.
- Regulation of Organization and Functions of the Osinergmin (ROF of Osinergmin). Approved in February 2016, lays the foundations for implementing RIAs in Osinergmin, by establishing the need of conducting the studies required to carry out the RIA to the regulations chosen by its Board of Directors.
- Guideline of Regulatory Policy N°1: Methodological Guideline for performing Regulatory Impact Assessment in Osinergmin (Methodological Guideline). Approved in April 2016, it contains the guidelines for the assessment of the regulator's regulatory decisions. This was a fundamental step for implementing the RIA in Osinergmin since from the approval of this tool, the regulator has a methodology to apply the RIA to its regulations.
- Minutes of the Board of Directors No. 13-2016. According with the strategy approved by the IOP 2015, the Board of Directors of Osinergmin approved the beginning of the trial period for applying the RIA in two selected regulatory proposals, linked to the supervision of payments to dual power generation plants and safety in the commercialisation of LPG gas balloons (Osinergmin, 2016[9]).
- General guidelines for the presentation of proposals during the trial stage on mini RIA and exclusion of RIA[56] (Memorandums GPAE-61-2016 and Memorandum GPAE-108-2016). It states the content of the Supporting Reports of minor impact RIAs (or mini RIA), level of required assessment, exclusion and inclusion criteria of RIA, summary of the presentation of legislative proposals for assessing and identifying costs and benefits (Osinergmin, 2016[10]).
- General guidelines about the exclusion of RIA (Memorandum GPAE-122-2017). It completes the first guidelines and establishes the assumptions for mini RIA waivers (Osinergmin, 2017[11]).
- Format for legislative proposals (Memorandum GAJ-629-2016). It establishes the project form of the Board of Directors Resolution and Statement of Reasons to be used in the legislative proposals to be published for comments (Osinergmin, 2016[12]), in order to unify the information that will be available for stakeholders, which constitutes a practice encouraging transparency and predictability. This form considers the standards required in the RIA Methodology.
- Guidelines for conducting Regulatory Impact Assessment in Osinergmin (RIA Guidelines). Approved in August 2020,[57] it is an update of the Methodological Guide that systematises, consolidates and updates the criteria and principles of the regulatory impact assessment applied by Osinergmin. It also defines the regulator's Regulatory Impact Assessment macro-process.

Therefore, since 2016, Osinergmin already had guidelines to carry out a high-impact and low-impact RIA, as well as specific criteria to identify those regulations exempted from RIA.

Framework for public consultation

The Osinergmin's General Rules establish that, before making a decision, the regulator must pre-publish the measures or even consider holding hearings to receive the public's opinion and to notify the criteria that were used during the decision-making process. Furthermore, the Methodological Guideline regulates the public consultation as an essential element to apply the RIA. The guideline sets the criteria to perform the consultation process and provides orientation on the time for its conduction.

RIA implementation in Osinergmin

Between 2016 and 2020 Osinergmin has implemented progressively and gradually the RIA methodology. According with this methodology, Osinergmin acknowledges that RIA is applicable to those proposals that are considered important and that are aligned with the Annual Operational Plan and the Strategic Plan of the Institution.

According with the Methodological Guideline, the proposals that can be analysed through a RIA can be of different nature, which are classified in three groups:

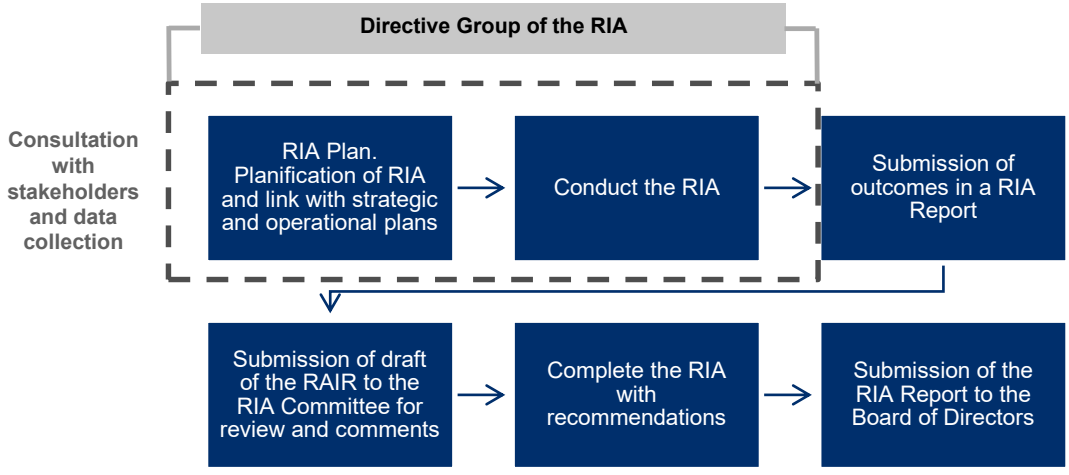
- Non-legislative initiatives, recommendations, and white books establishing compromises for future legislative actions.
- Cross-wide legislative actions, such as rules and guidelines that address broad issues and can have a significant impact on more than one stakeholder.
- Specific legislative actions, which affect a particular sector and do not have a major impact on the immediate policy environment.

The update of the Methodological Guide indicates that the RIA is compulsorily applied by all the areas of Osinergmin in charge of carrying out the RIA of regulatory proposals.

Preparation process

The preparation process of the RIA in Osinergmin follows the process depicted in Figure 6.6.

Figure 6.6. Procedure for developing the RIA in Osinergmin



Source: Methodological Guideline.

As observed, there is a planning period for the RIA and a period for the tool execution.

The planification of the RIA is a fundamental element of the methodology used by Osinergmin to carry out the *ex ante* assessment of the impact of its regulations since it allows to create a strategy, in advance to conduct its assessment, considering each of the elements and variables, according to the practices of RIA. The planification entails the preparation of a plan (PAIR).

The planification stage begins with the formulation of the proposal derived from each technical area, following the structure approved by the Methodological Guideline. The proposal should be linked to the Osinergmin's strategic and operational objectives; therefore, it is required to co-ordinate with other areas of the regulator to find common points and ensure the consistency of actions. The preparation of the PAIR and its connection with strategic plans of the entity is a consistent practice with the best practice principles for the RIA because it introduces the RIA as part of a long-term systemic plan to encourage the quality of the regulation, and fully integrated with other instruments of regulatory management (OECD, 2020[4]).

Likewise, the planification stage entails the identification of the problem that the initiative is intended to solve, the identification of the groups affected by the problem, and a first assessment of the regulatory and non-regulatory options.

To carry out these actions, the technical management establishes a working group, the *Grupo de Dirección de Análisis de Impacto* [steering group for impact analysis] (GDRIA, for its Spanish acronym), including all the areas linked to the proposal. The GDRIA will be responsible for preparing the RIA and will participate in all the stages that the RIA include.

Not every proposal follows the RIA process. The General Management decides if the proposal should be subject to a RIA, as well as its scope during the planification stage. Osinergmin has developed inclusion and exclusion criteria allowing to identify those assumptions where the RIA is applicable and those where the tool is not applied. These criteria are explained below:

Table 6.8. Inclusion and exclusion criteria of the RIA

Exclusion Criteria	Inclusion Criteria
The proposals do not have an innovative component	Proposals amending tariffs for electricity and gas when they include innovative components
They are not strictly regulatory (opinions, regulations about an intern administration, among others)	Representing a major change in the activities executed by Osinergmin
They are necessary and urgent	They have a major impact on the companies that participate in the markets
To carry out a formal action of the oversight	They have a major impact on users or all the public
To use legal instances to settle disputes	Political importance

Source: Methodological Guideline.

However, the Methodological Guideline does not explain how these criteria will be used in the practice, that is, if any of them predominates over any other, and which is the content for each of them.

If it is determined that is necessary to carry out the RIA, the detail and depth of the required impact assessment is defined in the PAIR, according to the significance of the proposal.[58] The more significant the expected impacts, the greater the depth of the assessment, which means that evidence collection, stakeholders consultation, and impact quantification will be more extensive. This practice implemented by Osinergmin is consistent with the best practice principles for regulatory impact assessment, which state that an RIA should be conducted in proportion to the importance of the regulation (OECD, 2020[4]).

Once the proposal is approved by the General Manager, it is included in the Osinergmin's Annual Operational Plan so that it can be implemented the following year with the appropriate resources, thus warranting that the RIA is integrated into the regulator's strategic planning and programming cycle.

Once the planification stage is completed, the next stage is the development of the RIA.

The RIA outcomes are gathered in the Impact Assessment Report (RAIR, for its Spanish acronym), which is submitted to the RIA Committee (CAIR, for its Spanish acronym). The CAIR is constituted by the managements that advice the General Manager. In addition to control the quality of the RAIR, the CAIR also has the function of providing support and advice to the GDRIA throughout the RIA process. The RAIR approving the control of CAIR is submitted to the Board of Directors for its approval.

RIA training for Osinergmin staff

In September 2016, Osinergmin organised the International Workshop on RIAs with conferences from OECD's experts, which was designed to train its personnel, as well as personnel from other Peruvian state bodies that were invited.[59] This workshop consisted on 24 sessions spread over three days. Staff from the OECD Regulatory Policy Division directed the 20-hour length training, along with three experts from Mexico with experience on the design and assessment of RIA of the Energy Regulatory Commission of Mexico, Federal Telecommunications Institute, and with experience working at the Federal Commission for Better Regulation of Mexico.

The workshop was aimed to improve the process through which Osinergmin prepares its regulations and rules, thus increasing the transparency, accountability, and quality of these regulations, by implementing the RIA tool. The importance of performing wide consultations to stakeholders in the preparation of regulations to receive information, even online, was highlighted in the workshop.

Osinergmin also organised a workshop to apply the RIA methodology with an expert of the Office of Gas and Electricity Markets (Ofgem) of England to provide recommendations for its application.[60] Additionally, internally, the Office of Policies and Economic Analysis of the Osinergmin performed workshops on the application of the RIA for the personnel of other departments of the regulator.

RIAs developed by Osinergmin

Although Osinergmin has been one of the pioneers in the implementation of RIAs —it was the first Peruvian economic regulator using this tool— its use in its high-impact version has not been extensive. Between 2016 and 2019, Osinergmin carried out 2 high-impact RIA. However, it has developed numerous mini RIA (or moderate-impact RIA). In the period mentioned before, Osinergmin performed 20 mini RIAs and assessed 67 exclusions of mini RIA.

