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Ensuring transparency
and integrity in public
decision making
and electoral processes
in the State of Mexico

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OECD Working Papers on Public Governance

Ensuring Transparency and Integrity in Public Decision Making and Electoral Processes in the State of Mexico

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Note by the Secretariat

This report summarises the findings of an analysis of the policies and practices to promote transparency and integrity in public decision making and in election processes in the State of Mexico, which is the most populous federal state in Mexico. The report is issued as a complement to the *OECD Integrity Review of the State of Mexico: Enabling a Culture of Integrity*, which was published on July 2021. In addition to the Office of the Comptroller General of the State of Mexico (*Secretaría de la Contraloría del Gobierno del Estado de México*, SECOGEM), which was the leading institution for the OECD Review, other entities provided information for this report, such as the Electoral Institute of the State of Mexico (*Instituto Electoral del Estado de México*, IEEM), the Office of the Comptroller of the Legislative Power, and the Citizen Participation Committee and the Technical Secretariat of the Anti-corruption System of the State of Mexico and Municipalities.

In January 2019, OECD and SECOGEM signed an agreement to promote integrity in the public sector of the State of Mexico, which led to the publication of the OECD Review and this report. This work is part of a series of reviews of the integrity policies of Mexico's federal states, which has already engaged the states of Coahuila and Nuevo León, as well as Mexico City.

Election processes and public decision making are activities that entail risks of capture, meaning the phenomenon in which such decisions serve primarily the interests of (economically and/or politically) powerful individuals or groups over the public interest. This not only feeds a vicious cycle of inequality that is already a significant problem in Mexico and many countries in Latin America, but also undermines trust in public institutions. Hence, countries are paying increasing attention to this phenomenon and taking measures to control the risks and preserve integrity and accountability.

This report is organised into two sections: i) Enhancing the transparency and integrity of political finance, and ii) Fostering integrity and transparency in decision making. It is worth highlighting that, following the institutional design in the State of Mexico and the allocation of powers, the recommendations are directed to several institutions, including the legislative branch of the State of Mexico; IEEM; the Institute for Transparency, Access to Public Information and Data Protection of the State of Mexico and Municipalities (*Instituto de Transparencia, Acceso a la Información Pública y Protección de Datos Personales del Estado de México y Municipios*, INFOEM); and ministries of the executive branch of the Government of the State of Mexico. Some of the recommendations require legal reforms, even at the constitutional level, and thus involve major challenges, while others can be implemented in the shorter term.

This report was drafted by Mariana Prats and Jacobo Pastor Garcia Villarreal of the OECD Public Governance Directorate. Valuable comments and suggestions were provided by Felicitas Neuhaus, all of them from the OECD Public Sector Integrity Division.

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Abbreviations and acronyms

DGDP	General Directorate for Political Development <i>Dirección General de Desarrollo Político</i>
GDP	Gross Domestic Product <i>Producto Interno Bruto (PIB)</i>
IADB	Inter-American Development Bank <i>Banco Interamericano de Desarrollo</i>
IEEM	Electoral Institute of the State of Mexico <i>Instituto Electoral del Estado de México</i>
INE	National Electoral Institute <i>Instituto Nacional Electoral</i>
INEGI	National Institute of Geography and Statistics <i>Instituto Nacional de Estadística y Geografía</i>
INFOEM	Institute for Transparency, Access to Public Information and Data Protection of the State of Mexico and Municipalities <i>Instituto de Transparencia, Acceso a la Información Pública y Protección de Datos Personales del Estado de México y Municipios</i>
MXN	Mexican pesos <i>Pesos mexicanos</i>
OECD	Organisation for Economic Co-operation and Development <i>Organización para la Cooperación y el Desarrollo Económicos</i>
SAEMM	Anti-corruption System of the State of Mexico and Municipalities <i>Sistema Anticorrupción del Estado de México y Municipios</i>
SESNSP	Executive Secretariat of the National System for Public Safety <i>Secretariado Ejecutivo del Sistema Nacional de Seguridad Pública</i>
TRIFE	National Electoral Court <i>Tribunal Electoral del Poder Judicial de la Federación</i>
UK	United Kingdom <i>Reino Unido</i>
US	United States dollars Dólares de los Estados Unidos de América

Ensuring transparency and integrity in public decision making and electoral processes in the State of Mexico

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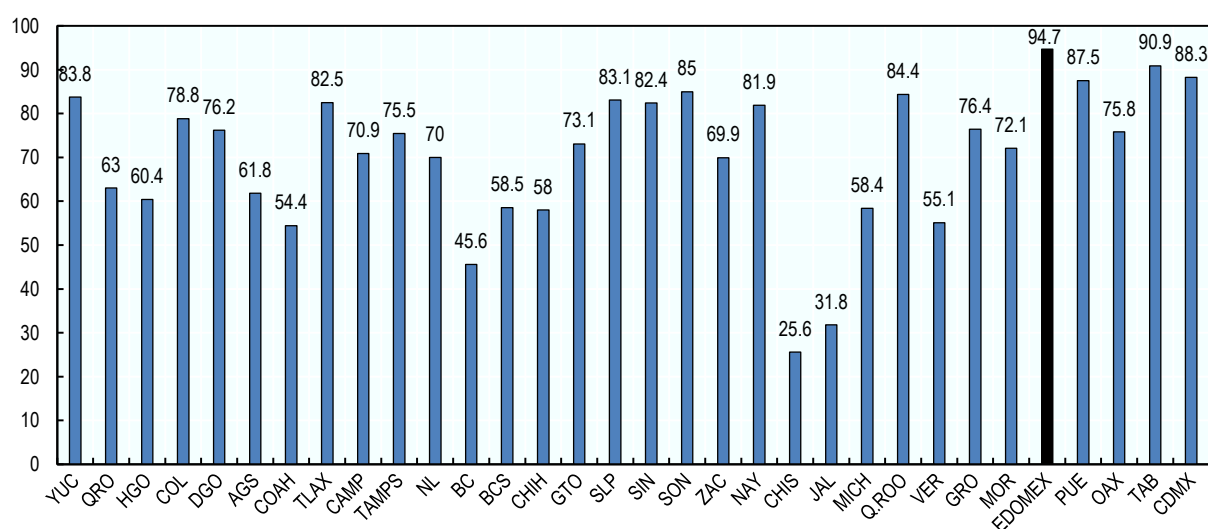
This paper provides recommendations to foster integrity and transparency in decision making, by regulating access and promoting stakeholder engagement; and to enhance transparency and integrity in the funding of political parties and election campaigns. It addresses current challenges related to political finance, such as cash contributions and clientelism, as well as the need to ensure adequate audit capacities and effective sanctions that improve accountability. Likewise, it analyses interactions among stakeholders, on the one hand, and among public officials and legislators, on the other, providing recommendations to prevent policy capture, preserve integrity, and strengthen transparency.

