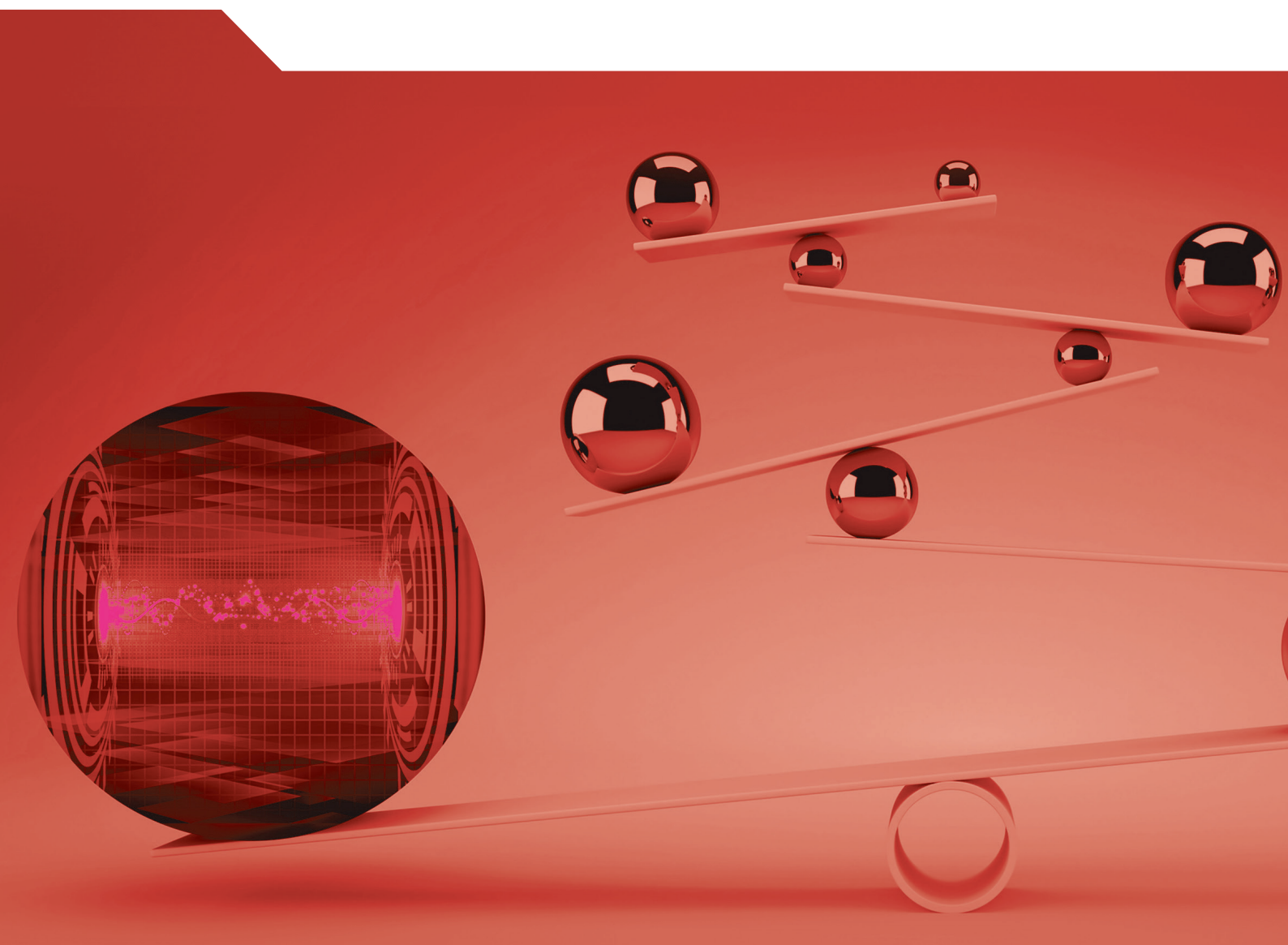




# Impact Update: Driving Performance of Mexico's Energy Regulators



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## Introduction

Regulators help ensure access to and quality of public utilities, facilitate investment and protect market neutrality. Good internal and external governance of regulators is crucial to ensure that they fulfil these functions and perform effectively. In this sense, the *2012 OECD Recommendation of the Council on Regulatory Policy and Governance* proposes that countries “develop a consistent policy covering the role and functions of regulatory agencies in order to provide greater confidence that regulatory decisions are made on an objective, impartial and consistent basis, without conflict of interest, bias or improper influence”. To support these goals, the OECD has developed Best Practice Principles on the Governance of Regulators (OECD, 2014) and a methodology to review and enhance regulatory agencies’ performance. Such reviews of Mexico’s Agency for Safety, Energy and Environment (*Agencia para la Seguridad, Energía y Ambiente*, ASEA), National Commission for Hydrocarbons (*Comisión Nacional de Hidrocarburos*, CNH) and Energy Regulatory Commission (*Comisión Reguladora de Energía*, CRE) were carried out in 2016-17. This document provides an update of the implementation of review recommendations by the regulatory agencies and points to some ways forward.

## Background

### *Reform of the Mexican energy sector 2013-14*

The government of Mexico launched a major structural reform in 2013 to modernise several key areas of the country's economy, including the energy sector. The reform restructured the oil and gas industry and opened access to the country's hydrocarbon resources to national and foreign, public and private entities, and further opened the electricity sector to private participation.

The reform aimed to increase sector investment and government revenue for the benefit of all Mexicans, as well as to make Mexico a global leader on environmental issues by embedding clean energy targets in legislation. In the power sector, it sought to place downward pressure on prices, facilitate the transition to renewable sources of energy and extend electricity coverage. Far-reaching modifications were made to the institutional framework with regard to sector regulation including the strengthening of existing regulators and the creation of new ones (Table 1).

Table 1. Overview of ASEA, CNH and CRE status and functions following the 2013 reform

Effect of reform	Institution	Date of creation	Legislation	Status	Functions