Table 6.9. RIAs carried out by Osinergmin

	2016	2017	2018	2019
High impact RIA	0	1	1	0
Mini RIA	14	4	1	1
Exclusion of mini RIA	5	26	13	23
Total	**19**	**31**	**15**	**24**

Note: The period 2016-2019 is considered.
Source: Information provided by Osinergmin, 2020.

RIA elements in Osingermin

The depth of the RIA depends on the level of complexity of the proposed regulation (OECD, 2019[2]). Based on that, Osinergmin has developed differentiated methodological criteria depending on the complexity of the regulatory assessment. The criteria for defining the level of assessment of RIAs are based on a threshold approach that considers the following variables: the magnitude of the costs that the regulation

generates, the relative contribution to the energy or mining GDP of the regulated parties subject to the regulatory proposal, the level of stakeholder attention to the proposal, and the level of impact on competition.

The regulator has designed guidelines to develop a high-impact RIA and a moderate-impact RIA (Mini RIA). The Mini RIA is a summarised version of the RIA and it has been developed to be applied for cases with minor impacts. Furthermore, Osinergmin has established exclusion criteria for the Mini RIA, which can be of two types. However, it is not clear how the two exceptions differ or in which cases each one is applicable. This is an aspect of improvement in the application of the RIA for the regulator.

Osinergmin establishes the elements included in the assessment of each type of RIA and its exclusions. However, the guidelines for the assessment for each type of RIA need a better definition, to avoid confusion for officers applying the tool regarding the scope of the assessment, the bodies that can intervene, the activities to be performed, among others.

Table 6.10. Components of the RIA analysis, mini RIA, and exclusion of RIA

Component	RIA	Mini RIA	Exclusion of RIA Type 1	Exclusion of RIA Type 2
Problem definition	Required	Required	Required	Required
Definition of policy objectives	Required	Required	Required	Required
Alternatives to the regulation	Required	Required	Assessment of the sole proposal	Assessment of the sole proposal
Impact assessment cost-benefit analysis	Quantitative	Qualitative	Qualitative	
Comparison of options	Required	Required		
Monitoring and assessment mechanisms	Required	Required	Required	
Public consultation with stakeholders	Mandatory	Optional		
Rationale for waiver			Required	Required

Source: Information provided by Osinergmin, 2020.

In the following sections the RIA elements that are analysed by Osinergmin on each type of RIA are developed.

Problem definition

No impact assessment can be successful if the legislative context and objectives are not defined, in particular, the identification of the problem. To the extent that the problem, its dimensions, and origin are identified correctly, it will be possible to design the instruments that reduce or eliminate the identified risks. If the problem is not defined correctly, it can create wrongly designed policies and deficient outcomes (OECD, 2019[2]).

The identification of the problem is a required component of analysis in the Osinergmin methodology for the high-impact RIA, Mini RIA, and the two exclusion scenarios.

The Methodological Guideline considers as elements for an adequate problem definition, the nature, scale, and causes of the problem on clear terms and based on evidence, the identification of the affected parties, the description of the progress of the problem over time, the deficiencies of the regulation to face it, the base scenario, risks, as well as the uncertainty that the problem creates.

Of all the elements for defining the problem, Osinergmin emphasises the description of the base scenario as an element to perform the comparison of the regulatory policy options. The description of the base

scenario requires to explain the evolution of the considered situation without an additional public intervention and includes the sensitivity analysis linked to the uncertainty extent of the formulated projections. This analysis considers three assumptions:

- If a regulation exists, the base scenario is the continuation of the application of the regulation without considering changes.
- If there is a high probability of implementing a change to the current regulation, the base scenario reflects this possibility. This assumption requires an explanation of the severity of the problem and the effects that could occur if the appropriate measures are not implemented.
- If an approved regulation exists but is not implemented, the base scenario considers the outcomes of the implementation of the regulation.

Additionally, one aspect included in the analysis is the verification of the Osinergmin's competence to address it, which includes an assessment of its position versus other state entities to lead the regulatory policy.

Policy objectives definition

This is the second step of the RIA and implies to determine the final outcome intended to be reached by the government through the regulatory policy, stating the differences of the means to be used for their achievement. No RIA can be successful if the legislative context and objectives are not defined (OECD, 2020[4]).

The Methodological Guideline establishes that the objectives should be clearly related to the problem and its causes, which is consistent with the RIA practices. In addition, it acknowledges that the definition of the policy objectives is an iterative process because they can be defined and refined during the RIA process.

The definition of the policy objectives is a component of the cross-wide analysis for the high-impact RIA, mini RIA, and the two assumptions of exclusion. However, only in the case of the high-impact RIA, the objectives are expressed in SMART terms,[61] that is, the objectives must be specific, measurable, achievable, realistic, and defined over time.

The following box shows the differences of the assessment of this element of the RIA for each assumption:

Table 6.11. Assessment criteria for policy objectives

RIA	Mini RIA	Exclusion of RIA Type 1	Exclusion of RIA Type 2
It implies general and specific objectives (SMART) clearly related to the problem and its causes, aligned with the jurisdiction of the institution	Identify the general and specific objective, and the consistency of these with the Osinergmin's objectives/policies	Identify the general and specific objective, and the consistency of these with the Osinergmin's objectives/policies	Identify the general and specific objective, and the consistency of these with the Osinergmin's objectives/policies

Source: Information provided by Osinergmin, 2020.

The guiding documents for preparing the RIA offer a detailed description to orientate on the definition of the policy objectives and the indicators that allow their measurement. However, they are thought for high-impact RIAs.

Osinergmin has defined three types of policy objectives: general, specific, and operational. The general objectives are established when the problem is defined to identify the contribution of the intervention; while the specific and operational objectives can be modified as the effectiveness and efficiency of the policy

options are assessed. These objectives are linked with the indicators that can be products, outcomes, impacts, as shown below:

Table 6.12. Relationship between objectives and indicators

Level of objective	Type of indicator
Operational objectives	Indicators of products
Specific objectives	Indicator of outcomes
General objectives	Indicators of impacts

Source: Methodological Guideline.

Alternatives to the regulation

There are several policy instruments available to achieve the objectives anticipated by a government entity, which can be combined to obtain different options. This assessment stage allows the identification of these instruments, other than regulation, that can be used to achieve the objectives more efficiently and effectively. A good practice for applying the RIA methodology is to consider all the potential alternatives, including performance-based regulations, process-based regulations, co-regulation, measures of information and education, and application of behavior science (OECD, 2020[4]).

The assessment of alternatives to the regulation in Osinergmin is based on the principle of proportionality. Among the alternatives are non-regulatory options, self-regulation and co-regulation.

Table 6.13. Definition of alternatives

RIA	Mini RIA	Exclusion of Mini RIA Type 1	Exclusion of Mini RIA Type 2
Identify (non) regulatory options and the option without change in the regulation (baseline setting)	Identify (non) regulatory options and the option of no action (baseline setting)	Identify (non) regulatory options and the option without change in the regulation (baseline setting)	Identify (non) regulatory options and the option of no action (baseline setting)

Source: Information provided by Osinergmin, 2020.

For the identification and selection of alternatives, Osinergmin has developed criteria that allow you to consider an appropriate range of realistic options. These criteria refer to the current legal framework, technical considerations or feasibility of the proposals and economic and social considerations of the stakeholders.

Furthermore, the assessment at this stage must comply with certain guidelines that include allowing the contributions of stakeholders; assessing doing nothing or improving the implementation or enforcement of existing regulations; identifying different types of intervention based on their content; ensuring that options are complete and sufficiently developed; and avoiding ruling out feasible options too quickly.

Impact assessment: cost-benefit analysis

The cost-benefit analysis is one of the most important stages of the RIA because it allows to assess the magnitude of the benefits and costs by comparing the impact of different alternatives. This assessment ensures that the regulation is performed only when its benefits overcome the imposed costs (OECD, 2008[5]).

This analysis can be conducted quantitatively and qualitatively. The quantitative analysis requires quantitative information, to the extent possible, about the size of the problem, regulation costs and expected benefits. The qualitative analysis is used when it is not possible to obtain monetary information for the quantitative analysis. However, qualitative analysis should present the information as clearly and objectively as possible (OECD, 2008[5]).

The impact assessment is a component of the analysis required for the high-impact RIA, Mini RIA, and the first assumption of the exclusion. However, the level of assessment is different for each one.

Table 6.14. Impact assessment per type of RIA

RIA	Mini RIA	Exclusion of RIA Type 1	Exclusion of RIA Type 2
Estimation of quantitative or monetary impacts	Estimation of impacts in a descriptive or qualitative level	Descriptive level	Not considered

Source: Information provided by Osinergmin, 2020

The assessment of this step of the RIA has a more extensive and comprehensive explanation in the case of the RIA, but not for Mini RIA, and the first exclusion.

Osinergmin assesses the impacts of different policy options compared to the base scenario (without a regulatory change) and based on the results produced. Additionally, this analysis does not only consider immediate and direct effects, but also indirect or secondary that other economy sectors might cause. Likewise, when quantifiable impacts are identified, but cannot be monetised, the public entity provides more insight of the most important impact estimations, appealing to a proportionality criterion.

The regulator has established a three-step analysis to assess the impact:

Figure 6.7. Steps for impact assessment

Source: Methodological Guideline del Osinergmin.

The Methodology Guideline details each of these steps, as well as criteria for identifying and quantifying costs and benefits.

The first step (the identification of economic, social, and environmental impacts) entails the process described below:

- The potential direct and indirect impacts resulting from the alternatives (including intentional impacts which are the objectives sought) are identified and defined at qualitative level. Impacts are analysed under the proportionality criterion by considering, among others, the type of regulation, time for the analysis, and available information. Osinergmin has developed questions that help to identify the potential economic, social, or environmental impacts.
- Costs and benefits are categorised in three groups: quantified and monetised impacts; quantified impacts but not monetised; and impacts expressed on qualitative or intangible terms that are non-quantifiable.

- Positive and negative effects are listed by stakeholder, according to their relevance. The analysis considers two types of impacts: impacts between different economic and social groups (that implies identifying winners or losers in the policy implementation) and impacts on the existing inequities (which leads to assess if the policy options worsen or reduce the existing inequities).

The second step (the analysis of the magnitude of impacts) is in general qualitative and includes the identification of those areas where the policy options will create benefits and produce direct costs or unwanted impacts. Likewise, it includes a likelihood analysis of the impact creation and estimation of its magnitude.

In the third step (exhaustive analysis of most significant impacts), the quantitative estimations of the most important benefits and costs are produced. If it is not possible to quantify the impacts, the importance that these have for the analysis is indicated.

Furthermore, Osinergmin performs an assessment of specific impacts, such as the effects on competition and other administrative burdens; a sensitivity analysis, when there is uncertainty between the assumptions that establish the conditions of the base scenario and policy options; and an assessment of the potential obstacles and incentives for the compliance of the measures. The Methodological Guideline contains guidelines to carry out these analyses.