Participating in public life and influencing public policies are fundamental rights in a democracy. Inclusive public policies and decision making based on integrity, participation and transparency legitimise and make policies more effective, building citizens' trust in their governments (OECD, 2017^[1]). However, powerful individuals and interest groups can use their wealth, power or advantages to tip the scale in their favour at the expense of the public interest. When public policy decisions are consistently or repeatedly directed away from the public interest towards the interests of a specific interest group or person, policies are “captured”.

According to the 2018 *Latinobarometer* survey, 88% of Mexicans perceive that a few powerful groups are governing the country for their own benefit. This is significantly higher than the Latin American average (78.9%) (Latinobarometer, 2018). In the State of Mexico, 94.7% of economic units perceive corruption by public servants in their interactions (INEGI, 2021^[2]). Policy capture and high-level corruption are among the phenomena that have the most negative impacts on citizens' trust in government. The state's scores in terms of corruption and quality of government are among the lowest in the country (Figure 1). In the long term, this affects not only public policies and service delivery, but also fair competition, trust in government and legitimacy of the political system, as policies are perceived as unfair and exclusive.

Figure 1. The State of Mexico's scores on perception of corruption are among the most concerning in the country

National Survey on Regulatory Quality and Government Impact on Businesses 2020



Source: (INEGI, 2021^[2])

The consequences of policy capture are devastating: it fuels inequality and weakens economic growth. According to a study by the Inter-American Development Bank (IADB) for Latin America, if private interest-oriented policies tend to benefit an elite with political and economic influence to skew political decisions in their favour, capture is interlinked with inequality. On the contrary, public policies that involve and coordinate a greater number of actors correlate with growth of GDP per capita and the improvement of human development indicators (Scartascini et al., 2011^[3]).

Indeed, the consequences and the impact of policy capture are even worse if the few powerful groups that capture policies are part of and are linked to organised crime. It has been identified that a high level of infiltration of the public sector by criminal groups implies biased policy making and enforcement, and

compromised campaign financing of politicians (Buscaglia, Gonzalez Ruiz and Ratliff, 2005^[4]). This affects political competition and has a negative impact on democratic systems.

As in many other Latin American countries, organised crime is a key problem for Mexican democracy. According to the Mexican Peace Index 2019, the rate of organised crimes increased 11.6% in 2018, and although the rates and situations vary in each State, drug trafficking is a sweeping presence in institutions and daily life. Besides, the fact that Mexico is a federal State could affect institutional strength to address the issue. The distribution of attributions and powers may weaken state responses and actions against organised crime, and criminals could thus more easily penetrate local governments and their political systems (Curzio, 2013^[5]).

The State of Mexico is not one of the federal states considered as most violent in the country. However, in 2018 there were 2 221 organised-crime related crimes (extortions, drug trade related crimes, and kidnapping or human trafficking investigations) per 100 000 people (Mexican Peace Index, 2019). Likewise, the Crime Incidence report of the Executive Secretariat of the National System for Public Safety (*Secretariado Ejecutivo del Sistema Nacional de Seguridad Pública*, SESNSP) documented 4 682 federal crimes in the State of Mexico during January-September 2021 (SESNSP, 2021).¹ This suggests organised crime is a persisting challenge for the state, and therefore criminal groups have to be considered as actors with interests, opportunities and power to capture public policies, especially but not only at the municipal level.

Promoting integrity and transparency in public policy making is a precondition to building inclusive and fair societies and to preventing policy capture and corruption. In order to ensure that influence is wielded correctly and avert that special interests capture policies, the State of Mexico could improve its policy-making processes by making them more accessible, inclusive and accountable. In particular, this requires improving regulations, policies and practices related to two lines of work:

- Enhancing the transparency and integrity of political finance.
- Fostering integrity and transparency in decision making.

1.1. Enhancing the transparency and integrity of political finance

1.1.1. Cash contributions and outdated rules may increase opportunities for informal campaign financing and hinder enforcement of political finance regulations

The financing of political parties and election campaigns may be a powerful instrument for special interests to exercise undue influence and “capture” the policy process (OECD, 2016^[6]). Additional challenges may arise if it is considered that regulations are designed by those who are supposed to be controlled, and who are, at the same time, aware of gaps and loopholes. In this sense, lack of regulations, legal loopholes and the inability of citizens and other state entities to exercise controls could facilitate funds of illicit origins to enter political parties and campaigns. That is why promoting integrity in political finance regulations must be a specific, comprehensive and realistic effort that also ensures that enforcement entities are credible and independent.