New	ASEA	2015	Hydrocarbons Act ASEA Act Further 9 federal laws	De-concentrated entity of SEMARNAT with technical and managerial independence	Ensuring industrial safety and environmental protection throughout the hydrocarbons sector
	CNH	2008			"Upstream regulator" in the hydrocarbons sector
Strengthened in status and functions and powers	CRE	1993	Hydrocarbons Act Law of the Co-ordinated Energy Regulators	Ministry-level entity with technical, operational and managerial autonomy	Electric power regulator and "mid- and downstream regulator" hydrocarbons regulator

Source: OECD (2017a), *Driving Performance of Mexico's Energy Regulators*, The Governance of Regulators, OECD Publishing, Paris, <https://doi.org/10.1787/9789264267848-en>.

The International Energy Agency estimated in 2016 that the cumulative gains in GDP from the Reform to 2040 would stand at more than \$1 trillion, compared with a case of non-action. (OECD/IEA, 2016).

***Performance assessment reviews of Mexico's energy regulators 2016-17***

A regulator's ability to operate effectively hinges on its governance arrangements. Strengthening governance helps reinforce the legitimacy and integrity of the regulator, supporting high level policy objectives that contribute to better outcomes for the economy and society at large.

The OECD supports regulators in these efforts through in-depth peer reviews that assess and strengthen their performance assessment processes and governance frameworks. Based on work carried out by the OECD Network of Economic Regulators (NER), the Performance Assessment Framework for Economic Regulators (PAFER) builds on recognising the importance of "assessing how a regulator is directed, controlled, resourced and held to account in order to improve the overall effectiveness of regulators" (OECD, 2014a). The reviews propose a series of recommendations to support organisational change in favour of enhanced performance by the regulatory agencies.

In 2016, Mexico's energy regulators requested that the OECD carry out parallel performance reviews of the three agencies. Work was carried out in two phases: a first phase dedicated to the external governance of the sector (OECD, 2017a) and second phase dedicated to the separate internal governance of the three agencies (OECD, 2017b; OECD, 2017c; OECD, 2017d).

The review of external governance noted the need to enhance institutions and processes that, upstream, strengthen role clarity, co-ordination and planning in a new and complex institutional context, and, downstream, instate accountability for agreed objectives and results. Regulators play an important and increasingly complex role in the delivery of regulatory regimes to achieve the best outcomes for society.