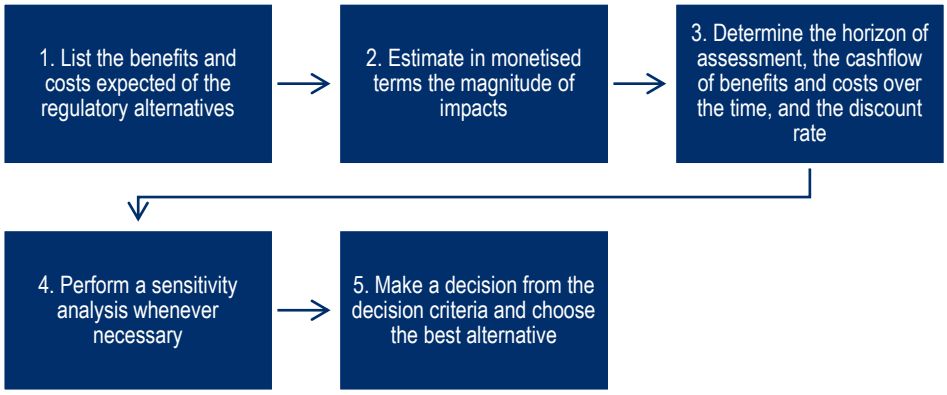
Comparison of alternatives

Once the impact assessment of each of the policy options is carried out, the weighting of such options is performed to justify the decisions made.

Osinergmin has established three criteria to perform the comparison between the policy options: effectiveness of the option regarding objectives, efficiency of the option for the achievement of objectives, and coherence of the option with the strategic objectives of the regulator. In addition to the cost-benefit analysis methodology, the Methodological Guideline considers alternate methodologies to estimate the impact of regulations because it acknowledges that not in all cases it will be possible to apply the cost-benefit analysis methodology, aligned with the international practices (OECD, 2008[5]). These are cost-effectiveness analysis and multicriteria analysis. The cost-benefit analysis and cost-effectiveness analysis are applied in general to the high-impact RIA, while the latter is applied to Mini RIA.

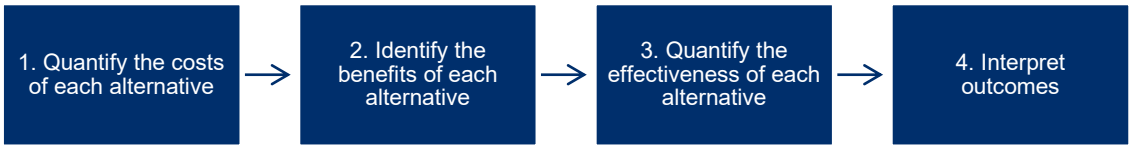
The following diagrams show the steps for applying the cost-benefit analysis, cost-effectiveness analysis, and multicriteria analysis:

Figure 6.8. Steps of the cost-benefit analysis



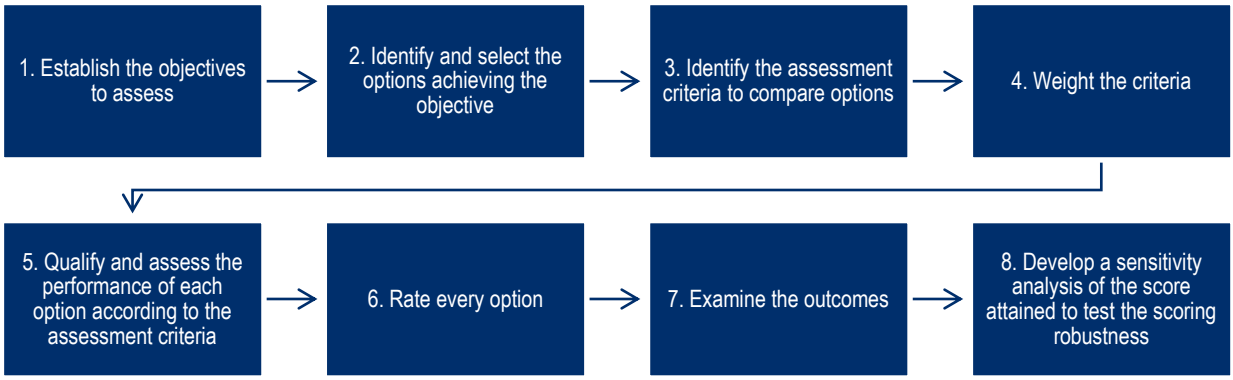
Source: Methodological Guideline.

Figure 6.9. Steps of the cost-effective analysis



Source: Methodological Guideline.

Figure 6.10. Steps of the multicriteria analysis



Source: Methodological Guideline.

Regulation compliance

The establishment of a regulatory compliance strategy generates, among other benefits, the minimisation of costs and efforts for the regulated subjects and the government, the generation of incentives for the regulated subjects to comply with the regulation, as well as adequate guidelines for those who supervise the regulation (OECD, 2019[2]).

The way in which regulations are applied and enforced, and the way in which compliance with their requirements is ensured and promoted are determining factors for the regulatory system to function as intended (OECD, 2018[7]); however, the Methodological Guide has not incorporated mechanisms or criteria to enforce regulation. The incorporation of this element would strengthen the implementation of the RIA.

Monitoring and assessment mechanisms

The monitoring and assessments mechanisms of the implemented proposal allow identifying if the public policy objectives are being reached and to determine if the proposed regulation is necessary or if it can be more efficacious and efficient for achieving the proposed objectives (OECD, 2019[2]). Therefore, the assessment mechanisms must be considered from the moment the regulation is designed.

This stage of the assessment is intended for high-impact RIA, Mini RIA, and for the first assumption of waiver from the RIA. In all these cases, the compliance monitoring indicators of objectives are identified, and a general scheme of the potential follow-up and policy assessment mechanisms is prepared. However, the Methodological Guideline does not provide guidelines or orientations to identify assessment criteria or indicators which will be used for monitoring and assessment.

Public consultation

The Methodological Guideline anticipates the conduction of consultations at an early stage of the regulatory policy design. Prior to regulations approval, Osinergmin publishes the projects and organises public hearings for stakeholders. Likewise, it prepares a matrix with the comments made by stakeholders and the response of the regulator, which is published with the final regulation.

Public consultations are foreseen only for high-impact RIA and Mini RIA. For the former, consultations are mandatory, while, for the latter, they are optional. In the case of the high-impact RIA, it also anticipates prior consultations. Likewise, consultations are performed on a *Consultation Document,* which can be the PAIR (if information is sought for the formulation of regulatory policy) or RIA.

Consultations are carried out following a plan prepared since the beginning of the regulatory policy formulation, containing information on the objective of the consultation, the elements of the impact assessment that are being consulted (nature of the problem, objectives, and policy options, comparison of the policy options, and costs and benefits analysis), the targeted stakeholders, consultation techniques, and time assigned for the consultation.

The Methodological Guideline establishes minimum standards for consultation that allow the process to be organised. One of these serves to identify stakeholders. However, only the group that will be affected by the regulation is considered, and this analysis can be extended to cover other parties that may be affected.

As for consultation techniques, the Methodological Guideline considers the following: notification and comments, circulation for comments (to a selected group of stakeholders), focus groups, public hearings, and advisory bodies, which are consistent with the functions performed by the regulator. Additionally, the Methodological Guideline establishes criteria for the performance of consultations, explained below:

- Plan the consultation at an early stage of the policy design
- Ensure the participation of relevant stakeholders, especially those most affected by the policy.
- Provide the time, format and tools necessary for each group to ensure the objectives of their participation.
- Ensure that stakeholders can comment on a clearly defined problem, the description of possible intervention options, and the impact assessment.
- Ensure stakeholder contact throughout the process and feedback.
- Ensure that the RIA reflects the contribution of stakeholders in its development.

Examples of RIA and Its consultation process

This section details two cases of RIA that have been carried out by the Osinergmin and the public consultation activities developed. The first corresponds to a high impact RIA, while the second corresponds to a Mini RIA.[62]

RIA: “To improve the security in the commercialisation of Liquefied petroleum gas cylinders (LPG)”

The purpose of this RIA was to analyse alternatives to improve safety conditions in the commercialisation of liquified petroleum gas cylinders (LPG).

RIA elements

Applying the Methodological Guideline, Osinergmin identified as public problem the high security risk faced by people using 10-kg LPG cylinders. Despite the fact that LPG is a potentially dangerous fuel, it had not been possible to guarantee its safe commercialisation and more than 50% of the total number of cylinders nationwide had been identified as lacking the appropriate conditions for its commercialisation.

As part of the problem definition, Osinergmin analysed the LPG cylinder commercialisation market and the rules that regulate that market, which allowed it to identify existing market and legislative failures. Based on the assessment, Osinergmin was able to identify the causes of the problem,[63] which generated economic incentives encouraging the companies to not renew the cylinder inventory, and to not comply with the security conditions set forth in the valid Technical Regulations.

The RIA included the definition of the general and specific objective of the intervention, following the "SMART" criteria, established for high-impact RIAs. The objective identified by Osinergmin considers a specific goal that can be measured and realistically achieved, within a specific period of time. At a general level, the creation of incentives in order that the commercialisation of bottled LPG is performed in adequate security conditions was set as the objective, while in the specific level, the decrease to 30% of the ratio of LPG cylinders of the national inventory with high-risk noncompliances of technical and safety conditions was considered.

The RIA assessment considered three regulatory policy options, considering Osinergmin's scope of competence:

- To keep the regular supervision of cylinders, consisting in supervising the integrity of cylinders (baseline setting).
- To implement an electronic labelling system. This proposal consists of adding an electronic device (*transponder*) fixed in the body of each cylinder with relevant information allowing the automatic identification and traceability through radiofrequency.
- To implement the supervision of technical and safety conditions of cylinders. According with his proposal, those cylinders with non-compliances of technical and security conditions in a high level will be immobilised.

The assessment of each of the options was carried out using the methodology of cost-effectiveness analysis. As a result of the analysis, the implementation of the third option was recommended.

The analysis also included the identification of the main affected parties (positively and negatively) by the proposal. Additionally, the information of the *ex post* follow-up and assessment mechanisms of the regulation was included.[64]

RIA consultation process

The RIA consultation process involved several stages. During this process, the Osinergmin employed two consultation mechanisms. The first one consisted on the publication for comments of the document that includes the assessment carried out by Osinergmin (Consultation Document DC-001-2016-RIA/OS). According to the regulator's usual practice, the publication was performed in the institutional web page. In addition, Osinergmin organised an open public hearing in order that all agents with interest in the proposal could participate. The regulator also invited the Ministry of Energy and Mines (MINEM), National Institute for the Defence of Competition and Protection of Intellectual Property (INDECOPI, for its Spanish acronym), as well as the private sector, and society (bottling companies, consumer associations, and legal firms).