In the State of Mexico, as in most OECD countries, anonymous and foreign contributions are forbidden (Electoral Code, Articles 66, 68). The logic behind these regulations is to prevent foreign influence and the idea that identifying contributors strengthens transparency and accountability. If citizens know about the links between private interests and politicians, they are able to detect situations in which politicians are in a conflict-of-interest or acting in the interests of their electoral campaign contributors. In addition, in order to balance influence and contributions, the State of Mexico’s Electoral Code establishes limits for private contributions and expenses (Article 66). In fact, political finance regulations in the State of Mexico establish

the highest nominal ceiling for expenses in the country, more than three times higher than in other less populated states, such as Coahuila² (Casar and Ugalde, 2018^[7]).

Despite limits and prohibitions, similarly to most Latin American countries (OECD, 2019^[8]), the main challenge with respect to private funding is to address the high level of informality, and therefore ensure the enforcement of regulations. Reports by political parties and candidates are key to controlling and supervising income and spending. However, there is evidence that shows that they systematically underreport, which prevents the exercise of effective controls and accountability, and impedes the enforcement of regulations. According to figures presented by the National Electoral Institute, the State of Mexico is the federal state in which most expenses are undeclared. In the 2017 elections, 29% of total expenses was supposedly not reported by candidates to the State Executive (Casar and Ugalde, 2018^[7]).

Although there are no easy solutions to limit the problem of illicit or undeclared funding, instead of merely prohibiting informal contributions, incentives have to be provided in a way that private donations are channelled as much as possible through formal means. In the State of Mexico, as in 91% of Latin American political systems, it is possible for private donors to contribute in cash or make in-kind donations. This opportunity may be used to circumvent formal regulations, as it is impossible to track money and control all “informal” money income and sources. In order to strengthen enforcement capacities and make political funding transparent, the State of Mexico could adequately frame the rules of the game for private funding by, for example, prohibiting donations in cash, as was recently stipulated in Argentina and Uruguay (Box 1).

Box 1. Political finance regulations in Uruguay

In November 2017, Uruguay amended its regulation on political parties introducing key modifications on how political parties are regulated and financed.

Article 4 of the regulation states that all monetary transactions pertaining to income need to be made electronically. Furthermore, candidates must disclose all public funds they receive during primary elections, as well as all in-kind private contributions.

In addition, Article 10 bans all official advertising during electoral periods.

Source: Ley No. 18485, <https://legislativo.parlamento.gub.uy/temporales/D2017110843-001943923.pdf>

Finally, it is key to highlight that the use of technology, digitalisation, and social networks are creating new risks and challenges in relation to private political funding. Communicational changes give rise to the need to start analysing and regulating the financing of digital campaigns, the access to “digital space/internet”, and how this affects the practices and enforcement of current regulations. For example, it is very difficult to track the actual contributors to campaigns on social networks and how political advertising is disseminated online. This can create new gaps that prevent supervision and jeopardise the effectiveness of the political finance system as a whole. Furthermore, these new means of communication and related risks could exceed risks related to oversight of private contributions and create new vulnerabilities in terms of manipulation and asymmetric influence on elections through social networks and fake news. The State of Mexico has no regulation on these issues yet. However, it could assume the leadership in Mexico and promote discussions, publicly and in Congress, on drafting new regulations or updating them in order to prevent and anticipate emerging risks, like some OECD countries have started to do (Box 2).

Box 2. UK Electoral Commission - Digital Campaigning Recommendation

According to a report on digital campaigning by the Electoral Commission, the evidence shows campaigners are increasingly using new ways of communicating to reach voters, for example, through advertising services bought from digital and social media companies.

In order to guarantee effective law enforcement and transparency of political finance towards citizens, the Commission recommends:

1. Each of the UK's governments and legislatures should change the law so that digital material has an imprint indicating who is behind the campaign and who created it.
2. Campaigners should be required to provide more detailed and meaningful invoices from their digital suppliers to improve transparency.
3. Each of the UK's governments and legislatures should amend the rules for reporting spending. They should make campaigners sub-divide their spending returns into different types of spending. These categories should give more information about the money spent on digital campaigns.
4. UK election and referendum adverts on social media platforms should be labelled to make the source clear. Their online databases of political adverts should follow the UK's rules for elections and referenda.
8. Social media companies should put in place new controls to check that people or organisations who want to pay to place political adverts about elections and referenda in the UK are actually based in the UK or registered to vote there.

Source: UK Electoral Commission https://www.electoralcommission.org.uk/_data/assets/pdf_file/0010/244594/Digital-campaigning-improving-transparency-for-voters.pdf

1.1.2. Effective enforcement of political finance regulations requires strong audit capacities and co-ordination between subnational and national entities

Despite the existence of strong regulations on paper, weak monitoring and enforcement can open the door for interest groups or individuals to seek informal ways to exert influence. In this regard, electoral entities and sanctions are fundamental for enforcing political finance frameworks. There are three basic factors to guarantee effective enforcement:

1. Independence (see Table 1).
2. Capacities –in terms of resources as well as staff and its technical expertise.
3. Social control (Speck, 2013^[9]; OECD, 2016^[6]).

Oversight bodies need to have the right powers, policies, people and procedures to perform their tasks and importantly, they must be committed to fulfil them. Moreover, civil society and individuals should be able to act as watchdogs and help control and scrutinise political actors. In this regard, transparency is also essential to enable effective enforcement of political finance regulations.

Table 1. Elements affecting independence of political finance oversight entities

Hinder independence	Promote independence
Financial dependence	Financial independence
Public officials lacking professional experience and training	Highly professional and experienced public officials
Co-optation schemes for senior appointments	Appointment periods that do not coincide with electoral cycles - Stability
Tacit agreements between parties that remain out of public debate	In some countries, electoral judges are part of the Judiciary and go through public electoral processes
Lack of clear criteria and specific procedures to appoint and remove public officials	Decisions can be submitted for review by an independent authority
Closed-door elections	Public competition under citizen scrutiny

Source: (OECD, 2019^[8])

According to the Constitution of the State of Mexico, the Electoral Institute of the State of Mexico (*Instituto Electoral del Estado de México*, IEEM) is provided with its own budget and legal capacity, both necessary resources regarding the entity's independence. Besides, concerning the appointment of authorities, the General Council of the National Electoral Institute (*Instituto Nacional Electoral*, INE) is in charge of appointing the seven members of the IEEM General Council based on merit and gender balance criteria (Article 11). The IEEM General Council appoints an Executive Secretariat, who together with one representative per political party, compose this body. The political parties' representatives can participate in discussions but cannot vote.