The parallel reviews of ASEA, CNH and CRE found that it is critical to enhance internal governance systems across the three regulators so that they are fully equipped to support the implementation of the Energy Reform. The reviews put forth a series of recommendations to activate an integrated system of energy regulators and support organisational change within the three agencies.

Together, the four reviews constitute a comprehensive body of work on the regulatory governance of Mexico's energy sector and propose important recommendations to bolster future work of the regulators at a critical moment in the implementation of the country's 2013 Energy Reform.

## Impact update: external governance

### *Review findings: external governance*

The reviews conclude that the sector regulators have successfully navigated the challenges linked to new functions and powers, as well as to interacting with a growing number of public and private sector stakeholders. As the implementation of the reform progresses, there is a clear and urgent need to make the new governance infrastructure more effective. In particular, the review underlines the need for transparency and clarity with regard to roles and responsibilities of regulators whose functions have been modified as a result of the reform. These new roles and responsibilities should be communicated to all stakeholders and implemented through working plans complete with targets, with the aim of minimising overlaps. The review also recommends more structured co-ordination mechanisms among the growing number of federal entities in the energy sector. Effective co-ordination will also need to be complemented by active accountability mechanisms between the regulators and their constituents, in particular with Congress.

While the reform itself included the creation of the Co-ordination Council for the Energy Sector (*Consejo de Coordinación del Sector Energético*, CCSE) under the leadership of the Ministry of Energy, the CCSE did not include ASEA as one of its permanent members and its objectives mainly focus on information sharing between actors. Moreover, meetings could only be convened by the Ministry. As a result, the reviews identify the opportunity of creating a co-ordination body under the joint leadership and ownership of the energy regulators that could include among its objectives operational collaboration and the implementation of available synergies for organisational performance and effectiveness.

### *What happened?*

The context described above highlighted the need for heightened co-ordination between the energy regulators for the effective implementation of the Energy Reform. Following the recognition of this need, ASEA, CNH and CRE made effective the Framework Agreement of the Regulatory Co-operation Group in April 2017. The Energy Regulators Group (ERG) (*Sistema de Reguladores del Sector Energético*, SRSE) was officially created in September of the same year, at its first strategic planning workshop. The ERG constitutes an institutional approach to improving co-ordination. It proposes to be a permanent forum for exchange and implementation of joint work whose mission is to ‘regulate and supervise in a reliable and coordinated manner the activities of the energy sector, to encourage productive investment and its efficient and sustainable performance in Mexico’ (CNH, ASEA, CRE, 2018). The September 2017 workshop also produced the ERG Strategic Plan 2018-2022 that is available online and that has been in turn translated into a Work Programme comprised of 12 priority initiatives (Figure 1).

The Strategic Plan 2018-2022 lays out the following objectives:

- *Strategic objective 1:* Facilitate the development of the energy sector
- *Strategic objective 2:* Offer long-term regulatory certainty to the energy sector



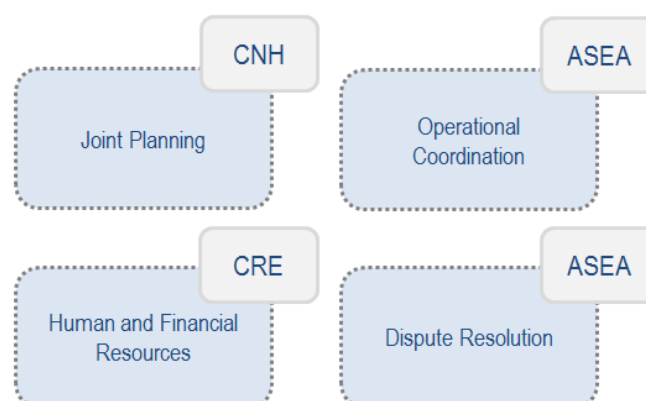
- *Strategic objective 3*: Meet the needs of the sector in a coordinated manner through systematic operations
- *Strategic objective 4*: Promote cutting-edge financial and technical capacity permitting the operation of the system
- *Strategic objective 5*: Be recognised as a benchmark by society as well as national and international markets

**Figure 1. ERG's strategic objectives and initiatives**



Source: (CNH, ASEA, CRE, 2018).