In September 2016 the first version of RIA was published in the institutional web page of Osinergmin to receive the comments from the public (Osinergmin, 2016[13]). The public hearing was performed in November 2016, which included the presentation of the used RIA methodology and the situational condition of the commercialisation of LPG gas balloons. Likewise, three conferences of the National Society of Mining, Petroleum and Energy, MINEM, and the Peruvian Association of Gas Companies were considered.

The comments formulated during this first part of the process were analysed and answered in a document which was published in the institutional web page of Osinergmin in December 2016. These comments created a new assessment by the regulator. From this assessment, Osinergmin prepared a new consultation document, which was published in its institutional web page in December 2016.

Afterwards, in October 2018, after collecting comments from stakeholders, the Board of Directors approved the listing of conditions of the technical and safety conditions in the cylinders for bottled Liquified Petroleum Gas (LPG) that warrant the implementation of the *Medida de Seguridad de inmovilización y el marco de supervisión* [safety measure of immobilisation and supervisory framework] (Regulation of LPG). The LPG Regulation and the document of final analysis of RIA were published and are available in the web page of the regulator.

Mini RIA "Procedure proposing the improvement of the mechanism of tenders for hiring electricity supplies"

In this Mini RIA, Osinergmin analyses options to improve the contractual mechanism in electric generation from the bidding procedure.

Mini RIA elements

During the Mini RIA, Osinergmin identified the existence of deficiencies in the bidding procedures for the acquisition of electric energy supply, linked to the incentives for the development of new electric generation projects, the management of risks between the contracting parties, the evolution of the updating factors of each contract and its link with the price of the service and the revision of conditions established in the contracts.

The evaluation included the causes of the problems identified (which respond to a dissociation between the objectives intended by the bidding and what really happened), and the justification for the intervention.

Additionally, the Mini RIA included a development of the objectives (general and specific) that were intended to be established from the intervention. In general terms, the intervention had as purpose to design contractual mechanisms to improve the bidding process of the electric supply of regulated clients.

Regarding the options of policy, Osinergmin assessed five alternatives applicable for the case:

- Option 0: The base scenario that consisted in keeping the situation without changes to the regulatory framework.
- Option 1: Maintain the existing contracting system but incorporating the obligation of establishing a Bidding Plan of binding nature, splitting the bidding processes intended to the installed generation (basic offer – existing) and projects of generation (offer growth). Likewise, it considered to define the boundaries for the exclusion period and the contractual terms.
- Option 2: Corresponds to Option 1 but incorporates a mechanism for firm power recognition that allows generation projects with Renewable Energy Resources to participate in bids.
- Option 3: It is a modification of Option 1 and consists of the migration to a system of products based on firm energy blocks with associated power similar to the Chilean model, without distinguishing between installed generation and generation projects. Only in one of these blocks would power and firm energy be acquired.
- Option 4: Starting from Option 1, in addition to the creation of the Bidding Plan, block segmentation was included, as in Option 3. In addition, the energy price indexation formula for contracts signed with generation projects was modified.

The assessment of the impact of each of these alternatives followed the methodology of cost-benefit analysis, from a qualitative approach, taking as a reference the base scenario or not making any intervention. Osinergmin established that option 4 was the one that registered greater benefits than costs.

Mini RIA consultation process

During the consultation process of the Mini RIA, Osinergmin employed two consultation mechanisms. The first was the publication on the institutional website of the document that compiles the analysis carried out by Osinergmin. The second was a working meeting to explain in detail the content of the proposal and gather comments and suggestions from stakeholders. In this meeting the regulator presented each of the elements analysed in the Mini RIA. The presentations used during the workshop, as well as the list of those attending the meeting, are published on the institutional portal of the entity.

Stakeholder comments were received through two means. The first was a four-part outline survey given to those who participated in the workshop. This survey gathers information on 4 specific aspects: the order of relevance of the problems identified; additional aspects not considered by the regulator that would affect the problem; the assessment (by importance) of the policy alternatives; and specific solutions proposed by the stakeholders that could be useful to solve the identified problems. The second mechanism was the submission of comments received during the Mini RIA publication period.

The comments received and the responses to these were included in a comment matrix available publicly on the Osinergmin corporate website. The proposal for intervention has not been approved.

Other relevant regulatory policy practices

Ex post assessments

The *ex post* regulatory assessment is not a mandatory practice of the central Peruvian government entities (OECD, 2016[14]). Notwithstanding, during 2017, Osinergmin carried out seven regulatory policy impact assessments, the results of which were reflected in the Policy Assessment Documents (PAD). These *ad hoc* assessments were aimed to quantify *ex post* the impacts of regulations and supervision actions on audited activities, using different criteria. The PAD performed by Osinergmin are the following:

- Impact assessment of the supervision of the public lighting service: It analysed the cost-benefit ratio of changing the supervision process using the consumer's willingness to pay
- Impact assessment of the impact of the regulation of energy losses: It analysed the impact of a regulatory change focused on reducing energy losses by measuring consumer savings.
- Impact of the impact of safety and accident prevention regulation: It analysed the impact of a change in monitoring practices in terms of prevented deaths
- Impact assessment of the supervision of metrological control: It analysed the change in the supervision in terms of costs and social benefits.
- Impact assessment of the supervision of mining activities: It analysed the change in the supervision practices in terms of prevented deaths.
- Impact assessment of the supervision of electric meter contrast: It analysed the impact of monitoring practices in terms of consumers savings.
- Impact assessment of fuel quality supervision (gasoline and diesel): It analysed the impact of a reduction in the number of low-quality gas stations in terms of consumers benefits.

In addition, Osinergmin manages two investment programs (Social Inclusion Energy Fund – FISE and Electric Social Compensation Fund – FOSE), of which an impact assessment is conducted according with the methodologies set forth by the MEF.

With the accumulative experience in the conduction of assessments, Osinergmin might develop an intern guideline to orientate future efforts. Likewise, it could establish measures for conducting assessments in a more systemised way.

Case study 4: Osiptel

Context

Osiptel is one of the four economic regulators of Peru created in the decade of 1990 to supervise the transition of Peru to a liberal economy and allow a long-term stability in key economic sectors (OECD, 2019[15]).

Its first role as regulator was to watch the Peruvian telecommunication market liberalisation in its first years of operation. Osiptel ensures the quality and efficiency of services to users and the regulation of the sector tariffs, as well as regulates and supervises the competition and protection to consumers in the telecommunication market (OECD, 2019[15]). As regulator, Osiptel is governed by the LMOR, which grants powers to set for public services in the telecommunication sector, establish and impose sanctions and corrective measures, resolve disputes in the telecommunications sector, act as second instance for user complaints, supervise that regulated entities respect the rules and regulations of the sector issued by the regulator and issue regulatory instruments.

Legal framework to perform the RIA in Osinergmin

The General Rules of the Supervisory Agency for Private Investment in Telecommunications (Osiptel's General Rules) contain several provisions containing guiding principles for decision-making, including regulations. These are the principles of action based on cost-benefit analysis, transparency and functional decision analysis.

According to the former, the benefits and costs of the regulator's actions must be assessed before their conduction and be supported to endorse their reasonability and efficacy.[65] This assessment must take into account short- and long-term projections, as well as direct and indirect costs and benefits, either monetary or non-monetary.

The principle of transparency, in turn, establishes that the projects of legislative and/or regulatory decisions will be pre-published to receive opinions of the general public.[66]

Finally, in accordance with the principle of functional decision analysis, Osiptel should take into account the effects of its decisions on issues of tariffs determination, quality, incentives for innovation, contractual conditions, and any other feature relevant for the market development and the satisfaction of the users' interests, for which the impact of these aspects should be assessed.[67] Likewise, according with this principle, the performance of Osiptel should be guided also for the search of efficiency in the allocation of resources and the achievement of objectives at a lower cost for society.

Although this regulation does not implement the RIA, it states the application of consistent practices with this tool and served as a basis for adopting the RIA within the regulator, described below.

RIA regulations at Osinergmin

In March 2018, Osiptel approved the Guidelines on Regulatory Quality (LCR, for its Spanish acronym), with the purpose of providing the regulator with a mechanism that allows it to carry out a legality and cost-benefit impact analysis of its regulations, thus strengthening the good governance and the Better regulation Policy (OSIPTEL, 2018[16]).[68]

The LCR includes a Manual of Technical Regulations (to perform the legality analysis) and a *Manual de la Declaración de Calidad Regulatoria* [manual of regulatory quality statement] (to perform the impact analysis of costs and benefits of each regulation). The approval of LCR was carried out through a participatory process pursuant to the principles set forth in the General Rules of Osiptel. On one hand, it was published for comments of the content of both manuals, LCR, and its forms.[69] On the other, a public

hearing was convened.[70] The comments formulated during this process were considered in the document which was finally approved by Osiptel.

Table 6.15. Guidelines on regulatory quality of Osiptel

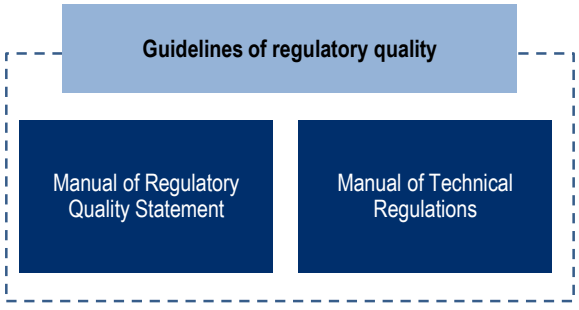
Guideline 1	Establish the framework for strengthening good governance and continuous improvement of regulatory policy
Guideline 2	The legislative and regulatory functions are targeted to promote private investment, encourage competition, and warrant the quality and efficiency of the services provided to users
Guideline 3	Endorse the regulatory transparency and quality in the issuance of regulations. This based on the compliance of processes controlled in the Quality Management System and the Manuals of Technical Regulations and of Quality Statement
Guideline 4	Certify the transparency and responsibility in management through the design and approval of management instruments and institutional planification focused on outcomes
Guideline 5	Free participation of regulated individuals in the procedures filed before the Osiptel

Source: LCR.

The LCR work as guiding principles of regulatory governance in Osiptel. These are aimed to ensure that the regulatory decisions of this body are issued within a planned, transparent, and participatory process, ensuring that these decisions are justifiable, reasonable, legal and efficient. In turn, the two manuals constituting the LCR allow the technical and legal assessment of the legislative proposal, that is, the application of the RIA in practice.

