

## Chapter 1. The context of international regulatory co-operation policies and practices in Mexico

*Mexico's active efforts to embrace globalisation are reflected in many aspects of its domestic policies, practices and institutions. It has introduced international considerations into its domestic rule-making procedures and uses a variety of ways to co-operate internationally. This chapter sets the legal and institutional context in which international regulatory co-operation (IRC) takes place in Mexico. To do so, it gives an overview of Mexico's regulatory actors and instruments, describes the regulatory instruments subject to IRC, the main legislative and policy documents that encourage or require IRC, and the institutions that are involved in co-ordinating and overseeing IRC efforts in Mexico.*

## Introduction

Mexico's active efforts to embrace globalisation have permeated many aspects of its domestic policies, practices and institutions. Mexico has introduced international considerations into its domestic rule-making procedures and uses a variety of ways to co-operate internationally. These efforts amount to a range of IRC policies and practices that impact the activities of the Mexican government at highest political levels, as well as the everyday work of regulators.

Mexican domestic regulators increasingly have to take into account the international environment when regulating. Various laws include specific requirements to incentivise them to do so, whether within the disciplines of regulatory improvement or through the specific procedures applicable to the development of technical regulations and standards.

Mexican authorities also consider a range of different *fora* to share experiences and align regulatory approaches, bilaterally with specific countries, regionally with their neighbours in South or North America, or multilaterally, within international organisations. Selected success stories highlight the important benefits that co-operation efforts may have for domestic regulatory process. Different legal provisions enable these different forms of international co-operation to be undertaken both at technical level between regulators and at the political level, with commitment from the Mexican government as a whole.

The combination of unilateral, bilateral and multilateral forms of IRC has resulted in a variety of actors being involved. Regulators in particular are active in implementing these different forms of IRC. Bodies situated within the central government have the responsibility of ensuring that in their everyday work, regulators have necessary awareness and guidance to truly implement their IRC obligations. These authorities are also in charge of monitoring the practical steps undertaken to implement these IRC obligations.

At the same time, the experience in IRC in certain areas may still be enhanced and extended to a broader scope in its implementation to ensure that it benefits the Mexican population. On one hand, these important and visible efforts seem to have happened in an ad hoc manner and not as the direct result of a comprehensive IRC strategy. The legal policies concerning IRC tend to be fragmented throughout various different legal provisions, resulting in a variety of approaches to IRC. Trade-related measures, and in particular technical regulations and standards, have more systematic IRC requirements than subordinate regulations more broadly. In addition, a number of tools escape IRC more generally, such as those stemming from the legislative branch and subnational levels of government. Extending IRC to a broader range of regulatory tools may help leverage IRC not only for enhancing trade flows, an important objective of IRC, but also to improve evidence-based rule-making with international expertise and adapting Mexican policy framework to the global context.

On the other hand, when conducted, IRC does not necessarily deliver tangible outcomes. Some IRC tools embedded in domestic legal provisions remain underexploited, with limited evidence on their concrete effects on the regulatory process. Evidence is lacking on tangible outcomes of different co-operation efforts. Effective co-operation efforts resulting in common regulatory approaches seem to be the result of individual authorities, and not from a common and generalised approach. Overall, lack of awareness and understanding of their benefits for domestic regulations fail to provide sufficient incentives for authorities to consider IRC systematically, in their everyday work.

To understand the variety of Mexico's IRC practices, this chapter sets out the regulatory process in Mexico, the authorities that engage in or oversee IRC efforts, the range of regulatory instruments and the disciplines followed to ensure their quality.

### Setting the scope of the study: Mexico's regulatory actors and instruments

This review focuses on the regulatory tools in which IRC practices are most embedded. In practice, this equates to the tools that fall under disciplines of regulatory improvement, or that are submitted to specific regulatory procedures. This covers regulations that stem from the federal executive branch encompassing centralised bodies such as line ministries, deconcentrated bodies and the energy regulators with ministerial status, as well as the autonomous and decentralised bodies. More specifically, the regulatory instruments subject to IRC, and thus part of the scope of the review, are those originating from the executive branch of government including subordinate regulation, technical regulation (NOMs) and standards (NMXs).

IRC is mostly absent from tools stemming from the legislative branch or regulations developed at the subnational level. While this can be logically explained by the specific processes such measures follow, this may be less justified from the perspective of regulated citizens or economic agents, for whom the origin of the rules that affect them is irrelevant. Recent legislative reforms and ongoing proposals should provide an enabling environment to broaden the scope of application of regulatory improvement when the reforms materialise. This could provide an opportunity to also extend the scope of application of IRC, and raise awareness about IRC namely at the subnational level and within the legislative body.

#### *The actors of IRC in the Mexican public administration*

The Mexican Federal government is divided into three branches of government: legislative, executive, and judiciary. Moreover, there are three different levels of government (Figure 1.1): federal, state and municipal; all of which can issue certain types of regulation depending on the attributions and powers stated in the Constitution.

The scope of this report covers regulation and co-operation efforts stemming from the federal executive branch (and relevant decentralised bodies) given that it is in this branch of government where subordinate regulation fall under regular and continuous regulatory improvement and where a series of efforts to systematically promote IRC are in place (Figure 1.1). With regards to sub-national levels of government, states (32) and municipalities (2 457),<sup>1</sup> there is a vast heterogeneity of regulatory practices with no systematic approaches to consider the international environment.

The work excludes the legislative branch which is not systematically subject to regulatory improvement disciplines and do not have explicit requirements to consider IRC when developing primary laws, beyond the technical and legal consistency appraisal. Indeed, normative instruments stemming from Congress are equally relevant and should embed good regulatory practices including IRC to increase their quality through implementing evidence-based processes, like it is done in some OECD countries (Box 1.1).

### Box 1.1. Good regulatory practices in Congress: The Law Evaluation Department in Chile

Chile is one of the few OECD countries that have formalised the *ex post* review of laws in the legislative branch of government. The Law Evaluation Department (LED) was created by an agreement of the Commission on Internal Regime, Administration and Regulations, issued on 21 December 2010.<sup>2</sup> The main responsibilities of the LED are:

1. Evaluating the legal norms approved by the National Congress in co-ordination with the Secretary of the Commission in charge. The Department might propose corrective measures to improve the implementation of the law evaluated.
2. Creating and maintaining a network of social organisations interested in participating in the evaluation process.
3. Informing the Secretary-General, through the Commission of Internal Regime, Administration and Regulations, about the results of evaluations.
4. Suggesting amendments to the current legislation, if needed.

The LED is in charge of developing a three-stage project to evaluate the effectiveness of laws. The three stages cover the following issues: technical analysis, citizens' perception and preparation of a final report. The analysis of laws has the following objectives:

- Determining the degree of compliance with the expected objectives when the law was passed.
- Identifying the externalities, impacts and non-desired effects when Congress was legislating.
- Knowing citizens' perception about the law and its implementation.
- Proposing corrective measures to the law and its implementation.