However, as pointed out during the OECD fact-finding mission, these merit and gender balance criteria are harder to apply during recruitment processes at the municipal level or during electoral periods, where and when the amount of personnel required exceeds the number of applicants. IEEM has already established a unit in charge of the professionalisation of its officials, called the Centre for Elections Training and Education (*Centro de Formación y Documentación Electoral*), under the umbrella of the General Council. Furthermore, there are no specific regulations for interactions between candidates and IEEM public officials. This is a legal loophole that persists even after the candidates are elected. Considering this, IEEM could develop guidelines or rules to regulate how candidates and elected representatives should interact with electoral public officials in order to reduce potential risks of capture. These guidelines could also be applied to interactions with public officials from the Judiciary and judges in charge of electoral affairs.

Concerning co-ordination between national and subnational entities, during state elections the IEEM is in charge of organising elections, whilst INE is in charge of electoral training, electoral geography and overseeing political finances. However, according to the Electoral Code, the national entity can delegate the role of financial oversight to the state entity (Article 11). In fact, whenever such delegation may happen, IEEM already established a Technical Audit Unit (*Unidad Técnica de Fiscalización*), whose powers are regulated by Article 204 of the Electoral Code of the State of Mexico. Since the creation of INE, these powers have never been delegated to the state entity, but the IEEM could promote with INE the development of regulations that clearly stipulate how to proceed in specific situations where such delegation may be a possibility and detail its procedures and mechanisms.³ This could improve future co-ordination and build oversight capacities.

In addition, audit capacities may be strengthened by providing resources and stipulating responsibilities for national and subnational authorities to allow timely monitoring, as well as to incorporate data on the online SAEMM platform. In Chile, for example, Article 48 of Law 19.884 states that all the information regarding campaign financing should be published online by the Electoral Service. Moreover, the Electoral Service has to update all the information on parties' accounts while reviewing them, and state if they are accepted, rejected or observed.

1.1.3. Clientelism undermines democratic institutions and trust in governments

Clientelism can be defined as the “offering of material goods in return for electoral support, where the criterion of distribution that the patron uses is simply: did you (will you) support me? It is worth noting that ‘offering of material goods’ in reality sometimes takes the form of threats rather than incentives” (Stokes, 2009^[10]). In turn, even if it involves a simple economic exchange (vote buying), it includes the offering of public resources –most typically public employment– (patronage), or if entails violence, clientelism hinders the consolidation of democratic institutions by weakening the secrecy of voting and de facto excluding some citizens from access to public services and employment.

Therefore, the State of Mexico could clearly define and prohibit clientelistic practices and specify sanctions for those who provide benefits to citizens with the aim to influence their votes, as well as regulate the provision of material goods during campaigns.

1.1.4. Sanctions should be effective and deterrent to ensure accountability and enforcement of political finance regulations

Sanctions are the “teeth” of regulations on the financing of political parties and election campaigns. They deter breaches and indirectly promote compliance with regulations. In OECD countries, sanctions range from financial to criminal and political. In case of breaching regulations, parties may have to pay fines (74% of member countries), have their illegal donations or funds confiscated (44%) or lose public subsidies (47%). More severe sanctions include criminal charges, such as imprisonment (71% of member countries), the loss of elected office (18%), forfeiting the right to run for election, or even deregistration (21%) or suspension (3%) of a political party.

In Mexico, there is a broad range of applicable sanctions. The majority of them are of financial nature (General Law on Electoral Institutions and Procedures, Article 456): fines, reduction of public funding and interruption of political advertising. Further, sanctions may lead to the suspension of parties and candidates’ political rights, and electoral authorities may even declare the nullity of elections (National Constitution, Article 41). However, regulations do not stipulate sanctions for candidates once they take over the position for which they were elected, which may weaken their deterrent effect.

According to the registry of the State of Mexico, the amount of fines applied to political parties and candidates has been constant since 2015. Thus, and considering that weak enforcement reduces probabilities of being caught, political actors may prefer to keep paying fines (discounted from public funding) instead of reducing breaches to regulations. Furthermore, parties may delay payments for many years. INE, for example, is still applying sanctions from 2016. Moreover, reports show that there have also been contradictory resolutions between INE and the National Electoral Court (*Tribunal Electoral del Poder Judicial de la Federación*, TRIFE), which leads to confusion and impunity, mainly at the subnational level (Gris Legorreta et al., 2018^[11]).

The State of Mexico could take a clear stance on promoting the timely enforcement of regulations at the subnational level, following up and monitoring the application of sanctions and developing guidelines for integrity and transparency of political parties. Besides, and in order to provide incentives for compliance with regulations and induce behavioural changes, the State of Mexico may consider holding candidates personally responsible for breaches, on top of the charges political parties assume.

Furthermore, in order to strengthen enforcement of regulations regarding the political use of public funds, the State of Mexico could focus on detailing sanctions for public officials who use public resources to promote or undermine the campaign of a given candidate, force other public employees to participate in campaign activities supporting a candidate, or tie the provision of a public service to political support for a candidate. Additionally, sanctions may not be limited only to public officials. In Korea, for instance, voters are also subject to sanctions if they accept to sell their votes. The fine is equal to 50 times the value of the money or any materials provided by a candidate, his family or a third party on behalf of a candidate. Those

reporting any electoral crimes are also rewarded up to USD 500 000 by the National Election Commission of Korea (OECD, 2016^[6]).