The Regulatory Quality Statement Manual (MDCR, for its Spanish acronym) allows the implementation of the RIA guaranteeing that Osiptel's decisions are justifiable, reasonable, legal, generate benefits and are efficient. On the other hand, the Manual of Technical Regulations (MTN) sets forth the provisions for standardizing the preparation of regulations issued by the Board of Directors regarding the language, structure of the regulation, and means of publication.

Figure 6.11. Osiptel's regulatory quality guidelines and manuals



Source: LCR.

Framework for public consultation

As stated previously, the General Rules of Osiptel regulate the participation of stakeholders in regulatory decision-making since it established that the legislative and/or regulatory projects should be published to receive opinions from the public.

Additionally, the LCR orientate the actions of the public entity in order that these are transparent and to allow the participation of stakeholders in the regulation. Likewise, the MDCR contains provisions on public consultation, applicable to the two modalities of RIA implemented by Osiptel. These provisions guide

officials in the dissemination of the legislative proposal, how they should conduct the consultation process, and the effective participation of stakeholders.

RIA implementation in Osinergmin

Osiptel complies with several functions derived from the general and specific rules regulating it, whose purpose is to ensure the growth and maintenance of the public service market of telecommunications.

This regulator has approved regulations by analysing the impact that these generate since 2016. However, as of March 2018 the regulator applies the RIA using the methodology approved in its LCR.

Osiptel has considered that the application of LCR and its manuals should be mandatory to all those procedures leading to rules of general nature or, if they are of specific nature, are applicable and/or impact companies or users of the sector. Therefore, the RIA is applied for decisions that:

- Create new obligations and/or sanctions for the operating companies or for the users, make the existing ones stricter or generate higher costs for their compliance.
- Create or modify rules of procedures which can create administrative burdens or compliance costs for operating companies or users.[71]
- Reduce or restrict benefits or rights for operating companies or users.
- Establish or modify definitions, classifications, methodologies, criteria, or any other impacting the rights, obligations, benefits, or procedures of individuals.
- These decisions are filed under two types of procedures.[72]
- Procedures for the issuance of regulations approving provisions applicable to the current and future public service companies of telecommunications and/or users.
- Regulatory procedures approving provisions applicable to current and future public service companies of telecommunications.

The RIA is applicable to all the Osiptel's decisions. However, the LCR has established two suppositions where the analysis of alternatives has variations. The first assumption corresponds to cases in which regulation derives from the express mandate of a higher-ranking law or regulation. In these cases, maintaining the *status quo* (non-intervention) is excluded from the analysis alternatives. The second assumption corresponds to cases in which the regulation must establish deadlines for carrying out an activity (from Osiptel and/or the regulated individuals). In these cases, the analysis of alternatives can be excluded.

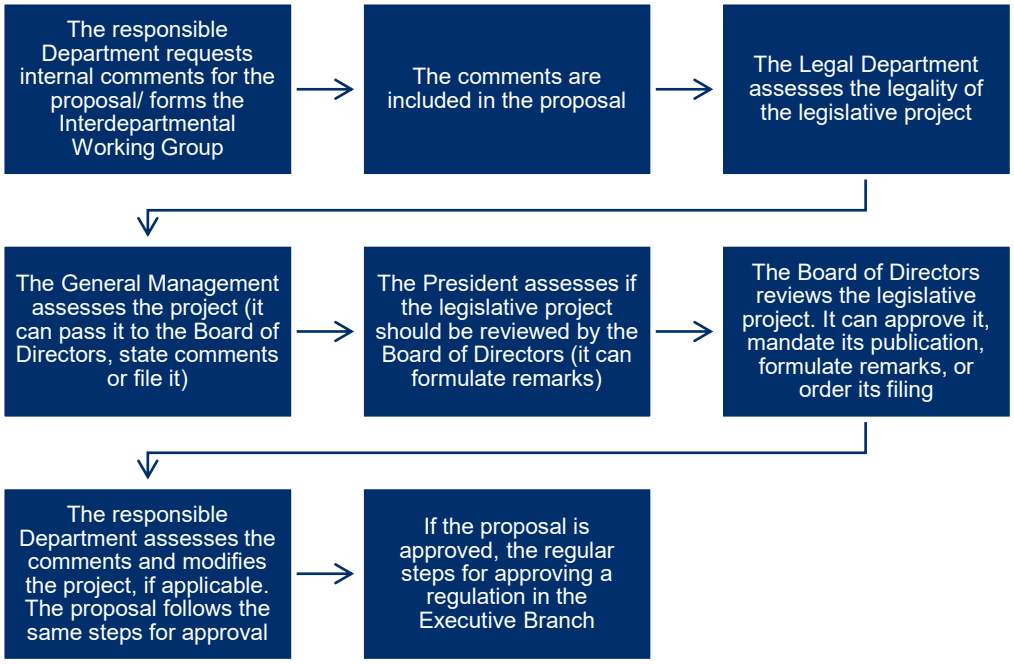
Preparation process

The RIA in Osiptel involves several entities of the government. Even when a particular area leads one of these procedures, the LCR has the need to carry out co-ordination between areas and, when it is noticed that the intervention is transversal to multiple functions, Interdepartmental Committees can be enabled, whose members represent each area involved in the legislative proposal. Thus, it is ensured that the decisions issued respond to the functions established for the entity, in a general way.

Once the responsible department or the Interdepartmental Committee has completed the preparation of the RIA, this follows the following procedure for its approval (see Figure 6.12).

All RIAs are controlled by the General Management before being submitted to the Board of Directors. The General Management has the power of blocking and returning for review those deficient RIAs before their submission to the Board of Directors.

Figure 6.12. RIA approval procedure in Osiptel



Source: LCR.

RIA training for Osiptel staff

In September 2016, Osiptel organised a Forum on Regulatory Impact Assessment where an officer from the OECD Regulatory Policy Division participated. In such opportunity, the regulator explained the proposed Guidelines on Regulatory Quality and made it available for comments from all stakeholders.

Additionally, Osiptel's officers have participated in training activities on matters of RIA performed by other Peruvian public entities.

RIA developed by Osiptel

Osiptel like other economic regulators in Peru, has been a pioneer in the implementation of RIA and in the application of this tool at the level of the public management in Peru. To date, Osiptel has performed 28 RIAs using the different methodologies approved by the LCR. Some of these RIAs are still under assessment.

RIA elements in Osiptel

One of the principles of RIA best practices consists in acknowledging that a RIA should be carried out in proportion to the importance of regulation (OECD, 2020[4]). Osiptel's RIA is governed by the principles established in the Osiptel's General Rules,[73] in particular the principle of proportionality to ensure that the pronouncements issued have followed an analysis that weighs the impact of the decision.

Based on the proportionality principle, Osiptel has designed two types of RIA: *medium-/high-impact RIA* and *Low-impact RIA*. The first requires a more detailed analysis. However, even though both RIAs would be differentiated, mainly, by the level of analysis, the LCRs do not include accurate information that allows to identify these variations; thus, it is not possible to identify the characteristics of these types RIAs and

their scopes. Likewise, in both cases, public consultation is carried out in the same way, except for emergency cases set forth by the Osiptel's General Rules.

On the other hand, although the RIA is developed based on the jurisdiction assigned to the regulator and the principles governing its decisions are followed, it is not part of an annual regulatory planification linked to the strategic framework of the public body.

Problem definition

To the extent that the problem, its dimensions, and origin are identified correctly, it will be possible to design the instruments that reduce or eliminate the identified risks. If the problem is not defined correctly, it can create wrongly designed policies and deficient outcomes (OECD, 2019[2]).

According with the LCRs, the analysis of this element includes four aspects:

- Description of the evolution of the study subject and its legal framework.
- The approach of the problem.
- The identification of the potential causes of the problem.
- The assessment of the permanence of the problem if the status quo is kept or it is decided to not intervene.

From these four aspects, the approach of the problem entails a deeper analysis. Through the use of questions, it is intended to describe the problem, its manifestations, most relevant effects and evolutive trends, as well as to identify the evidence available, the affected agents and markets, and similar cases abroad that may serve as a reference.

Osiptel acknowledges the importance in the use of evidence to achieve this analysis, therefore, it establishes the use of several data sources. The information that can be obtained from market agents or stakeholders is not only considered, but also it is intended to use information available internally from the regulator, academics, specialists on the subject or consulting committees, as well as that which may be obtained from international sources. Likewise, the mechanisms that can be used to obtain such information are established,[74] which must consider the level of representativeness of who provides the information.

The analysis of the potential causes of the problem includes identifying whether the problem is due to a regulatory failure, a market failure, or an action caused by an agent. Furthermore, the analysis involves determining the mistakes or defects on the design and implementation of other regulations intended to address the same problem.

Policy objectives definition

The definition of policy objectives implies determining the final result that the government wants to achieve through regulatory policy, differentiating it from the means that will be used to achieve it. No RIA can be successful if the legislative context and objectives are not defined (OECD, 2020[4]).

Osiptel's LCR establish the need to identify general and specific objectives, which must be related to the root causes of the problem. The general objective must be directly related to the cause of the problem detected.

The analysis also includes determining the legal basis for the intervention, that is, if the regulation is issued for complying with the provisions of a law or regulation of higher hierarchy and if the regulator has the enough jurisdiction to intervene.

As in the case of problem definition, to establish the objectives of the regulation, the Guidelines use questions that guide the entity's officers through the conduction of the analysis.

Alternatives to regulation

This assessment stage allows the identification of other tools, different from regulation, that can be used to achieve the determined objectives in a more efficient and effective way. A good practice for the application of the RIA methodology is to consider all possible alternatives, including performance-based regulations, process-based regulations, co-regulation, information and education measures and application of behavioral science (OECD, 2020[4]).

LCRs formulate questions so that public entity officials can conduct their analysis and identify possible alternatives that could be implemented to solve the problem, their differences, and their effectiveness.

Impact assessment: cost-benefit analysis

The cost-benefit analysis is one of the most important stages of the RIA because it allows to assess the magnitude of the benefits and costs by comparing the impact of different alternatives. This assessment ensures that the regulation is performed only when its benefits overcome the imposed costs (OECD, 2008[5]). This analysis can be conducted quantitatively and qualitatively. The quantitative analysis requires quantitative information, to the extent possible, about the size of the problem, regulation costs and expected benefits. The qualitative analysis is used when it is not possible to obtain monetary information for the quantitative analysis. However, the qualitative analysis must show the information in the most clear and objective manner possible (OECD, 2008[5]).