Source: (OECD, 2016<sub>[1]</sub>), *Regulatory Policy in Chile: Government Capacity to Ensure High-Quality Regulation*, OECD Reviews of Regulatory Reform, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264254596-en>.

Consequently, information on IRC activities at the subnational level and in the legislative branch is at best anecdotal and ad hoc as stated above. The General Law of Regulatory Improvement recently adopted (Box 1.3) mandates all levels and branches of government to embed good regulatory practices. In this sense, a window of opportunity is present to reflect upon the GRPs to be embedded and the possibility of including IRC to support better regulation in Mexico.

The federal executive branch relies on the president and the federal public administration, and its attributions and obligations stem from the Mexican Constitution. The federal public administration is composed of centralised bodies, including energy regulators which have ministerial status, and deconcentrated bodies according to the Organic Law of the Federal Public Administration, or LOAPF. In parallel, autonomous and decentralised bodies are considered separate from the three branches of government (Figure 1.2).

Sectoral ministries and energy regulators have attributions for and are subject both to unilateral disciplines to embed IRC in the rule-making process and to undergo regulatory co-operation efforts. Deconcentrated bodies are subject to COFEMER's<sup>3</sup> dispositions including the different IRC approaches with the caveat that they have to act through the line ministry they are attached to when exerting regulatory powers. For example, the Federal Commission for the Protection of Sanitary Risks (*Comisión Federal para la*

*Protección contra Riesgos Sanitarios*, COFEPRIS) legally acts through the Ministry of Health.

**Box 1.2. Autonomous bodies: The Federal Telecommunications Institute as an example**

The Federal Telecommunications Institute (IFT) is an autonomous body -by constitutional mandate- charged with developing an efficient telecommunication and broadcasting market. Besides the usual powers of telecom regulators, the IFT is also the competition authority for the telecommunication and broadcasting sectors.

The IFT cannot issue NOMs or NMX to regulate the telecoms market; however, the Federal Law on Telecommunications and Broadcasting (Ley Federal de Telecomunicaciones y Radiodifusión, LFTR) gives the regulator powers to issue mandatory “technical provisions” concerning the characteristics that telecommunication and broadcasting products and services need to comply with as well as the evaluation process and technical requirements needed for the installation of equipment, systems and/or infrastructure.

As stated, given the autonomy of the IFT, the process to draft and issue technical provisions is not subject to the supervision of DGN or COFEMER. Notwithstanding, art. 194 of the LFTR establishes a co-ordination mechanism with SE to issue technical regulation (NOMs) which establishes the specific obligations that the concessionaires and authorisation holders shall comply with, in order to guarantee the effective protection of consumers rights provided by the Federal Law of Consumers Protection and the LFTR.

During the drafting process, the IFT complies with three main objectives:

- The consideration of national and international technical regulation/standards;
- Foster technological innovation; and
- Protect and promote competition.

In issuing technical provisions, the regulator takes into account the Mexican stakeholders and its perspective and recommendations released by international bodies.

The IFT issues in its Annual Work Program a forward planning agenda containing the provisions, which will be examined by the IFT. By general rule, all provisions should be subject to public consultation and the exception is limited to those cases in which the publicity may compromise the effects intended to be solved or prevented in an emergency situation (LFTR, art. 51). The public consultation process is published on the IFT’s website allowing third parties to submit comments.

When IFT’s Regulatory Policy Unit presents a draft technical provision is obliged to complete a regulatory impact assessment including a competition analysis. The regulatory impact assessment is overseen and analysed by the Regulatory Improvement Bureau –an internal department pertaining to the IFT. To conclude, the draft is submitted to the Board of commissioners for approval. If approved, the technical provision is published in the Official Gazette and shall be systematically reviewed every 5 years. Since 2013, the IFT has issued 13 technical provisions with 6 technical provisions in 2016, and 3 in 2017.

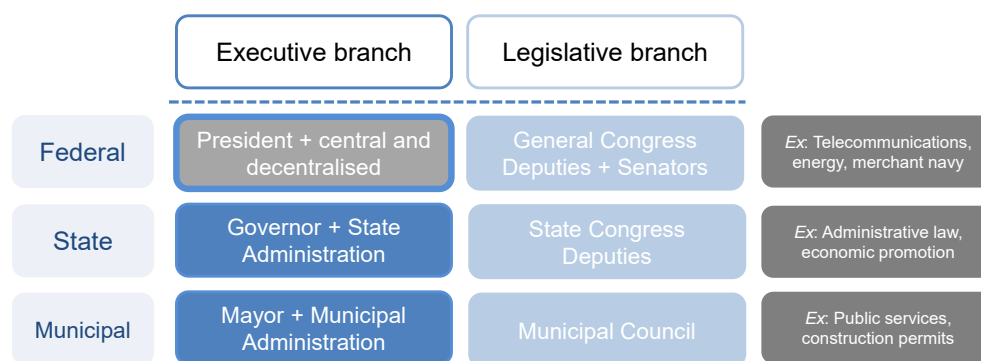
*Source:* Adapted from (OECD, Forthcoming<sup>[2]</sup>), “Standard-setting and competition in Mexico: a secretariat report” and arts. 7, 15, 41, 289 and 290 of LFTR; [www.ift.org.mx/industria/politica-regulatoria/disposiciones-tecnicas](http://www.ift.org.mx/industria/politica-regulatoria/disposiciones-tecnicas).

Autonomous and decentralised bodies are not subject to COFEMER’s dispositions as per their administrative autonomy. However, some of these institutions might have a regulatory improvement unit of their own (i.e. the Federal Telecommunications Institute, IFT); consequently, their regulatory practices, including IRC, might differ from those overseen by COFEMER (see Box 1.2 above). The law allows such institutions to voluntarily submit their regulatory proposals to COFEMER; however, that is not the case so far.

The autonomous and decentralised bodies that are not subject to COFEMER’s dispositions when issuing regulation are as follows:

- The Central Bank of Mexico (*Banco de México*, BANXICO)
- National Electoral Institute (*Instituto Nacional Electoral*, INE)
- National Commission of Human Rights (*Comisión Nacional de Derechos Humanos*, CNDH)
- National Statistics and Geography Institute (*Instituto Nacional de Estadística y Geografía*, INEGI),
- Federal Telecommunications Institute (*Instituto Federal de Telecomunicaciones*, IFT)
- Federal Commission for Economic Competition (*Comisión Federal de Competencia Económica*, COFECE)
- National Institute of Transparency, Access to Information and Data Protection (*Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos*, INAI)
- National Attorney General (*Fiscalía General de la República*)
- National Institute for the Evaluation of Education (*Instituto Nacional para la Evaluación de la Educación*, INEE)
- National Council for the Evaluation of the Social Development Policy (*Consejo Nacional de Evaluación de la Política de Desarrollo Social*, CONEVAL).
- National University of Mexico (*Universidad Nacional Autónoma de México*, UNAM).