1.2. Fostering integrity and transparency in decision making

1.2.1. Specific regulations on interactions between stakeholders and public officials, as well as those that promote stakeholder engagement, are key to preserve integrity in public policy making

Advocacy and interest groups can bring much needed information to the policy debate. Transparent and fair competition of interests through legal and legitimate channels during decision-making processes lead to public policies that include constituents' views and concerns, and favour the public interest. However, if there are no mechanisms to regulate effectively how private interests influence and interact with policy makers, or to promote participation and stakeholder' engagement, some interests may have uneven access to the decision-making process and capture policies.

At the national level, each of the houses of the National Congress of Mexico developed in 2010 "internal rules" that regulate interactions between stakeholders and policy makers. For example, the Rules of the Chamber of Deputies state that everyone who lobbies has to register in the Lobbyists' Registry, and the data provided by lobbyists is published online and in the legislative newsletter each semester (Article 264). The rationale behind the development of these regulations was to improve dialogue and consensus between the legislature and the Executive branch and to avoid suspicion over decision making in the legislative process (OECD, 2014^[12]). These regulations on influencing public policies and addressing concerns related to the engagement of private interests have had a positive impact on Mexican democracy (Box 3).

Box 3. The impact of the regulation of lobbying in Mexico

One of the results achieved by regulating lobbying in Mexico has been the strengthening of democratic governance. To that end, the Rules of the Chamber of Deputies incorporate:

- The concepts of lobbying and lobbyist.
- The rules to be observed by lobbyists should they intend to influence the legislative process.
- The registration of lobbyists in a public registry instituted and managed by the Board of the Chamber of Deputies and published bi-annually in the Legislative Gazette (*Gaceta Parlamentaria*) and on the Chamber's website. The registry contains information provided by those registering and about the transparency observed in the process of registration.
- The cases in which lobbyists are stricken from the registry.

Overall, the lobbying process has gained in clarity, and the Lobbyists' Registry has given stakeholders an understanding of the size of the lobbying sector. The Board of the Chamber of Deputies has a mechanism by which the information provided by lobbyists and the companies whose interests they represent is scrutinised to guarantee its reliability. Registration can be denied or cancelled should the information prove incorrect, incomplete or false. The review mechanism has led to several applications being turned down.

Source: (OECD, 2014^[12])

Regarding the subnational level, public officials in the State of Mexico mentioned and recognised that the engagement of advocacy and interest groups is common during discussions in legislative commissions and policy making, both at the municipal and state level. In addition, according to Article 19 Inc. III of the State of Mexico Legislative Branch Regulations (*Reglamento del Poder Legislativo del Estado de México*), presidents of legislative commissions can request, whenever needed –and after approval of the Political Coordination Council (*Junta de Coordinación Política*)–, the service of professional advice by the private sector.

However, there are no specific regulations in the State of Mexico concerning stakeholder and private sector interactions with public officials and legislators during the policy-making process. The legislative work is organised in policy area commissions composed by groups of legislators who advise and discuss in-depth draft bills and proposals before they are voted. Therefore, the process of engaging private advice and influencing discussions within commissions is key to getting insights and evidence that inform policies, but may give rise to the opportunity of biasing them. The lack of clear regulations on how the private sector is to be involved in policy making, and on transparency or open parliament standards, as well as the lack of specific conditions on the request of their professional advice, could lead from potential conflicts of interests to policy capture.

In this regard, the State of Mexico, through the Executive and the Legislative branches, could develop specific regulations on how policy makers should engage and relate with stakeholders that seek to influence public policies. In the United States, all federal states have their own regulations on the issue, in addition to the federal one. This is also the case in nine out of the ten Canadian provinces (Chari et al., 2019^[13]). In the State of Mexico, such regulations could provide standards and/or principles on how to access and interact with public officials (for example, through a code of conduct), specify that stakeholders should be registered in an official document, or require disclosure of their activities. Furthermore, they could be linked and complement the current process undertaken by the Legislative branch which would require that public officials adhere to principles, values and integrity rules included in the Code of Ethics for public servants of the Government of the State of Mexico and its Auxiliary Bodies.

Similar to the lobbying regulations developed by Ireland (Box 4), the Ministry of Government of the State of Mexico could initiate a broad consultation process to inform and start drafting regulations on how to engage stakeholders in decision making. This could provide policy makers with stakeholders' concerns and inputs, as well as incentivise broad ownership of future regulations and legitimise them. As a starting point, the Ministry of Government could use the current national regulations as a baseline, and improve them by, for instance, applying them in the State Executive branch. Furthermore, the State of Mexico could extend the scope of new regulations to municipalities, taking advantage of the knowledge and experience of the Legislative Comptrollers' practice, which is the only one in Mexico that has engaged public officials at the subnational and municipal levels since 1991.

Box 4. Consultation processes for the Irish Regulation of Lobbying and Lobbyists' Code of Conduct

In order to inform its work on introducing a statutory register of lobbyists and rules governing lobbying practices, the Department of Public Expenditure and Reform of Ireland invited interested parties to submit their views. It sought opinions on key issues relating to options for the design, structure, and implementation of an effective Irish lobbying regulatory system, based on the OECD's *Recommendation on Principles for Transparency and Integrity in Lobbying*.

The Department also met with some of the contributors to the public consultation to further discuss and clarify issues highlighted in their submissions. In addition, the Ministry for Public Expenditure and Reform organised a conference on the Regulation of Lobbying in July 2012, and after the conference, a second round of feedback was organised by stakeholders and government departments on the issues in the consultation paper and those raised at the conference. All submissions were available online.

The Regulation of Lobbying Act was signed into law in March 2015. The Act established that a first legislative review should be held after one year of application. An extensive communications and outreach programme, including a national print, radio and digital advertising campaign, was also designed in order to help raise awareness of the Act and its obligations.