The ERG meets every two months under ordinary sessions and is organised around a President (President Commissioner of CNH/CRE or Executive Director of ASEA), Technical Secretariat (Planning Directors of ASEA, CNH or CRE) and Members (governing body of CNH/CRE and Executive Director of ASEA) with defined roles and functions for each party. Its Presidency rotates every six months and the Technical Secretariat is that of the presiding institution. The ERG comprises working groups with assigned responsibilities by themes (see Figure 2). The working groups can create sub-working groups for any particular issue that may arise and had not been foreseen in one of the four pre-established working groups.

**Figure 2. Working groups and agency responsible**

Source: (CNH, ASEA, CRE, 2018).

Since its creation, the ERG has provided a forum for the delivery of initiatives that aim to reduce burden on the regulated industry, harmonise regulatory approaches and enhance governance arrangements of the three regulators. With the ERG, Mexico's energy regulators have effectively established an explicit institutional co-ordination mechanism. The regulators have empowered themselves to do so, by establishing the ERG following a methodology of i) carrying out a diagnostic, ii) defining a mission, vision and pillars of work, iii) establishing the objectives and strategic initiatives, iv) communicating the outcome. This formal and transparent process has been key in providing legitimacy to the ERG as well as in demarcating it from the CCSE, a higher-level co-ordination body under the leadership of the Ministry of Energy.

Among its most notable initiatives has been the launch of the Energy Sector Co-ordinated Assistance Office (*Oficina de Asistencia Coordinada del Sector Energético*, ODAC) in February 2018 (initiative 3.3 of the ERG Strategic Framework 2018-22). Many licensing and administrative procedures in the energy sector have since the 2013-14 reform required regulated entities to apply to and communicate with at least two regulatory authorities. This in some cases increased the burden on the regulated industry, duplicating efforts and providing unclear information on procedures and schedules to industry. ODAC aims to harmonise information and orient regulated entities in six business areas that involved more than one regulator: approval of exploration plans, approval of development plans for extraction, authorisation for drilling, sale of Liquefied Petroleum Gas to the public, sale of petroleum products to the public, and natural gas transport via pipeline. Since its creation, as of August 2018, roadmaps of the six business areas are available online on the ODAC microsite<sup>1</sup>. Operators are able to access information about the status of their procedures via this site. In its first four months of operations (as of June 2018) the site had received over 1 100 visits. It is intended that this one-stop-shop that streamlines information and procedures for regulated entities will be extended to cover other business areas going forward, further reducing burden on industry and harmonising regulatory activities in the energy sector. This positive trend is taken further by the ERG in other areas linked to improving the impact of regulatory activities, such as in regulatory enforcement and inspections, as well as the drafting of joint guidelines for ex-post evaluation.

<sup>1</sup> <https://cnh.gob.mx/Informacion/odac.aspx> (accessed 7 September 2018).

Achievements in other areas include, for example, the discovery that existing safety regulation did not cover petrol stations destined for non-commercial use (i.e. truck or bus stations) that CRE would license; or, there was no unified definition of multimodal retail station (i.e. retail of petroleum products and of natural gas). Joint work within the ERG between CRE and ASEA led to the publication of technical regulation for self-consumption stations and a harmonised definition of multimodal stations.

Finally, the regulators have established a joint Internship programme and staff exchanges that have contributed to staff development and have benefited knowledge sharing and unification of regulatory approaches and activities across the three authorities.

## Impact update: Agency for Safety, Energy and Environment (ASEA)

ASEA is a multi-disciplinary regulator. Its mission is to oversee industrial and operational safety and environmental protection. Its responsibilities cover the entire hydrocarbons value chain, from upstream exploration and extraction to midstream and downstream transformation, production and storage, and all the way to distribution and retail at petrol station level.

Established in 2015 as part of the Energy Reform, ASEA operates in a complex legal setting, referring to 11 federal laws and attached to the Ministry of Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales*, SEMARNAT), relying on the Ministry for financial and administrative management. ASEA has navigated initial challenges linked to its operationalisation admirably, notably by successfully absorbing functions from a variety of actors, issuing regulations for previously unregulated areas, and defining and implementing robust management processes. The consolidation of these results and processes will be crucial for the successful implementation of the Energy Reform in the coming years.