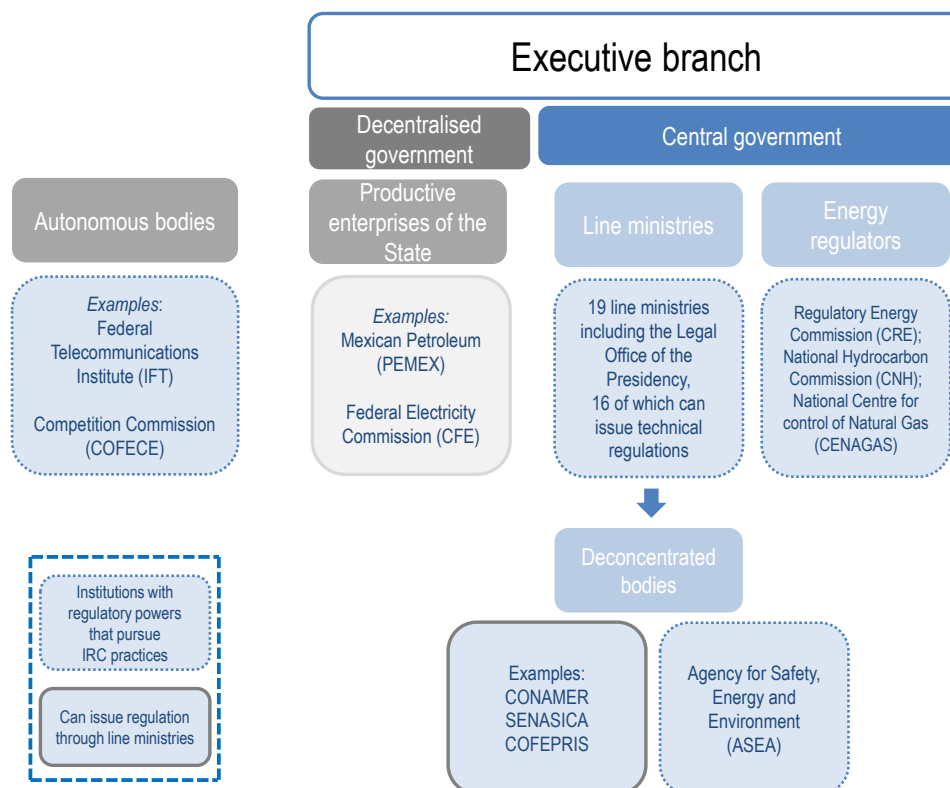
**Figure 1.1. Levels of government for the executive and the legislative branches**



Source: Author’s own elaboration.



**Figure 1.2. Types of bodies of the federal public administration related to IRC**



*Notes:* The good regulatory practices are only reflected in case they have an IRC component. As part of the 2013 constitutional reform the energy regulators, CNH and CRE, have ministry-level status framed by the Law of the Co-ordinated Energy Regulators (*Ley de los Órganos Reguladores Coordinados en Materia Energética*, LORCME) and the Organic Law of the Federal Public Administration.

*Source:* Author's own elaboration as an adaptation from the Federal Law of Administrative Procedure and the Federal Law of Metrology and Standardisation, and art. 90 of Mexico's Political Constitution.

### ***The subject of IRC: Mexico's regulatory instruments***

The Mexican regulatory framework for the Executive branch consists of several regulatory instruments that stem from the large number of bodies with regulatory powers within the federal public administration. Amongst the different regulatory instruments there are four main categories of regulation according to their legal nature: i) primary laws; ii) subordinate regulation, iii) mandatory technical regulation; and iv) voluntary standards.

- *Primary laws:* formal document that bodies with regulatory powers, from the executive and legislative branches, introduce to any of the two chambers of Congress for its study, discussion and approval with the objective to create, reform, add, abolish constitutional or legal provisions.<sup>4</sup>
- *Subordinate regulation:* general administrative provisions with the objective to establish specific obligations, issued by the federal executive power.<sup>5</sup>
- *Technical regulation:* mandatory regulation that establish rules, specifications, attributes, directives, characteristics or provisions applicable to a product, process, installation, system, activity, service or method for production or operation, as well as the relative to terminology, symbols, packaging, labelling and the ones related to their enforcement or implementation.<sup>6</sup>

- *Standards*: voluntary requirements stemming from a National Standardisation Body (ONN) applicable for a repeated or common use of rules, specifications, attributes, directives, characteristics or provisions applicable to a product, process, installation, system, activity, service or method for production or operation, as well as the relative to terminology, symbols, packaging, labelling.<sup>7</sup>

The regulatory instruments subject to IRC disciplines and thus part of the scope of the present issues note are those that stem from the federal executive branch of government or autonomous and decentralised, and are shown in Table 1.1. This excludes, in particular, primary laws initiated by the Legislative branch (approximately 91% of the total universe of primary laws).

**Table 1.1. Regulatory instruments under the scope of the current study**

Regulatory instruments
<b>Primary laws</b> Primary laws initiated in the executive branch (approximately 9% of the total universe of primary laws)
<b>Subordinate Regulation</b> Bylaws Decrees Ministerial agreement or notice Circulars Manuals, methodologies, calls, programmatic rules of operation
<b>Technical regulation</b> Official Mexican Standards – NOM
<b>Standards</b> Mexican Standards – NMX

*Note:* The good regulatory practices are only reflected in case they have an IRC component.

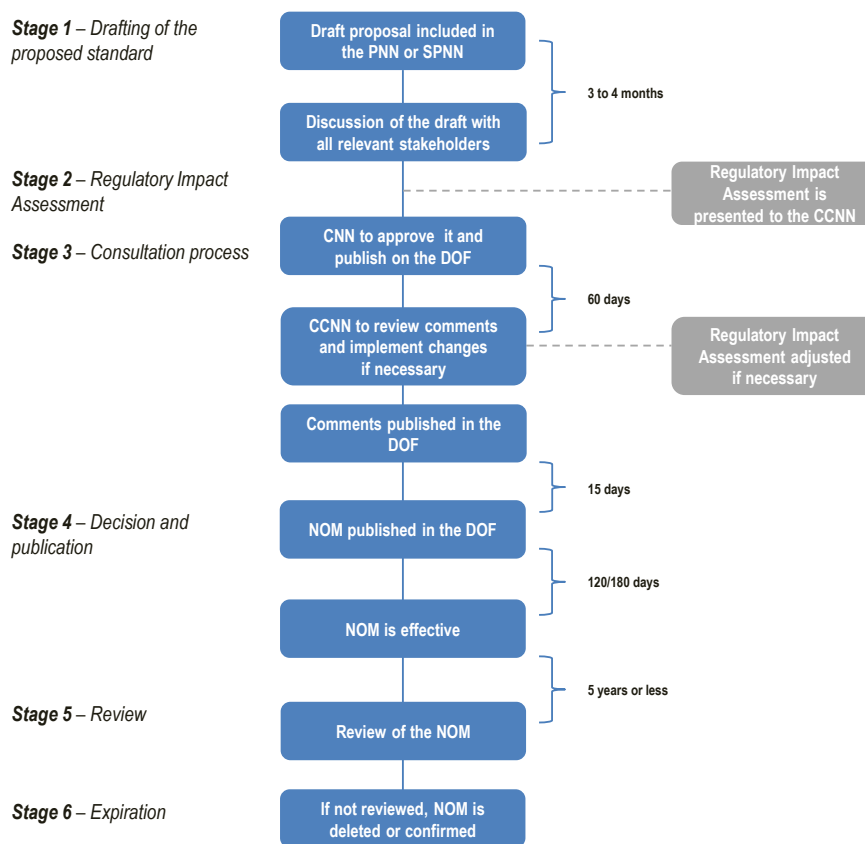
*Source:* Author’s own elaboration as an adaptation from the Federal Law of Administrative Procedure and the Federal Law of Metrology and Standardisation.