Finally, the Act established that further reviews will be held every three years, following a process of public consultation.

In addition, Section 16 of the Act requires a consultation process to inform a Lobbyists' Code of Conduct. It was officially launched by the Standards in Public Office Commission in November 2018, based on a large consultation process, involving local, national and international actors, and the experience of applying the Act's provisions in practice. All inputs to the consultation were made publicly available on the website of the Commission along with the Code. This Code came into effect on 1 January 2019 and will be reviewed every three years following the same consultation process.

Source: (OECD, 2014^[12]); <https://www.lobbying.ie/about-us/legislation/2019-legislative-review-of-the-regulation-of-lobbying-act-2015-submission-by-the-standards-in-public-office-commission>; <http://www.irishstatutebook.ie/eli/2015/act/5/section/16/enacted/en/html#sec16>

In addition, the State of Mexico could include regulations on private stakeholders' engagement within broader transparency laws, based on the argument that if there are no governmental mechanisms that allow citizens to participate in decision making, transparency may lead to resignation and undermine social accountability (OECD, 2019^[14]; Bauhr and Grimes, 2014^[15]). For instance, the Law on Transparency and Participation of the Community of Madrid establishes mechanisms for stakeholders to participate during policy making, and the creation of a registry at the local level (Box 5). The Government of the State of Mexico could use the opportunity of the current discussions on the upcoming Law on Citizen Participation to include such a regulation.

Box 5. Law on Transparency and Participation of the Community of Madrid

In April 2019, the Community of Madrid passed the Law 10/2019 on Transparency. The purpose of the Law is to regulate transparency in the Community of Madrid. Transparency is understood as active publicity and as the right of access to public information and citizen participation, as well as collaboration in public affairs.

Article 65 of the Law establishes the creation of a Transparency Registry. The registry aims to include anyone who carries out any activity with the purpose of directly or indirectly influencing the development of legal norms and general provisions, and the development and implementation of public policies.

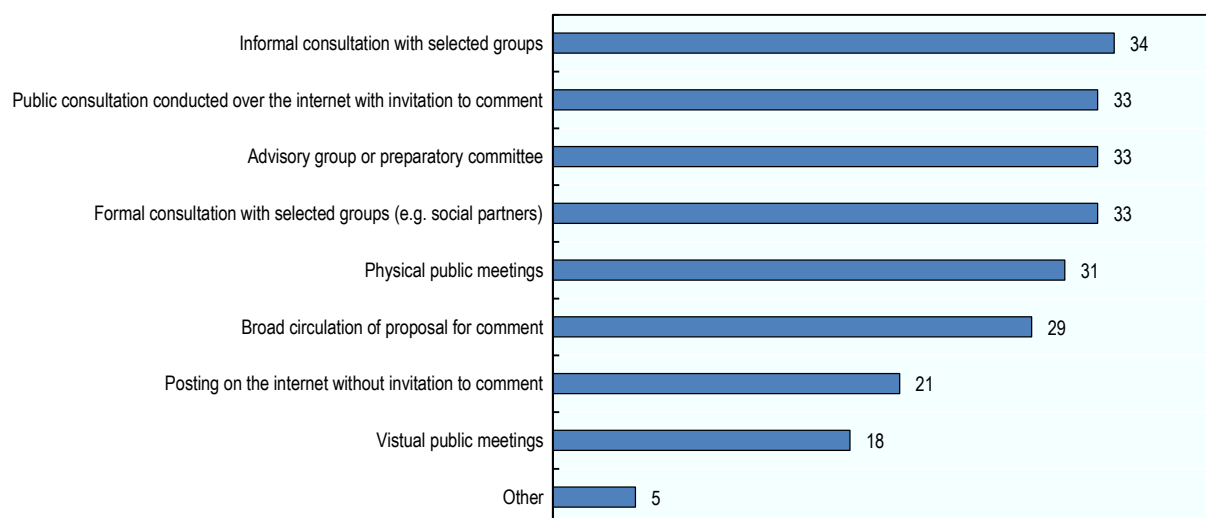
Influence includes not only direct contact with public officials and policymakers, but also any means of communication and intermediary contact, such as the media, the public opinion, conferences or social events addressed to the public administration.

Registration is mandatory, public and free, and its operation must respect the principles of proportionality, equality and non-discrimination.

Source: Ley 10/2019, de 10 de abril, de Transparencia y de Participación de la Comunidad de Madrid. https://www.bocm.es/boletin/CM_Orden_BOCM/2019/04/22/BOCM-20190422-1.PDF

Concerning the promotion of stakeholder engagement beyond the mere regulation of interactions, OECD countries make use of a variety of tools to consult (Figure 2) both with the general public and targeted stakeholders (OECD, 2018^[16]).

Figure 2. Forms of stakeholder engagement used in OECD and European Union countries



Note: Data is based on 34 OECD member countries and the European Union.

Source: (OECD, 2018^[16])

The National Constitution stipulates that Mexican citizens can initiate legislation and participate in public consultations (Article 35). In the same vein, the Constitution of the State of Mexico establishes as citizens' prerogatives to be part of public consultations and express, through their vote, opinions on relevant subnational issues (Article 29). In addition, according to Article 72 of the Bylaws of the Legislative branch

of the State of Mexico, legislative commissions may preferably develop roundtables where civil society organisations, working on the issue at hand, can be invited to participate.

Besides, the General Directorate for Political Development (*Dirección General de Desarrollo Político*, DGDP) administers a registry of civil associations that are invited to different initiatives and trainings, and receive funding from the State. However, there is no formal and clear mechanism to invite stakeholders to actively participate or any rules in order to guarantee a balanced representation of different actors. There are regulations that include the possibility of engaging different stakeholders during the decision-making process, both in the Executive and in the Legislative branches, but the lack of specific dispositions on how to ensure and promote this engagement may hinder the effective implementation of regulations. Furthermore, discretionary criteria to allocate funds could incentivise abuse of resources and the use of public funds with political purposes. In this regard, the Government of the State of Mexico, through the DGDP, could develop and suggest specific regulations detailing procedures and mechanisms to actively promote engagement and ensure a balanced and equitable participation of stakeholders.