### Role and objectives

#### *Review findings*

ASEA is a deconcentrated agency of SEMARNAT, which sets it apart significantly from the other two energy regulators, CNH and CRE, which have ministry level autonomy. As such, ASEA is subject to SEMARNAT processes and the agency intervenes in a sector where its parent ministry has limited technical experience.

ASEA objectives are clearly defined in law. However, it operates in a more complex legal framework than its peers, due to the transfer of powers and functions from a variety of federal and state actors following its creation in 2015. Pursuant to its multidisciplinary mandate, ASEA is called upon to co-ordinate with a wide variety of stakeholders. These characteristics make it essential for ASEA to be a fully-fledged member of the integrated energy regulators' system. ASEA has made considerable advances in defining its strategic objectives and the accompanying performance assessment system in its first years of operations. A more broad and medium- to long-term vision would strengthen this framework.

#### *What happened?*

To tackle the complex legal framework in which it operates, ASEA launched in January 2017 the preparation of its *reglamento unificado*. From March to June, the agency engaged in discussions with its main stakeholders (SEMARNAT, SENER, CRE, CNH, as well as the regulated sector) around a draft text, which it finalised for presentation in July 2017. This proposal was presented to the Legal Counsel of the Federal Executive (*Consejería jurídica del Ejecutivo Federal*), that reviews and validates decrees submitted for the consideration of the President of the Republic.

The Legal Counsel decided that the instrument would not remain as one legal text, but would be separated in four, given the large variety of technical areas in touched upon. These four areas are: *Reglamento de la Ley General del Equilibrio Ecológico y la Protección el Ambiente en Materia de Evaluación de Impacto Ambiental* (LGEEPA), modifications to *Reglamento de la Ley General para la Prevención y gestión Integral de los residuos* (RLGPGIR), modifications to the *Reglamento de la Ley general de Desarrollo Forestal Sustentable* (RLGDFS), and the *Disposiciones Administrativas de Carácter General* (DACG). This solution would maintain legal specialisation and avoid the creation of a miscellaneous law. ASEA is currently working with the legal office of SEMARNAT in moving ahead with implementing the Legal Counsel's decision.

Since the review, ASEA also put forward a draft law that sought to transform its external and internal governance that would have increased its level of technical, managerial and operational autonomy. This law was debated and passed in the lower Chamber of the Mexican Congress, but it was not debated in the upper house (Senate).

Finally, ASEA has been an equal partner in the establishment of the Energy Regulators Group and the implementation of its activities, supporting regulatory harmonisation of the energy sector with CNH and CRE.

These advances underlines the need for ASEA to continue strengthening its independence and robustness of its processes in the areas underneath its direct control.

## Input

### *Review findings*

By law, ASEA is funded by the federal budget and its own income. In reality, the agency does not yet receive funds from regulated entities and has not yet set up the trust fund that would receive these resources. It is intended that the Agency will gradually reach financial autonomy. As a deconcentrated agency of SEMARNAT, ASEA is governed by SEMARNAT rules and procedures for managing financial and human resources and for procurement. These processes can carry a high transaction cost and are seen to undermine effective and autonomous operations.

Regulators are faced with the challenge of attracting and retaining qualified staff, a task that will grow more difficult as oil prices recover and the development of the industry in Mexico picks up speed. ASEA has explored and implemented strategies to attract and retain staff in a challenging context due to competition from the private sector and lack of flexibility within the federal system. These efforts are worth pursuing in collaboration with CNH and CRE.

### *What happened?*

ASEA's trust fund – necessary for the regulator to claim income from the regulated entities – was opened in the second semester of 2017. The agency also mapped a projection of its income in five regulatory activities from 2016 to 2024. It is projected that income from the sector would cover 20% of the Agency's overall budget in 2018, 70% in 2019 and 100% in 2020. However, the management and access to resources in the trust fund remains cumbersome, requiring approval of a process presented by SEMARNAT.

ASEA has also continued to implement further measures to attract staff beyond salaries, from converting positions from temporary to fixed contracts, putting in place more flexible working arrangements and delivering training in a number of areas.