The choice between regulatory instruments depends on the subject matter which is regulated. By default, when a regulator develops a regulatory proposal, it develops a subordinate regulation. However, when the measure aims to establish rules, specifications, attributes, directives, characteristics or prescriptions applicable for a product, process, installation, system, activity, service or production method, or relates to terminology, symbols, packaging, labelling, the regulator develops a technical regulation (NOM), or standard (NMX), following a specific procedure described in Figure 1.3.

Table 1.2 offers insight into the yearly production of regulatory instruments in Mexico. It confirms that subordinate regulations are the regulatory instruments most commonly developed by the executive with 1 166 subordinate regulations (including technical regulations) and 32 primary laws initiated by the executive power. NOMs only represented 5.57% of regulatory proposals in 2017 (COFEMER, 2017<sub>[3]</sub>). The overall registry accounts for a total of 756 technical regulation (NOMs) and 4 908 standards (NMX) in force today.<sup>8</sup>



**Figure 1.3. NOM life cycle**



Source: (OECD, Forthcoming<sup>[2]</sup>), “Standard-Setting and Competition in Mexico: A Secretariat Report”, OECD, Paris.

**Table 1.2. Number of regulatory proposals according to their legal nature**

Regulatory proposals submitted between December 2016 and October 2017

Regulatory instrument	Amount
Primary laws (initiated in the executive)	
Laws	32
Subordinate regulation	
Ministerial agreement	396
Notice	149
Rules of operation	88
Resolutions	73
Calls	65
Decrees	47
Guidelines	36
Manuals	45
International agreements	19
Other	183
Technical regulation	
Official Mexican Standards	65
<b>Total</b>	<b>1 198</b>

Source: (COFEMER, 2017<sup>[3]</sup>), “COFEMER’s Annual Report 2016-2017”, [www.cofemer.gob.mx/docs-bin/dg/Informe\\_anual\\_2017.pdf](http://www.cofemer.gob.mx/docs-bin/dg/Informe_anual_2017.pdf) (accessed 5 March 2018).

The agencies that issued the most subordinate regulation (Table 1.3) with compliance costs, including NOMs, in 2017 were the Ministry of Finance (80), the Ministry of Economy (39), the Ministry of Agriculture (34), and the Ministry of Environment and Natural Resources (34).<sup>9</sup>

**Table 1.3. Production of subordinate regulation per agency**

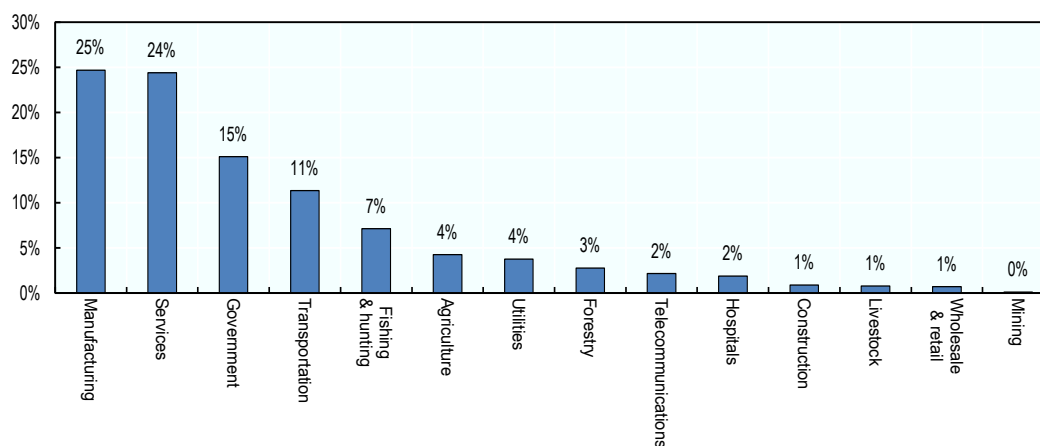
The proposals comprise the period from December 2016 to October 2017

Ministry/agency	Subordinate regulation	Percentage
Finance	80	27.40%
Economy	39	13.36%
Agriculture	34	11.64%
Environment and Natural Resources	34	11.64%
Energy	29	9.93%
Energy Commission	15	5.14%
Communications and Transport	15	5.14%
Health	13	4.45%
Attention to Victims Commission	5	1.71%
Interior	5	1.71%
Others	23	7.88%
<b>Total</b>	<b>292</b>	<b>100%</b>

Source: (COFEMER, 2017<sup>[3]</sup>), “COFEMER’s Annual Report 2016-2017”, [www.cofemer.gob.mx/docs-bin/dg/Informe\\_anual\\_2017.pdf](http://www.cofemer.gob.mx/docs-bin/dg/Informe_anual_2017.pdf) (accessed 5 March 2018).

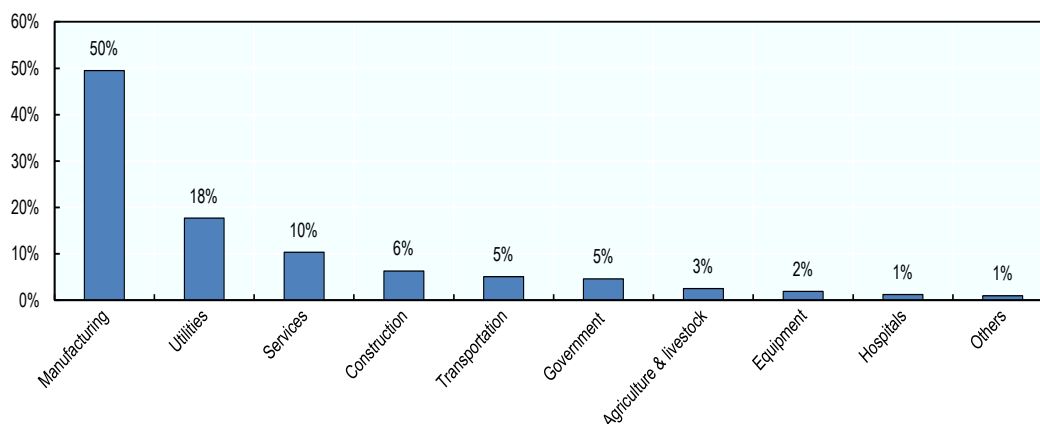
According to the forthcoming OECD report on standard-setting and competition in Mexico, 75% of NOMs are within four major sectors, i.e. manufacturing, services, government and transportation (Figure 1.4). In the case of NMXs, almost 50% relate to the manufacturing sector (Figure 1.5).