Since 2016 there have been initiatives in the State's legislature in order to develop a Citizen Participation Law. The most recent draft bill was introduced at the beginning of 2019. It includes participation mechanisms such as participatory budgets or referenda. As part of the discussions on the law, fora are being held across municipalities in order to allow people to provide their inputs on the future regulation. Overall, 13 fora were held and 20 more were planned until April 2020. Besides these regional inputs, the State of Mexico could analyse and use the experiences of OECD countries and include in its regulations some of the many forms of stakeholder engagement.

1.2.2. Fostering transparency in public decision making, as well as strengthening user-friendliness and availability of public information, is necessary to prevent capture of policies

Transparency has been proven one of the key elements in developing anti-corruption policies. It provides individuals and civil society organisations with the opportunity to monitor and hold public servants and representatives accountable. In this regard, granting people the right to know and regulations on access to public information are important tools to curb corruption.

Indeed, there is a strong correlation between public trust in politicians and transparency in government policy making (OECD, 2017^[17]). That is why during the last years, as trust in government has declined across the world, more countries are introducing regulations to improve the transparency and integrity of the public decision-making process. To improve transparency, many OECD countries' governments publicise the names of organisations and people who they met and consulted when drafting legislation, allowing for a legislative footprint that facilitates public scrutiny. Similarly, many Latin Americans are also able to understand and track who has influenced regulatory processes based on available public information (OECD, 2019^[8]).

According to the Law on Transparency and Access to Public Information of the State of Mexico (*Ley de Transparencia y Acceso a la Información Pública del Estado de México y Municipios*) and the Legislative branch regulations, all legislative sessions should be public, and there is an official media channel –the “Debate Journal” (*Diario de Debates*)–, which includes dates, summaries of information and transcriptions of session discussions (Article 144). Moreover, in order to better communicate people on legislative activities of the State of Mexico, the Legislative branch developed in 2019 an annual review, “*Diálogo Público Edomex*”, which includes for instance a summary of the legislative year, interviews with representatives and public calls, such as the ones to participate in consultations on the Citizen Participation Law.

However, public officials recognise that although citizens can attend legislative discussions and access legislative information, this information is neither systematised nor detailed. This means that there is no generic guidance to access the information, and it is not categorised (e.g., by policy topic or legislation), nor labelled and organised accordingly, which makes finding specific information difficult for the public. Furthermore, the president of the legislature may determine that some sessions need to be classified and should not be made public, and some dispositions of the legislative regulations may hinder the availability of information. For instance, regulations establish a six month period to edit publications on the “Debate Journal” after the ordinary season ends, and that these publications may, but are not required to, be digital. This may result in a lack of updated online versions of the “Debate Journal” (by the beginning of 2020, the last online registry was from March 2019), and therefore a lack of publicly available and timely information on public decision making.

In order to make all the information related to decision-making processes transparent and timely available, and thus accountable to public scrutiny, regulations must be clearer and detail the exceptional and specific situations when the president of the legislature may determine that sessions should be classified. This will limit the discretionary leeway. Moreover, the edition periods of the “Debate Journal” provided by the regulations could be shortened in order to provide people with timely information on what is being discussed and decided.

Additionally, opening policy makers’ agendas could allow individuals and organisations to know which interest representatives or groups have had access to policy makers, and when they were approached. This could make influence and policy-making processes transparent beyond legislative discussions and formal processes.

According to the Law on Transparency and Access to Public Information of the State of Mexico and Municipalities, the Executive branch is required to make its information transparent and accessible, and public servants should make their activities transparent and guarantee the right of access to public information. However, even though the legislation requires to disclose any call to public meetings (Article 92, XV), neither this law nor the Law on Administrative Responsibilities of the State of Mexico and Municipalities make an explicit reference to a compulsory or voluntary request for policy makers to make their agendas public. Policy makers do not have to make transparent with whom they meet and about what issues during regulatory processes. Thus, people are not able to access information on who is trying to influence policies and hold policy makers accountable for potential conflicts of interest. They can only rely on their declaration of interests.

The impact this lack of information has on transparency and integrity in decision making may be even stronger if it is considered that according to the State Constitution (Article 59), the head of the Executive branch has broad veto powers (total and partial). This could mean that access to one actor and his cabinet could be key to influencing policy outcomes.

On the other hand, the functioning, organisation and attributions of the State’s Legislative branch are regulated by the Organic Law on the Legislative Branch of the State of Mexico (*Ley Orgánica del Poder Legislativo del Estado Libre y Soberano de México*) and the Legislative Branch Bylaws. According to these regulations, the legislative agenda should be public, but legislators are not required to disclose with whom they meet or to make transparent who is trying to influence their decisions.

In many OECD countries, such as in Spain, Ireland or the United Kingdom, as well as in many presidential Latin American countries, such as Peru or Argentina, policy makers and/or public officials involved in regulatory processes are required to make their agendas available to the public. The State of Mexico could consider these examples and promote access to this information (Box 6).

Box 6. Online registry of meetings in Peru

In September 2018, the Executive Order No. 1415 of the Republic of Peru amended the Law No. 28.024 on Lobbying (*Ley Gestión de Intereses en la Administración Pública*) by including the creation of an online Registry of Meetings.

This Registry requires every public official involved in a regulatory process to register on a daily basis –both in the entity’s webpage, as well as in a centralised integrity webpage (https://www.peru.gob.pe/integridad/registro_visitas.htm)–, every meeting they receive, who they meet, the purpose of the meeting and other details.