Osiptel's LCRs require the identification of direct and indirect benefits and costs to the regulated agents and the regulator, according to each alternative, as well as the variations that could occur in them over time. The LCR consider, in a referential way, the costs and benefits that can be considered in the analysis, which are detailed below:

Table 6.16. Types of costs and benefits of the LCRs of Osiptel

Costs	Benefits
Negative impacts on the competition	Positive impacts on the competition
Financial or compliance costs of the regulation	Financial savings
Collateral costs affecting third parties	Other collateral benefits affecting third parties
Costs derived from new administrative burdens	

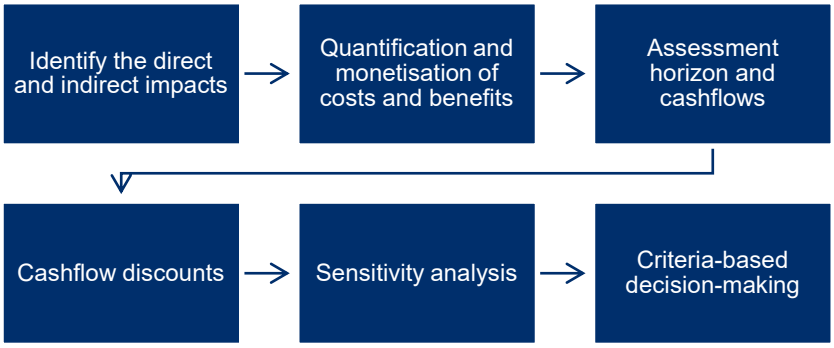
Source: MDCR.

According to the LCRs the costs and benefits must be based on market prices and analysed in incremental terms, that is, only those additional costs and benefits generated by the proposed regulation, over the current situation, are considered. Furthermore, this analysis must be consistent with the principle of proportionality; in that sense, regulatory proposals that aim to solve high-impact problems must be based on a more detailed cost-benefit analysis.

The methodology to analyse the alternatives depends on the information that Osiptel has available. LCRs allow the use of additional information contributing to the assessment of available alternatives, such as outcomes obtained in other countries, related literature, among other. When the information is available, the analysis should be quantitative, otherwise, a quantitative analysis of alternatives will be performed. For such purposes, Osiptel uses two analytical methods for the quantification: direct methods (or declared preferences) and indirect methods (or revealed preferences).[75]

Osiptel's LCRs develop in detail each of the steps involved in carrying out the quantitative and/or qualitative cost-benefit analysis of alternatives. The following figure describes the application of such methodology, according with LCRs:

Figure 6.13. Steps for applying the cost-benefit analysis in Osiptel



Source: MDCR.

As observed, one of the steps for applying the cost-benefit analysis is the sensitivity analysis. This consists of performing simulations on the effects of the regulation to identify its potential consequences and minimizing inherent mistakes of estimations. Moreover, decision-making is carried out following two criteria:

- *Cost-benefit ratio:* If the indicator is higher or equal to 1, benefits are higher than costs and the legislative proposal derives in positive net effects; if it is lower than 1, benefits are lower than costs and the legislative proposal derives in negative net effects.
- *Net benefits:* If this indicator is positive or equal to zero, benefits are higher or equal to costs and the proposal has positive effects, while, if the indicator is negative, benefits are lower than costs and the proposal derives in negative effects.

In addition to the cost-benefit analysis, LCRs consider the methodology of cost-effectivity analysis and multi-criteria analysis, aligned with the typical practices considered for performing the RIA (OECD, 2020[4]). The former consists of a four-step analysis by which the quantification of costs and identification of benefits of each alternative, the effectiveness quantification for each option, and the selection of the best outcome are achieved. The multi-criteria analysis considers the quantified costs and/or benefits in an ordinal and weighted manner.

LCRs have not established differences for applying these methodologies for the types of RIAs that can be done by Osiptel. However, to date, mainly multi-criteria analysis RIAs have been completed.

Regulation compliance and monitoring and assessments mechanisms

The establishment of a regulatory compliance strategy creates, among other benefits, the minimisation of costs and efforts for the regulated individuals and government; the generation of incentives in order that the regulated individuals comply with the regulation, as well as adequate guidelines for those who oversee the regulation (OECD, 2019[2]). The way in which regulations are applied and enforced, and the way for ensuring and encouraging the compliance of their requirements are determinant factors for the intended operation of the regulatory system (OECD, 2018[7]).

Additionally, monitoring and assessment mechanisms of the implemented proposal allow to identify if the public policy objectives are being achieved and determine if the proposed regulation is necessary or if it can be more efficacious and efficient for reaching the proposed objectives (OECD, 2019[2]). Therefore, the assessment mechanisms must be thought from the time when the regulation is being designed.

Osiptel's LCRs develop the compliance mechanisms of the regulation and those of monitoring and assessment in a single step, called "application of the selected solution". This has as purpose to establish the level of compliance of the regulation and the follow-up mechanisms that can be implemented to verify its effectiveness.

Regarding the compliance of the regulation, as with the other RIA Elements, LCRs establish questions in order that the regulator's officers consider certain aspects in their assessment. In particular, it is required to identify three aspects: The incentives that the regulated agents might have to comply with the regulation, if the supervisory procedures are applicable, or if it is necessary to implement new procedures and the measures that could be set for breaches. However, LCRs do not have provisions guiding officers to identify each of these aspects.

Regarding the monitoring and assessment mechanisms, LCRs establish that the efficacy of regulations approved by Osiptel (regulations and pricing) can be assessed two years from its entry into force. However, LCRs do not have guidelines for performing this assessment. The incorporation of guiding criteria might improve the strategy to perform the follow up of the regulation compliance and check if this complies with the objectives for which it was issued.

Although the LCRs contemplate both steps of analysis of the RIA, it is important to define more clearly that they are different analyses, whose criteria and parameters of evaluation will differ, depending on whether it is a question of determining the mechanisms of compliance with the regulation or mechanisms of compliance with the regulation, aimed at verifying its level of effectiveness.

Notwithstanding the above, one aspect that stands out from the LCRs is to establish that during the RIA it will be identified whether the implementation of the regulation will require the creation or modification of of computer systems, networks, transmission systems or processes, as well as co-ordination with other State entities or organisations. Likewise, this assessment step requires to identify if the regulatory proposal creates or modifies proceeding rules for Osiptel's procedures.[76]

Public consultation

Prior to the issuance of LCRs and their manuals, Osiptel had implemented some mechanisms for the participation of agents interested in the regulator's decision-making process. These mechanisms were included in the regulations legislating procedures for issuing regulations by the CD and for setting or reviewing maximum interconnection tariffs or charges.[77]

These mechanisms operated in two moments: Before the approval of the regulatory proposal and before the approval of the final text of the regulation. In the first one, Osiptel required information for preparing regulatory proposals and measured the response levels to these proposals. In the second, before the approval of the regulation, Osiptel disseminated the text of the regulation in the official gazette and its web page to receive comments from any stakeholder. The publication also included the explanatory memorandum (a brief description of reasons for issuing the regulation), and the report supporting the legislative proposal. Then, Osiptel disseminated the comments formulated about the legislative proposal, performed a matrix of comments and, in certain events, created spaces for public discussion,[78] and then analyse the comments and the necessary modifications to the regulations, before finally arranging for their approval and publication.

Like its regulatory peers, Osiptel has established two moments for consultation: before the regulatory project approval and before the approval of the final regulation or legislation.

- *Before approving the legislative project:* The purpose is to gather information about the problem and/or solution alternatives. Even when LCRs require to determine the mechanisms to collect information and the agents to whom such information was asked, they do not establish guiding criteria about the mechanisms that can be used or the subjects that can be consulted, neither about the way in which these should be identified. In practice, Osiptel has sometimes conducted informal

and non-mandatory consultations at the initial stage with external stakeholders when the regulatory project assessment has begun. During these consultations, Osiptel can ask information or feedback about the topic, statistics, or impact. Feedback comes from users, companies, or relevant stakeholders. There is no counseling body, but sometimes there is contact with a group of private companies *ad hoc* to ask opinions at the onset of the regulatory process.

- *Before the approval of the final regulation:* It consists of the consultation performed for the regulatory proposal. As in the case of the consultation performed before the approval of the legislative project, LCRs formulate questions guiding Osiptel's officers on the aspects to be considered for the conduction of the consultation process. Based on these questions, there is the purpose of determining the way in which the regulator notified the proposal to the stakeholders, the agents that were informed, the channels that were used for performing the consultation, and the way they were made available for the public. However, LCRs do not have specific provisions about the methods and tools that can be used during the consultation process, or about which criteria can be used to determine the form of the consultation, and the identification of the potential stakeholders.

The method that Osiptel uses in general to perform the public consultation is the publication of the legislative proposal in the web site of the entity, as was the usual practice before the implementation of LCRs. In accordance with these, when a draft is published for comments, the supporting documents should be included in order to provide stakeholders with more information prior to the consultative process, for example, the cost model where appropriate, in Excel format. In some cases, a press release is also drafted.

Another consultation mechanism used are public hearings, which are performed when there is a legal ordinance setting the provision, or when because of the nature, scope, or impacts of the regulation, it is considered necessary.[79] For example, changes in tariffs and interconnection charges require that these hearings be held. In the case of tariff regulation, public hearings must be held in three cities (one at North, one at South, and one at the Center) and the selection should be done according with the number of people using the regulated service. Public audiences should last at least 20 days (OECD, 2019[15]).

Osiptel has tried innovative methods, such as broadcasts via Facebook Live, to increase the participation of the groups of users, as well as to hold occasional seminars with academic audiences. However, the efficacy of these methods has not been assessed yet (OECD, 2019[15]).

As the typical Osiptel's practice was, the final regulation and the matrix of comments of the consultation are published as a document on its web page. The matrix includes the response of the Osiptel with the explanation and rationale of the decision. The resolution approving the regulation is also published in the official gazette El Peruano, with a remark that all the supporting information can be consulted in the web site of the entity.

When a new regulation is approved, Osiptel issues a press release and organises interviews, forums, or seminars to provide more detailed information on new regulations (OECD, 2019[15]).

While the RIA establishes the need for public consultation prior to the approval of a regulation, there is an exception to this rule, and it occurs when regulations are considered urgent or necessary.[80] In these cases, the regulation to be approved is exempted from the consultation process.

Osiptel, like all the other Peruvian economic regulators, has a User Board, which is mechanism to allow the participation of stakeholders in any sector. These might participate in public consultations; however, User Boards have not been established to be able to operate from this year.

Even though the Guidelines establish the possibility of early consultations, most public consultations have been carried out on proposed regulations.