**Figure 1.4. NOMs per economic activity**



Source: (OECD, Forthcoming<sup>[2]</sup>), “Standard-Setting and Competition in Mexico: A Secretariat Report”, OECD, Paris.

**Figure 1.5. NMJs per economic activity**

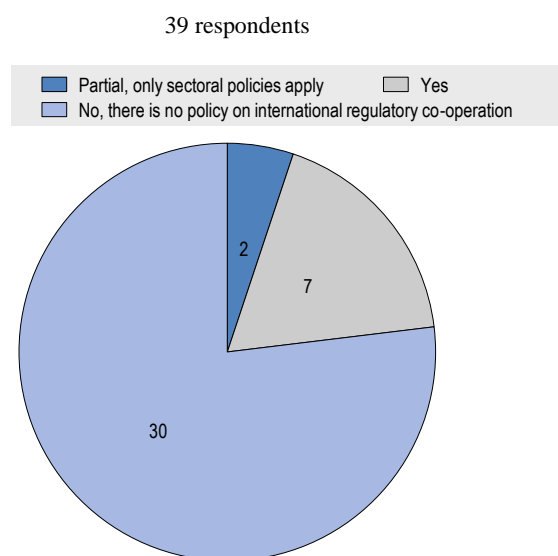


Source: (OECD, Forthcoming<sub>[2]</sub>), “Standard-Setting and Competition in Mexico: A Secretariat Report”, OECD, Paris.

### Overview of the legal and policy framework on IRC in Mexico

There are considerable efforts to promote IRC in Mexico, from the embedding of key international considerations in the rule-making of domestic regulators to the active participation of Mexican regulators and the State in international regulatory *fora*. Despite this intense activity, Mexico has not articulated its IRC strategy in a single legal or policy document that cuts across sectors and government. Instead, the legal and policy framework on IRC is embedded within a number of documents. Mexico is nevertheless among the few OECD countries with a policy and legal basis framing some aspects of IRC (OECD, 2018<sub>[4]</sub>) (Figure 1.6).

**Figure 1.6. Number of jurisdictions with an explicit, published policy or a legal basis on IRC**



Note: Data for OECD countries is based on the 35 OECD member countries, the European Union, and three accession countries.

Source: (OECD, 2018<sub>[4]</sub>), *OECD Regulatory Policy Outlook 2018*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/g2g90cb3-en>.

The IRC legal framework is divided into two sets of legal provisions: i) two key documents framing IRC practices in domestic rule-making, namely the Federal Law of Administrative Procedure (LFPA),<sup>10</sup> and the Federal Law of Metrology and Standardisation (LFMN); and ii) the legal and policy documents framing Mexico's regulatory co-operation efforts, including the Law on Celebration of Treaties and the Law on Foreign Trade.

It is worth noting that a new legislative framework was introduced on 18 May 2018 with the issuance of the General Law of Regulatory Improvement in the Official Gazette (see Box 1.3 for the elements that concern IRC). However, the practices examined in this review are still valid. Furthermore, with regard to the IRC components, the transitory clauses of the new general law foresee a period for implementation that goes beyond the timeline of this report. For ease of reference, we will continue to cite the provisions of the LFPA.

### *Legal provisions framing unilateral IRC approaches*

The unilateral disciplines of regulators to embed IRC in rule-making are framed by two key documents that reflect the dual approach to regulation in Mexico: on one hand the regulatory process covering subordinate regulation and law proposals presented by the Executive; and on the other, what is referred to as the “standardisation” process, covering the development of technical regulations and standards.

The **Federal Law of Administrative Procedure** (*Ley Federal de Procedimiento Administrativo*, LFPA) sets the framework for good regulatory practices in Mexico. It introduces in particular: i) *ex ante* and *ex post* regulatory impact assessments with the possibility of assessment of trade impacts; ii) an open process for public consultation, including foreign parties; iii) an assessment of benefits for international treaties, including mutual recognition agreements (*see the detailed explanation of each point in the next chapter*). The new General Law of Regulatory Improvement reaffirms a high priority on regulatory improvement disciplines that existed previously, while replacing the legal provisions in the LFPA regarding regulatory procedure. This General Law foresees the introduction of an explicit legal instrument on better regulation including elements for IRC (Box 1.3).

The **Federal Law of Metrology and Standardisation** (*Ley Federal de Metrología y Normalización*, LFMN) includes the procedures and entities involved in the standard-setting process in Mexico (applicable to both mandatory NOMs and voluntary NMXs), metrology, accreditation and conformity assessment. The law introduces: i) an open 60-day consultation process; ii) a biannual forward planning agenda for NOMs and NMXs; iii) systematic *ex post* evaluations (at least) every 5 years. This law is currently under revision, namely with the objective of reducing the timeframe for the elaboration of NOMs. A reform for the LFMN was tabled at Congress and is currently under debate. The reform would streamline the process and improve the procedure for mutual recognition agreement and conformity assessment that could further enable IRC (see Box 1.3).

Beyond these two main legal provisions, the **Law on Foreign Trade** (*Ley de Comercio Exterior*, LCE) provides a legal framework on Mexico's trade practices that includes provisions related to good regulatory practices. In particular, it identifies the regulations that may represent non-tariff barriers to exports and imports,<sup>11</sup> and as such must be submitted to the Foreign Trade Commission for opinion prior to adoption, and published in the Official Gazette, (LCE, art. 17).

**Box 1.3. Ongoing reforms of the General Law of Regulatory Improvement and the Federal Law of Metrology and Standardisation and their relevance to international regulatory co-operation**

**General Law of Regulatory Improvement**

The constitutional reform on regulatory improvement of February 2017 introduces the possibility for Congress to issue a General Law on regulatory improvement that would be mandatory for all levels of government. Consequently, in December 2017, the Executive branch introduced a law proposal which proposes to change the name of the current COFEMER to CONAMER while preserving its current legal status as a deconcentrated body from the Ministry of Economy with technical and administrative autonomy. The law was adopted 18 May 2018 with its issuance in the Official Gazette. The Commission is now led by a Commissioner with attributions over the federal and the national sphere.

According to article 25 of the new general law, the National Commission for Regulatory Improvement would be tasked with:

- promoting co-operation and regulatory improvement at the international level;
- signing inter-institutional agreements on regulatory improvement with other countries;
- participating in international fora and within international organisations in the area of regulatory improvement.