In addition, the regulation states that all information registered is legally equivalent to public officials’ asset declarations and forbids public officials to be part of influence and lobbying activities outside their offices.

Source: <https://busquedas.elperuano.pe/normaslegales/decreto-legislativo-que-modifica-la-ley-n-28024-ley-que-re-decreto-legislativo-n-1415-1691026-4/>, <https://www.sbs.gob.pe/transparencia/registro-de-visitas-en-linea>

The State of Mexico took a significant step towards transparency with the adoption of the Law on Transparency and Access to Public Information in May 2016. The law identifies access to public information as a human right and it is broad in terms of scope, granting access to public information to everyone. Procedures for requesting information are free and do not ask requesters to specify the reasons to request information. The law also establishes that public information must be provided in a simple, clear and user-friendly way.

However, in order to grant the right to information to people through access to information laws (passive transparency), the way information is actually provided is key (active transparency). The state law requires all subjects to publish their information on their entities’ and the State (IPOMEX) and National platforms. This multiplication of information sources could create confusion. It could also make it more difficult for users to understand where to find information and to compare data from different entities, and could lead to the provision of online information that differs and is more or less updated depending on the webpage individuals’ use. In line with the findings and recommendations from the OECD Review *Public Procurement in the State of Mexico*, the State could consider simplifying how information is provided, avoiding overlaps and providing users with a single, complete and trustful source of information. It could also improve user-friendliness of the State platform by, for example, providing shortcut links to data by different categories or allowing user functions to sort and compare information.

Furthermore, the Transparency Institute (*Instituto de Transparencia, Acceso a la Información Pública y Protección de Datos Personales del Estado de México y Municipios*, INFOEM) webpage could provide people with specific guidelines on how to proceed in different situations by using concrete and practical examples. Additionally, in order to facilitate the analysis and monitoring of figures, and as such promoting accountability, INFOEM could provide more details on breaches on transparency and access to information, as well as on sanctions applied. The only information currently provided is that in 2019, 151 breaches on transparency and access to information were registered, compared to 504 in 2018. This would allow better enforcement and the possibility for civil society to act as a watchdog and more efficiently follow up on the status of requests and outputs.

Proposals for action

Enhancing the transparency and integrity of political finance

- The State of Mexico should reduce opportunities for informal campaign financing by prohibiting cash contributions and set a leading example in Mexico in updating rules to address new challenges, such as digital campaigning and fake news.
- The State of Mexico, through IEEM, could consider designing guidelines or rules to regulate how electoral public officials should interact with candidates and elected representatives.
- Audit capacities may be strengthened by providing resources and stipulating responsibilities for national and local authorities, which would enable timely monitoring. This data should also be incorporated to the online SAEMM platform.
- Coordination between the national and the state electoral institutes could be improved by developing regulations that clearly stipulate procedures and mechanisms on specific situations where the delegation of responsibilities is an effective possibility.
- The State of Mexico could strengthen the enforcement of political finance regulations at the subnational level by following up and monitoring the application of sanctions, and developing guidelines for integrity and transparency in political parties. It may also consider encouraging candidates' responsibilities besides the ones political parties assume.
- The State of Mexico could take a clear stance against clientelism by legally defining and prohibiting clientelistic practices and specifying sanctions for those who provide benefits to citizens with the aim to influence their votes. These sanctions may not be limited to public officials.

Fostering integrity and transparency in decision making

- The State of Mexico, in the domains of the Executive and the Legislative branches, could develop specific regulations at the subnational level on interactions between the private sector and other stakeholders with public officials.
- The Ministry of Government could launch a broad consultation process to inform and start drafting these regulations. National regulations may provide a basis that could be strengthened by, for instance, applying them to the State Executive branch and to municipalities. Alternatively, the State of Mexico could also include regulations on private stakeholder engagement as part of transparency regulations.
- In order to level the playing field, the State of Mexico, through the DGDP, could adopt specific regulations and detail mechanisms to proactively encourage and ensure stakeholder engagement in policy making and promote the balanced and equitable participation of stakeholders.
- The Legislative branch of the State of Mexico could strengthen transparency in decision making by guaranteeing discussions and legislative sessions are available online to the broad public in a timely manner. It may shorten, for example, edition periods of the "Debate Journal".
- Legislative branch regulations could detail the exceptional and specific situations when the president of the legislature may determine that sessions should be classified. This would limit the room for discretion.
- The State of Mexico, in its Executive and Legislative branches, could foster transparency in policy making by requiring policy makers' and representatives' agendas to be transparent and accessible to the public.

- The State of Mexico could ensure implementation and enforcement of the Transparency and Access to Public Information Law by providing a single, user-friendly, online information platform. This could simplify how information is presented, avoid overlaps and provide citizens with a single source of information.
- Additionally, it may consider using INFOEM's webpage to provide individuals with specific guidelines on how to proceed in different situations by using concrete and practical examples.
- INFOEM could provide more details on specific breaches and sanctions applied. This would allow better enforcement and accountability.

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Notes

¹ Such crimes include those against public health (producing, transporting, trafficking, trading, supplying and possessing drugs), those against personal safety, those against the Federal Law of Firearms and Explosives (*Ley Federal de Armas de Fuego y Explosivos*), the Federal Law to Prevent and Punish Crimes relative to Hydrocarbons (*Ley Federal para Prevenir y Sancionar los Delitos Cometidos en Materia de Hidrocarburos*), and the Federal Law against Organised Crime (*Ley Federal contra la Delincuencia Organizada*).

² It is worth highlighting that expenditure limits for political campaigns are set based on the electoral lists of the federal states. The State of Mexico ranks in seventh place among Mexico’s federal states in terms of expenditure limit divided by the corresponding electoral list.

³ It is part of INE’s powers to regulate its delegation discretion.