Examples of RIA and Its consultation process

In this section we detail two cases of RIA that have been carried out by Osiptel and the public consultation activities developed, corresponding to the determination of important providers in the markets of access to the mobile network and mobile service and the procedure for the application of separate accounting for companies in the telecommunications sector.

> RIA: "Determination of important suppliers in markets of access to mobile networks and mobile service"[81]

This RIA, completed on May 2018, was one of the first performed by Osiptel after the approval of its LCRs. The RIA was aimed to analyse the market conditions for accessing to the public network of mobile services and wholesale access to the telecommunication service from mobile terminals, to determine if there were changes on the last 3 years warranting or not to keep the statement of absence of important suppliers.

RIA elements

Under current regulations, it is an obligation of major suppliers of public telecommunications services to grant access and shared use of their telecommunications infrastructure to any concessionaire of public telecommunications services that requests it, as well as to offer the resale of their traffic and/or public telecommunications services at reasonable rates, subject to a system of non-discriminatory wholesale discounts.

Both conditions are necessary for a potential new operator - reseller to enter the market to compete directly in the retail market. The inability to access these services prevents the potential operator-reseller from originating the calls of its future users, offering full-duplex voice call services, SMS and MMS; and, therefore, prevents it from competing effectively.

Based on the RIA, Osiptel identified the public problem to be assessed which consisted in the fact that, as of 2014, there were no network operators that had access to the public network of other mobile service operator to provide the *origination* service[82] of calls in such network, as well as there were not also transactions in a wholesale market access to communication services from mobile terminals. That is, there were no interactions in any of the markets, and therefore, there was a competition problem at the retail level. Even though it is established that market conditions did not vary, RIA does not detail the evidence that supports this assessment or the sources of information that were consulted, the causes that could have generated the identified problem, or the effects of the permanence of the problem in case of non-intervention.

Osiptel established as purpose of its intervention the refinement of the concept of important supplier. According with the regulator, at international level, this definition has facilitated the identification of suppliers subject to different obligations with market power in the sector, with the purpose of promoting more competitive intensity and safekeeping the wellbeing of users.

Regarding the policy options, Osiptel assessed two alternatives applicable for the case. The first consisted in considering that there had been no variations in the market conditions verified in 2014 (OSIPTEL, 2014[17]). The other alternative consisted in determining the existence of changes in the market and, therefore, in the conclusions reached in the analysis carried out in 2014, which would allow the identification of a major supplier in the same relevant market or in a new one. Osiptel performed a relevant market analysis and of the competition conditions valid to the date of the RIA, for which it used sector data, specifically from the regulated bodies. Based on this assessment, Osiptel established that there were no variations to the situation verified in 2014.

However, the RIA does not mention the analysis methodology it applies to carry out its assessment. Even when the improvements noticed on the market conditions supporting the no intervention of the regulator are detailed, a thorough weighting of costs and benefits of the alternatives considered is not performed.

The telecommunication sector is highly technical and people interacting in it generally have knowledge about its operation. Therefore, the information that should be provided through the RIA must be clear enough to explain the process of analysis of each of its elements and achieve effective stakeholder participation in the regulatory process. This implies a more detailed description of the problem, the intervention objectives, the regulatory alternatives and the impact assessment of each of these, in order to achieve a better understanding of the reasons for the intervention.

RIA consultation process

Osiptel published a resolution project and the report that supports it and granted a period of fifteen calendar days for interested operators to submit comments on the project (OSIPTEL, 2017[18]). Additionally, Osiptel published the Board of Directors Resolution that established the deadline for comments in the official gazette El Peruano and in its web page.

Only one service provider company submitted its comments through a letter, and they were included in the matrix of comments incorporated to the assessment report of the final regulatory proposal. This report is available publicly in the regulator's web page (OSIPTEL, 2018[16]), together with the resolution concluding the RIA process, the Resolution of the Important Supplier on Markets No. 30: access to the Service from Mobiles (Board of Directors Resolution No. 102-2018-CD/Osiptel).

RIA "Procedure for applying separate accounts for companies in the telecommunication sector"[83]

This RIA was completed in December 2019 and a more rigorous application of LCRs is evident than in the previous example.

The RIA was aimed to assess the relevance of issuing a separate accounting application procedure for companies in the telecommunications sector.[84] Separate accounting is considered a mechanism that provides benefits by reducing the asymmetry of information among market agents, since the methodological documents and audited reports of the companies are published in the Osiptel institutional portal for consultation by users and operating companies. The asymmetry of information between the regulator and the regulated companies is also reduced because the accounting accounts show greater detail,

This RIA was completed in December 2019 and there is a more rigorous application of LCRs than in the previous example.

The purpose of the RIA was to evaluate the pertinence of issuing a separate accounting application procedure for companies in the telecommunications sector. Separate accounting is considered as a mechanism that provides benefits by reducing the information asymmetry between market agents, since the methodological documents and audited reports of the companies are published on the institutional portal of Osiptel for consultation by users and operating companies. The asymmetry of information between the regulator and regulated companies is also reduced because the accounting accounts show greater detail, which allows monitoring the levels of competition in the market and the determination of tariffs.

RIA elements

Osiptel clearly identified the problems that were generated during the process of presentation of the methodological documents and audited regulatory reports. Likewise, it identified the causes and factors that originated each of these problems. The problems defined by the regulator were

- The lack of precision in the general instructions on separate accounting motivated the regulated companies to consult Osiptel on the application of the instructions, and the regulator to comment on the information presented.

- The lack of uniformity in the presentation of the documents of the regulated companies prevented Osiptel from performing a traceability analysis of the accounting information.
- The lack of a relevant parameter for the registration of new business lines.
- The costs were shown in an aggregated manner, which prevented Osiptel from performing a detailed analysis and an adequate comparability of cost structures.
- The deadlines set for the submission of information were not sufficient for the regulated companies.

According to the LCRs, Osiptel assessed in its RIA the progress of problems over the time and identified that by keeping the *status quo* and not performing interventions, the specified problems would maintain without changes.

Osiptel established a clear and defined objective, consisting in issuing a new procedure with changes for each of the identified problems.[85] Likewise, by following its LCR, Osiptel identified regulatory alternatives for each of the defined problems. The constant alternative was not to modify the existing regulations. The non-intervention alternative was compared with the regulatory proposal and the way these alternatives could solve the problems detected was analysed.

Once the alternatives were defined, Osiptel carried out the analysis of the regulatory options using the methodology of multi-criteria analysis, because not all the benefits and costs derived from the identified alternatives could be quantified or monetised.

The analysis of alternatives was performed independently by each problem identified. Osiptel used a matrix that considered criteria or attributes. Thus, for example, the problem of the lack of precision in the accounting separation methodology considered the criteria of predictability, costs and opportunity.[86] Each criterion was weighted regarding the others and each attribute of each alternative was rated.[87] The alternative that created a higher level of predictability, lower costs and specifications with a greater anticipation obtained the higher rate. From this analysis, Osiptel selected the alternative that resulted more cost-efficient for each of the problems assessed and detailed the modifications that should be included in the procedure.

On the other hand, following the guidelines established in the LCR, Osiptel analysed the creation or elimination of rules of procedure, derived as a consequence of the alternatives chosen, within which changes in the regulations of infractions and sanctions were included.

RIA consultation process

Before the approval of the legislation project, the legislative proposal received the feedback from the Osiptel's departments. The legislative project was approved by the CD through the Resolution approving the provisions to ensure the continuity, competition promotion, and sustained development of public telecommunication services in the framework of the National Emergency State (Resolution No. 50-2019-CD/Osiptel) and was published for stakeholders' comments. This publication was performed in the official Gazette El Peruano in April 2019 and in the regulator's web page. The publication in the institutional web page included, in addition to the legislative project, the explanatory memorandum of the proposal and the report supporting the project (OSIPTEL, 2019[19]).

Osiptel granted a term of 30 calendar days to submit comments, which were extended with 30 additional calendar days.

Other relevant practices in regulatory policy

Ex post assessment

Ex post assessment of regulation is not a mandatory practice in the central government dependencies of Peru (OCDE, 2016[1]).

However, Osiptel has performed some *ex post* assessments in and *ad hoc* manner and to specific regulations. In general, these are related with interconnection prices or charges, which are subject to periodic reviews.[88] Osiptel also makes periodic analyses of the telecommunications market to identify the impacts of recently introduced regulations or modifications. In these analyses, the main statistics, such as the number, evolution of lines, penetration, traffic, market share, and incomes are considered (by market, by economic group). Likewise, Osiptel actively monitors the offers of telecommunications companies (the main plans, prices, specific characteristics) and consumers demand (OECD, 2019[15]).

However, the entity has not mandated specific regulations or guidelines to allow for *ex post* assessments. Each department of Osiptel is in charge of assessing its own regulations and the quantitative or qualitative criteria for performing it have not been established. Consultation of stakeholders or public is not used also. However, Osiptel receives frequently suggestions from companies in an a *ad hoc* manner with the request of eliminating regulations that are not always related to those subject to review (OECD, 2019[15]).

In addition to the review process of regulations through the RQA, Osiptel has anticipated to perform a review of other regulations not linked to administrative proceedings, that started on 2018 and will continue to 2021. To carry out this activity, Osiptel hired an external consultant to make a diagnosis on the regulations that may be an unnecessary burden for companies and created an *ad hoc* group to carry out the review process.

Considering this experience, Osiptel could extend these *ex post* assessments to other regulations and implement them as a constant and automatic component of policy formulation in the entity.

Notes

[1] Article 1.

[2] Article 6.

[3] Article III of the Preliminary Title.

[4] Article 3.

[5] Article 4.

[6] The last update of this guide was approved under the Directorial Resolution 002-2019-JUS/DGDNCR.

[7] Article 51.

[8] Article 196.

[9] Article 1.

[10] Article 1.

[11] Article 17.

[12] Article 23.

[13] Article 2.

[14] Article 2.

[15] Article 41 of ROF PCM.

[16] Article 45 of ROF PCM.

[17] The count does not include secondary regulations issued by the entities of the Executive Branch such as Vice-Ministry Resolutions, Directorate Resolutions, Administrative Resolutions, among other.

[18] Information obtained from the Peruvian Legal Information System.

[19] By-law which lays down rules on advertising, publication, and dissemination of legal rules of general nature (Supreme Decree No. 001-2009-JUS).

[20] Published on September 16, 2018.

[21] Published on December 30, 2016.

[22] The ACR Constitutes a measure that supports the objectives of administrative simplification of proceedings of the Peruvian government, which is one of the elements of the National Policy of Modernization of the Public Management. This National Policy Is an effort to formulate a strategy together with the whole government in order to modernise public practices.