Furthermore, the General Law of Regulatory Improvement obliges the Legislative and Judicial branches of government and the autonomous and decentralised bodies (at the federal and the subnational level) to appoint a body inside their organisational structure in charge of embedding and carrying out regulatory improvement. The General Law abolishes the articles related to regulatory procedure of the LFPA.

**Reform of the Federal Law of Metrology and Standardisation**

In December 2017, a proposal to reform the LFMN was presented in Congress, with the objective to reduce the timeframe for the development and revision of technical regulations and to ensure better quality of conformity assessment procedures. The reform proposal contains the following elements, which may have an impact on fostering IRC:

- regulating the process, elaboration, consultation and publication of mutual recognition agreements;
- setting guidelines for enforcement, inspections and sanctions for conformity assessment;
- increasing transparency by having the System for Norms and Conformity Assessment (SINEC) as a digital platform to integrate, monitor and evaluate the activities of the standardisation system of Mexico.

The proposal is currently under debate in Congress.

*Source:* (COFEMER, 2017<sup>[31]</sup>), “COFEMER’s Annual Report 2016-2017”, [www.cofemer.gob.mx/docs-bin/dg/Informe\\_anual\\_2017.pdf](http://www.cofemer.gob.mx/docs-bin/dg/Informe_anual_2017.pdf) (accessed 5 March 2018).

### *Legal and policy framework for co-operative IRC approaches*

The legislative and policy framework framing the co-operation activities of regulators is more fragmented. The Constitution of Mexico provides for the general status given to international law within the Mexican legal system, placing international treaties which conform with the Mexican constitution as supreme law.<sup>12</sup> The Law on Celebration of Treaties establishes the requirements for all agreements concluded with foreign institutions, and the LFMN covers the participation in private standard-setting bodies and the conclusion of mutual recognition agreements. However, a number of international co-operation efforts are not subject to a common legal framework, and rather fall under sectoral provisions. In addition, the High Level Regulatory Cooperation Council benefits from specific terms of reference.

The **Law on Celebration of Treaties** (*Ley de Celebración de Tratados*, LCT) frames the procedures for signing treaties and inter-institutional agreements at the international level. It provides that treaties may only be concluded between the Federal Mexican Government and one or more subjects of public international law. By contrast, inter-institutional agreements may be subscribed between any entity of the federal, state or municipal public administration and one or more foreign governments or international organisations. The law is coupled with specific guidelines for the conclusion of treaties and interinstitutional agreements. This law also governs the international and inter-institutional agreements related to better regulation (art.69, E, 6 LFPA). In particular, this law provides for i) inter-institutional agreements; ii) trade agreements, including mutual recognition agreements.

The **Law on International Co-operation for Development** (*Ley de Cooperación Internacional para el Desarrollo*, LCID) created the Mexican Agency for International Development Co-operation (AMEXCID). AMEXCID is responsible of administering the national register on co-operation for development, which should include the agreements as well as projects and reports on results (art. 28), amongst other things.

The **LFMN** and its implementing regulation cover Mexico's co-operation efforts within international standard-setting bodies and mutual recognition. In particular, the LFMN provides that specific committees should be set up to participate in international standard-setting process and elaborate and address draft international standards.<sup>13</sup> The Ministry of Economy co-presides committees with the Ministry of Foreign Affairs. The LFMN also sets broad guidelines for mutual recognition, to be conducted with foreign and/or international entities, so long as they are truly reciprocal; they are mutually beneficial for trade of both parties; and they are concluded between bodies of the same legal nature (cf. art. 87 A and B).

The **LFPA** (art. 69 H) also entails that proposals of trade agreements take into account the opinion of the COFEMER as shown in Table 1.5.

The **Federal Law on Transparency and Access to Public Information** (art. 6) guarantees the right to freedom of information regarding public information stemming from any authority with public funding; furthermore, it obliges agencies to disclose information in their websites. In this sense, the Federal Law on Transparency applies explicitly to all international agreements to which Mexico is party, as well as resolutions and related judicial decisions that are made by specialised international bodies. For example, the Ministry of Foreign Affairs is obliged to make public all the international and inter-institutional agreements that Mexico is part of.

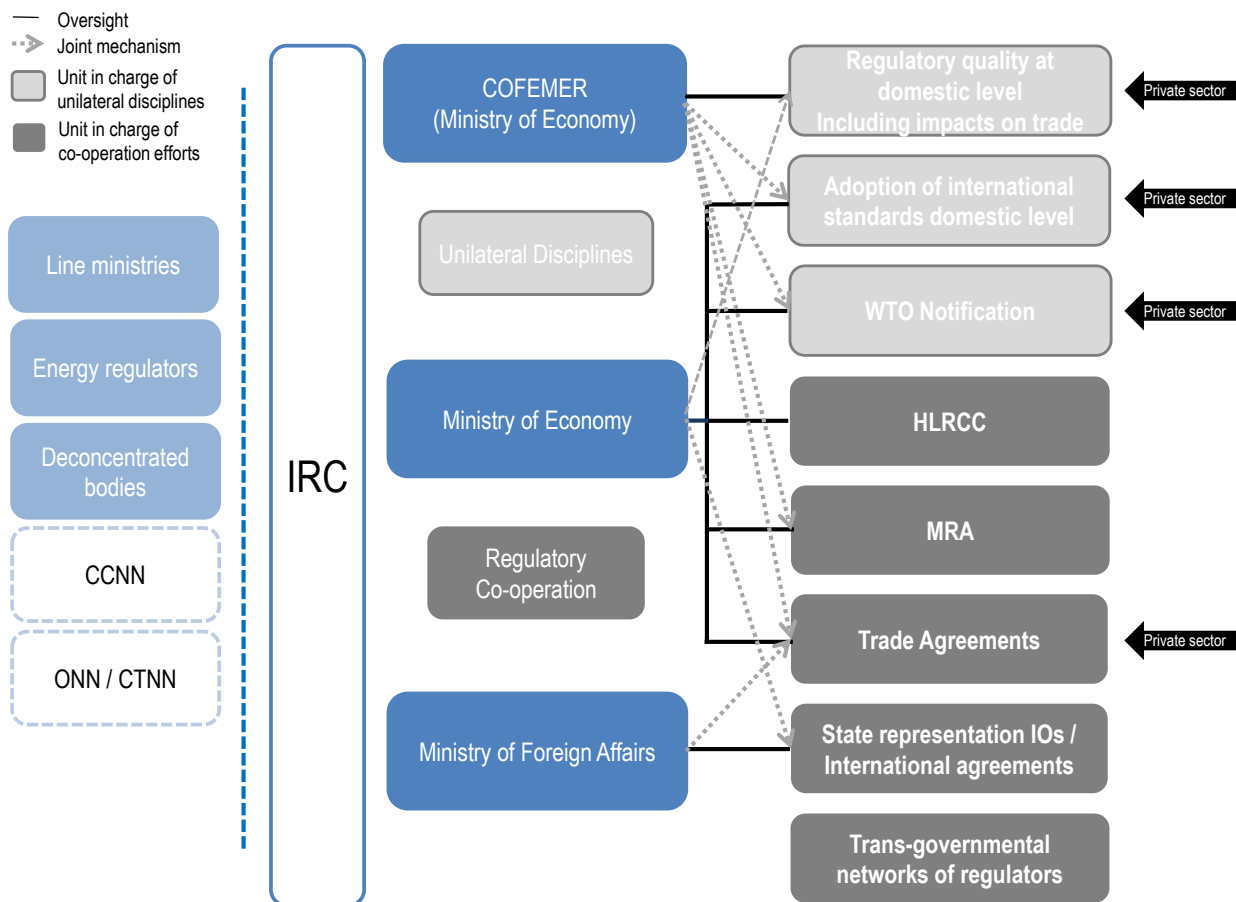


Concerning the legal framework for a regulator’s participation in international fora, there is an inherent heterogeneity and the different mandates rely on the provisions for each sector or agency.

### Institutions involved in overseeing IRC in Mexico

There are three authorities that play a key role in overseeing the broad range of IRC practices in Mexico (Figure 1.7): the Federal Commission for Regulatory Improvement (COFEMER), the Ministry of Economy, and the Ministry of Foreign Affairs. They intervene respectively in relation to embedding IRC in regulatory management tools (COFEMER), specific international obligations implemented at the domestic level (Ministry of Economy), or to ensure coherence of Mexico’s position in international treaties, agreements or *fora* (Ministry of Foreign Affairs). This divide of IRC responsibilities is common across OECD countries (OECD, 2018<sub>[4]</sub>) (Figure 1.8).

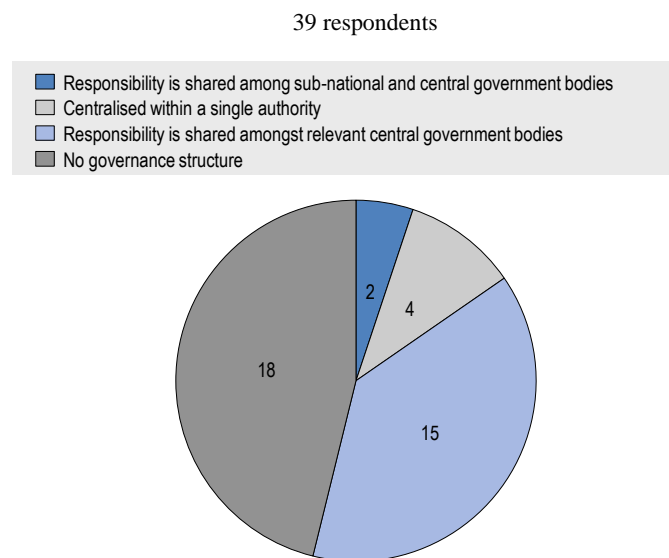
**Figure 1.7. Mexico’s oversight of IRC activities**



*Note:* The good regulatory practices are only reflected in case they have an IRC component.

*Source:* Author’s own elaboration as an adaptation from the Federal Law of Administrative Procedure, the Federal Law of Metrology and Standardisation, the Law on Foreign Trade, and the Law on Celebration of Treaties.

**Figure 1.8. Organisation of oversight of IRC practices or activities in OECD countries**



*Note:* Data for OECD countries is based on the 35 OECD member countries, the European Union, and three accession countries.

*Source:* (OECD, 2018<sup>[4]</sup>), *OECD Regulatory Policy Outlook 2018*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/g2g90cb3-en>.

**COFEMER** is the central oversight body for better regulation in Mexico and as such is mandated with ensuring regulatory quality at the domestic level for primary laws initiated in the Executive, subordinate regulation and NOMs.<sup>14</sup> This includes overseeing regulatory management tools such as stakeholder engagement, *ex ante* and *ex post* regulatory impact assessments which might include an assessment of competition, risk, consumer rights and trade impacts. COFEMER also collaborates with the Ministry of Economy in alerting when a notification to the WTO needs to be done. Furthermore, COFEMER’s opinion on trade agreements and mutual recognition agreements is sought before they come into force.

The **Ministry of Economy**, and in particular as embodied by the Vice-Ministry on Competition and Business Regulation (*Subsecretaría de Competitividad y Normatividad*, SCN), pursues the general objective of reinforcing economic competitiveness of the national economy, generating trust in the Mexican economy and attracting foreign investments. It therefore promotes economic growth by ensuring the development and implementation of a clear, effective and simplified standardisation process (General Organisation Guidelines of Ministry of Economy).<sup>15</sup>

In this context, the General Bureau of Standards within the Ministry of Economy (*Dirección General de Normas*, DGN) oversees the procedure for technical regulations (NOMs) and standards (NMXs). The Ministry is in charge of the Mexican Standardisation System which includes, inter alia, steering the process for the forward planning agenda for technical regulations and standards, and overseeing the adoption of international standards, as well as the 60-day consultation period in the Official Gazette, and the 5-year *ex post* reviews. In addition, the General Bureau of Standards is in charge of notifying new technical regulations to the WTO either through the standardisation process itself or the alert triggered by the quality checks implemented by COFEMER.

The LFMN also gives the responsibility to the Ministry of Economy (*Subsecretaría de Comercio Exterior*, SCE) to head the discussions of trade agreements, as well as to conclude mutual recognition agreements (MRAs). The same law mandates the Ministry of Economy to be in charge of Mexico’s representation in international bodies with an economic mandate and international standard-setting bodies such as ISO, IEC, COPANT, PASC, APEC, and Codex Alimentarius. Moreover, attributions for the Ministry include signing Memoranda of Understanding with foreign public and/or private standardisation entities to exchange information and technical skills.

According to the Organic Law of the Federal Public Administration (LOAPF), the **Ministry of Foreign Affairs** (*Secretaría de Relaciones Exteriores*, SRE) is in charge of foreign policy, as well as of promoting and ensuring co-ordination of all the actions carried out internationally, including international treaties and binding interinstitutional agreements. In addition, regulators and decentralised agencies must inform the SRE of all such agreements they intend to conclude, for the SRE to give an opinion for such agreements to the agency (LCT, art. 7).

There is no systematic oversight of the regulatory co-operation that sectoral agencies and ministries may choose to enter into with their peers in other jurisdictions unless the co-operation is done through an inter-institutional agreement with legally binding wording for Mexico; in which case, the agreement would need to be approved by the SRE. In practice, agencies tend to seek the opinion of the SRE before signature of agreements with foreign peers and/or international organisations, whether binding or not (see the detailed explanation in Chapter 3).