[23] Supreme Decree approving the Regulations for the Regulatory Quality Analysis implementation of administrative procedures set forth in article 2 of the Legislative Decree No. 1310 – Legislative Decree approving the additional measures of administrative simplification (Supreme Decree No. 061-2019-PCM), published on April 5, 2019.

[24] The CMCR is constituted by the General Secretary of the PCM (presiding it), the Vice-Minister of Economy of the MEF and the Vice-Minister of Justice and Human Rights, or their representatives.

[25] This category refers to some entities that created procedures on proceedings that were not formalities. From this review, 415 were eliminated because they were not necessary or pertinent for the development of the entity.

[26] Integrated by Vice-Ministers of the Executive Branch and directed by the General Secretariat of the PCM. The CCV has as main role to state opinions on the projects of law proposed by the Executive Branch, and legislative projects approved by the Executive Branch requiring the approving vote of the Council of Ministers.

[27] Article 12.

[28] Article 226.

[29] The Manual states that the possibility of reaching the desired outcomes of the public policy should be assessed without the need of changing the current legal framework or with the minimum intervention of the government (optimised original situation).

[30] Available at https://cdn.www.gob.pe/uploads/document/file/320727/RLGA_EM.pdf.

[31] Available at: https://www.gob.pe/institucion/mef/normas-legales/279567-231-2019-ef-10.

[32] Article 9 of Supreme Decree No. 044-2006-PCM.

[33] Article 14 of the Supreme Decree No. 044-2006-PCM.

[34] This resolution was modified by the Presidency Resolutions No. 042-2016-PD-Ositran and 039-2017-PD-Ositran.

[35] Conformed by Resolution No. 084-2018-GG-Ositran.

[36] Article 15 of Supreme Decree No. 044-2006-PCM.

[37] The content of the international workshop can be found at: http://www.oecd.org/gov/regulatory-policy/ria-workshop-ositran.htm.

[38] On 21 January 2021, Ositran approved its new General Tariff Regulation (Resolution N° 0003-2021-CD-Ositran), as well as the corresponding Regulatory Impact Assessment Report, which is published on its institutional portal.

[39] SMART is the acronym form: specific, measurable, achievable, realistic and time-dependent.

[40] Specifically, the *ex post* methodology available for the Australian Productivity Commission is taken as reference.

[41] Ositran took as reference the consultation methods used by the European Commission for early consultation.

[42] The document supporting the RIA can be found at: https://www.ositran.gob.pe/wp-content/uploads/2019/02/INFORME.pdf.

[43] The RETA was approved through the Resolution of the Board of Directors No. 043-2004-CD-Ositran. Thereafter, it was modified in 2006 and 2012.

[44] https://cdn.www.gob.pe/uploads/document/file/1581023/reso-003-2021-cd.pdf.

[45] The RIA identified four problems related to the RETA application: The regulation provisions were not clear enough for users and the regulated individuals, which limited its application; service provider companies suffered uncertainty for some aspects regarding the procedures for setting tariffs; some provisions prevented the efficiency of the proceeding of tariffs procedure, and the service provider companies carried with cost overruns in the publication of the tariffs.

[46] The consultation process of this RIA is available at: https://www.ositran.gob.pe/consultas-publicas/consultas-normativas/.

[47] Early consultation was carried out on August 21, and September 4, 2017.

[48] Consultations were formulated on the following topics: the order of the provisions contained in the RETA, procedures required to be simplified, criteria, and methodologies for fixing prices and tariffs review, clarity of the provisions of the RETA, periods of time, application of tariffs, discounts, and commercial policies, information about services, tariffs, and entry into force, obligations on the publication of tariffs, provisions on the application of offers, discounts, and promotions, tariffs proposals, minimum content, and terms for publishing the tariff proposal, participation of stakeholders on the procedures for fixing or reviewing tariffs, information requested to companies on the procedures by law, requirements, and terms established in the procedures of the civil party, minimum content of a request for fixing, reviewing, or deregulating tariffs, and any other additional information.

[49] The Board of Directors state the publication by means of the Resolution No. 0009-2019-CD-Ositran.

[50] Carried out on March 21, 2019.

[51] https://cdn.www.gob.pe/uploads/document/file/1581023/reso-003-2021-cd.pdf.

[52] The report is available in the web site of Ositran.

[53] Ositran published the call for this hearing in the official gazette, *El Peruano,* on July 6, 2018.

[54] The objective of this fund is to achieve that Peru overcomes the energetic gap existing between the rural and urban areas of the country.

[55] In the IOP as General Goal No. 007-2015 the development of the RIA under a systematic approach is considered.

[56] These guidelines were applicable to the Energy Supervision Department, Mining Supervision Department, Tariff Regulation Department, and the Technical Secretariat of Resolution Bodies.

[57] Approved by Board Resolution No. 130-2020-OS/CD.

[58] The Methodological Guideline classifies this assessment as proportionality analysis.

[59] The content of the international workshop can be found at: http://www.oecd.org/gov/regulatory-policy/agenda-osinergmin-peru-sp.pdf.

[60] In the framework of this training, two legislative proposals were reviewed (GLP and combined centrals).

[61] SMART is the acronym for the following definitions: specific, measurable, achievable, realistic and time-dependent.

[62] The information of both RIAs is available at: https://www.osinergmin.gob.pe/seccion/institucional/acerca_osinergmin/analisis-de-impacto-regulatorio/ria#.

[63] These were informality, lack of traceability of cylinders, the imperfect perception of security from consumers, and the characteristic of common resource of the GLP cylinder.

[64] Considering the chosen option, the ratio of LPG cylinders with non-compliances of high-risk technical and safety conditions (valve leakage and cylinders with numerous paint layers) and the ratio of cylinders with leakage within the group of cylinders with non-compliances of high risk technical and safety conditions were considered as indicators. This indicator is estimated from the number of cylinders with valve leakage, detected during supervisions.

[65] Article 6 of the General Rules of OSIPTEL.

[66] Article 7 of the General Rules of OSIPTEL.

[67] Article 13 of the General Rules of OSIPTEL.

[68] This decision was based on a recommendation formulated by the Regulatory Policy and Competition Department (GPRC) of OSIPTEL.

69 Even when an initial period for publication of 20 working days was established, this term was extended by the Resolution of the Board of Directors No. 018-2017-CD/OSIPTEL. In total, the publication was carried out for a period of 40 working days.

70 Held on February 15, 2017.

[71] These procedures have as main requirement the validation of the Regulatory Quality Analysis, under the framework set forth in the Legislative Decree No 1310, consisting of a tool for administrative simplification.

[72] OSIPTEL has approved specific provisions to regulate procedures under two denominations: procedure for issuing regulations by the Board of Directors and procedure for setting or reviewing maximum interconnection tariffs or charges.

[73] These principles are: free access, neutrality, non-discrimination, decisions based on cost-benefit analysis, promotion of competition, impartiality, autonomy, subsidiarity, supplementariety, analysis of functional decisions, efficiency, effectiveness, and promptness.

[74] Among these, questionnaires, web sites or social media, technical meetings, focus groups, seminars, round tables, public hearings, or publications in general.

[75] Direct methods use interviews to determine the agents' willingness to pay regarding goods and services of which there is no economic value. Therefore, OSIPTEL uses the method of contingent assessment. Meanwhile, indirect methods assess the agents' behavior and their preferences regarding the goods. In these cases, OSIPTEL uses the following methods: hedonic pricing, travel costs, defense costs, and transfer of benefits.

[76] This aspect of the analysis is related with the Regulatory Quality Analysis explained in the section "Cross-sectional Elements of RIA in Peru".

[77] All the activities performed as part of these procedures, including the aspects linked with public consultations were recorded in a file, which was subject to audits from the OSIPTEL's Quality Management System.

[78] Considering the relevance of the regulation, OSIPTEL proceeded to perform public hearings for presenting the legislative project. Stakeholders were invited to these spaces for extending their comments.

[79] These hearings will be governed by special regulations or, otherwise, by the TUO of the LPAG.

[80] This exception is based on articles 7 and 27 of the General Rules of OSIPTEL.

[81] The documents of this RIA are available at: https://www.osiptel.gob.pe/articulo/res102-2018-cd-osiptel.

[82] It is a service provided among operators, which allow to access to the necessary infrastructure for providing Communication Services (full duplex calls, SMS, and MMS) to their final clients.

[83] RIA documents can be obtained at: https://www.osiptel.gob.pe/articulo/res161-2019-cd-osiptel.

[84] Separate accounting is intended for companies providing public telecommunication services and whose incomes generated during two fiscal years overcome, in each fiscal year, 1% of the total annual income created together by the operators of the market of public telecommunication services.

[85] Among others, include specifications in the methodology for allocating incomes, costs, and inverted capital, establish a parameter of relevance for the registration of the additional business lines, modify the disaggregation of cost groups used in a separate accounting and specifying the procedure for amending methodological documents and audited reports, as consequence of changes in the allocation criteria of concessionaries.

[86] Other criteria considered in the assessment were auditability, reliability, materiality, flexibility, disaggregability, adaptability, and reasonability.

[87] OSIPTEL assigned to each attribute of each alternative the following rating:

Grade -1: lower rating

Grade 0: neutral

Grade +1: higher rating

[88] According with the Guidelines to Develop and Consolidate the Competition and Expansion of Telecommunication Services in Peru (Supreme Decree No. 003-007-MTC), for the case of regulating interconnection prices and charges, OSIPTEL must assess the market condition every four years to determine if a change is applicable. OSIPTEL uses data from the market collected to monitor operators that according to the classification have Significant Market Power (SMP) and make the necessary

modifications when deficiencies are detected. This classification is subject to the clause of termination, which states that OSIPTEL should perform an evaluation every three years to know if the operator still has the SMP classification. This analysis can be conducted every two years if the regulator has final evidence that a significant change existed in the market conditions or if a regulated body requests it.

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OECD Reviews of Regulatory Reform

Implementing Regulatory Impact Assessment at Peru's National Superintendence of Sanitation Services

Regulations play a fundamental role in achieving public policy objectives, including the protection of human health and the environment, the fight against monopolies, or the efficient provision of water and sanitation services. Regulatory impact assessment (RIA) is an important tool for ensuring that regulations are of good quality. This report provides guidance for implementing RIA at the National Superintendence of Sanitation Services in Peru (Sunass). After assessing the agency's process for issuing rules, the report provides recommendations for designing legal reforms needed to establish RIA as a permanent practice as well as training for the staff who will develop the RIAs. The report includes technical guidelines on undertaking public consultation, identifying public policy problems, and performing cost-benefit analysis.

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