In summary, Table 1.4 highlights Mexico’s regulatory instruments, the related IRC requirements as part of good regulatory practices, as well as the legal provisions from where the requirements stem, and oversight and co-ordination bodies. Table 1.5 lists the legal or policy provisions that set the general framework for each of Mexico’s co-operation efforts, together with the institutions that may engage in such co-operation and the bodies that oversee, enforce or co-ordinate the IRC activities of Mexican authorities.

**Table 1.4. Summary of entry points for IRC in the quality management of Mexico’s domestic regulatory instruments**

Regulatory instrument	Good regulatory practices	Legal/policy provisions	Oversight, enforcement and/or co-ordination
<b>Primary laws</b>	Regulatory impact assessment	Federal Law of Administrative	COFEMER
Primary regulation initiated in the executive branch (9% of all primary laws)	Trade impacts (moderate or high impact RIAs)	Procedure - LFPA	
<b>Subordinate regulation</b>	International considerations	RIA Guidelines 2016	
Bylaws	Incorporation of international instruments		
Decrees	Consultation (open to foreign parties)	<i>Ex Post</i> RIA Agreement	
Ministerial agreement or notice	RIA process		
Circulars	Regulator on its own initiative (not systematic)		
Manuals, methodologies, calls, programmatic rules of operation	<i>Ex post</i> review (On regulator’s initiative and/ or if it did moderate or high impact RIA)		
<b>Technical regulation</b>	Forward Planning (PNN)	Federal Law of Administrative	COFEMER
Official Mexican Standards - NOM	Regulatory impact assessment (Same as above)	Procedure – LFPA	RIA procedure
	Consultation (open to foreign parties)	RIA Guidelines 2016	Consultation
	RIA process	and	Min. Economy Forward planning

Regulatory instrument	Good regulatory practices	Legal/policy provisions	Oversight, enforcement and/or co-ordination
	60-day O.G. WTO notification Within the CCNN Systematic <i>ex post</i> review (min. every 5 years) Consideration of international standards	Federal Law of Metrology and Standardisation – LFMN World Trade Organization – TBT and SPS agreements	Consultation Overall procedure WTO notification <i>Ex post</i> reviews
<b>Standards</b> Mexican Standards – NMX	Forward planning Consultation 60-day O.G. Within the ONN or Ministry of Economy	Federal Law of Metrology and Standardisation - LFMN	Min. Economy Forward planning Consultation

*Note:* The good regulatory practices are only reflected in case they have an IRC component.

*Source:* Author’s own elaboration.

**Table 1.5. Summary of Mexico’s international regulatory co-operation efforts**

Co-operation instrument	Legal provision/policy	Institutions involved	Oversight, enforcement and/or co-ordination
Memorandum of Understanding	Law on Celebration of Treaties (LCT)	Bodies from the Federal Public Administration	Ministry of Foreign Affairs AMEXCID COFEMER
High Level – Regulatory Co-operation Council	Terms of Reference of HLRCC, March 2011	<i>Line ministries</i> Ministry of Economy SAGARPA SEMARNAT SCT SSA CNH <i>Deconcentrated</i> COFEPRIS SENASICA CENAM	Min. Economy
North American Leaders’ Summit	N/A	N/A	Office of the Presidency of the Republic
International Organisations	N/A	Sectoral Agencies and Ministries	Ministry of Foreign Affairs AMEXCID Min. Economy
Trans-governmental Networks of Regulators	N/A	Sectoral Agencies and Ministries	N/A
Mutual Recognition Agreements	Law on Celebration of Treaties (LCT)	Sectoral Agencies and Ministries EMA	Min. Economy
Trade Agreements	Law on Celebration of Treaties (LCT)  Law on Foreign Trade (LCE) Federal Law of Administrative Procedure (LFPA)	Sectoral Agencies and Ministries	Min. Economy COFEMER

*Source:* Author’s own elaboration.

## Notes

<sup>1</sup> INEGI: <http://cuentame.inegi.org.mx/territorio/division/default.aspx?tema=T> (accessed 5 March 2018).

<sup>2</sup> This was formalised by Official Note 381 of the Presidency of the Chamber of Deputies. The agreement was ratified by Resolution 857 of 27 January 2011 signed by the Secretary-General of the Chamber of Deputies.

<sup>3</sup> At the time of writing of this report there was an ongoing discussion in Congress to adopt a General Law of Regulatory Improvement that was passed on 18 May 2018. This new law led to a change in the name of the Federal Commission for Regulatory Improvement (COFEMER) for the National Commission for Regulatory Improvement (CONAMER).

<sup>4</sup> Glossary from the Ministry of Interior:  
[www.sil.gobernacion.gob.mx/Glosario/definicionpop.php?ID=123](http://www.sil.gobernacion.gob.mx/Glosario/definicionpop.php?ID=123) (accessed 20 December 2017).

<sup>5</sup> Adapted from article 4 Federal Law of Administrative Procedure.

<sup>6</sup> Article 3, XI Federal Law of Metrology and Standardisation.

<sup>7</sup> Article 3, X Federal Law of Metrology and Standardisation.

<sup>8</sup> Data received from Ministry of Economy, June 2018.

<sup>9</sup> The figures concerning the production of regulation of each Ministry consider regulatory projects with compliance costs according to COFEMER's Annual Report 2016-2017.

<sup>10</sup> At the time of writing of this report there was an ongoing discussion in Congress to adopt a General Law of Regulatory Improvement that was passed on 18 May 2018. This new law maintained existing disciplines of regulatory improvement while replacing the Federal Law of Administrative Procedure.

<sup>11</sup> The LCE considers that regulations that may represent non-tariff barriers to imports for example regulations that ensure the supply of products for basic consumption, ensure compliance with Mexico's international obligations, regulate the commercialisation of specific products subject to restrictions, aim to preserve fauna and flora against the risk of extinction or ensure the conservation or exploitation of species, or regulate goods with a historic, artistic or archaeological value. (art.15).

<sup>12</sup> According to the Constitution of Mexico, "... all the treaties that are in accord with it that have been concluded and that are to be concluded by the President of the Republic with the approval of the Senate, are the Supreme Law of all the Union." In other words, international treaties that have been approved by the Senate and published in the official journal of the Federation become "supreme" laws, and their provisions prevail over national laws. An issuance of a specific domestic law is not necessary. Still, international treaties may be challenged if they are considered contrary to the Constitution, through an "action of unconstitutionality" (*acción de inconstitucionalidad*), either within thirty days after the publication of the treaty, or by 33% of Senators.

<sup>13</sup> Art. 63, Bylaw of the LFMN.

<sup>14</sup> According to the General Law of Regulatory Improvement passed on 18 May 2018, COFEMER's functions will include promoting co-operation and regulatory improvement at the international level.

<sup>15</sup> [www.dof.gob.mx/nota\\_detalle.php?codigo=5307431&fecha=19/07/2013](http://www.dof.gob.mx/nota_detalle.php?codigo=5307431&fecha=19/07/2013).

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