## Process

### *Review findings*

The Executive Director (ED) of ASEA is nominated by the Minister of SEMARNAT and appointed by the President of the Republic. Most decisions linked to the technical work and management of the Agency are made by the ED. Like all federal entities, ASEA is accountable to Congress but presents its annual reports to the Technical Council led by the Minister. ASEA can be called to appear in Congress, but hearings do not happen systematically.

ASEA has set safeguards to avoid conflict of interest through a code of conduct that strictly regulates interaction with regulated entities. Unlike CNH and CRE, ASEA's code does not institute a supervisory mechanism. Moreover, the Agency is audited as any subsidiary or deconcentrated entity of the ministry and is supervised by SEMARNAT's Internal Audit Office (*Órgano interno de control*, OIC) which does not reflect its critical role in the implementation of the Energy Reform.

ASEA follows federal requirements for stakeholder engagement and has also set up early-stage consultation mechanisms. It is expected that the *reglamento unificado* will improve the overall quality of ASEA's regulatory activities.

### *What happened?*

ASEA has continued to define its internal process-driven management model, whereby the value chain of decisions and actions is defined and digitised. This system aims to institute a formal and systematic approach and understanding of the agency's organisational processes.

Moreover, the standardised processes and criteria have led to the definition of the ASEA Digital Platform that constitutes an online portal where regulated entities can start their procedures and follow them through until the end (many administrative procedures had to be carried out in person or in paper initially). To date, 20 administrative procedures have been digitised, reducing burden on the regulated entity and decreasing necessary resources for the regulator. This tool also contributes to instating certainty in the procedures and transparency of ASEA regulatory activities.

Moreover, ASEA has implemented recommendations linked to transparency and outreach. For example, ASEA publishes an Institutional Newsletter and news updates on projects that are under consideration by the agency and those that have been resolved, available online.<sup>2</sup>

Finally, in February 2017 ASEA launched its electronic filing system, that allows the generation of the unique registry key (*Clave Unica de Registro del Regulador*, CURR) as well as the registration and monitoring of regulated entities' Safety and Environmental Management Systems (SEMS).

<sup>2</sup> [https://www.gob.mx/cms/uploads/attachment/file/396408/bolet\\_n\\_notificaciones\\_octubre\\_1\\_de\\_2018.pdf](https://www.gob.mx/cms/uploads/attachment/file/396408/bolet_n_notificaciones_octubre_1_de_2018.pdf).

## Output and outcome

### *Review findings*

ASEA has recognised the importance of assessing its own performance and the Agency's leadership team has engaged in an exercise to set strategic objectives as well as indicators to monitor their implementation since 2015. To consolidate these advances, the framework should be reviewed to present an appropriate balance between input and process (internal functioning) and output and outcome (sector performance) indicators, so as to give medium/long-term visibility to the Agency. A wealth of data will be provided by the industry as of 2018, pursuant to SEMS regulation. ASEA needs to ensure that it has adequate skills and resources to process and analyse the data that will be sent by regulated entities to adequately report on sector performance.

### *What happened?*

In order to better assess and report on its own performance, the regulator has analysed its Strategic Framework – including indicators used – according to the Input-Process-Output-Outcome methodology. This has led to the definition performance indicators linked to the monitoring of strategic initiatives (Table 2).

The agency is also developing digitalised online systems to facilitate reporting by regulated entities.

**Table 2. ASEA Strategic objectives, initiatives and indicators**

Strategic objective	Strategic initiative	Indicator
Achieve financial sustainability	To manage sufficient and timely budget (internal-use of expenditures stage)	Budget ceiling Total requirements. Total of timely budget requirements.
	To optimise revenues.	Number of existing, obsolete and new DPA's (optimal DPA's)
	To manage sufficient and timely budget (internal-use of expenditures stage)	Number of exercised requirements/number of budgeted requirements Number of reassigned requirements/number of budgeted requirements
	To optimise revenues.	Number of financed DPA's / total affordable DPA's
	To manage sufficient and timely budget (internal-use of expenditures stage)	Requested budget/ obtained budget Requests out of budget/obtained budget
	To optimise revenues.	Total DPA's generating income/ number of optimal DPA's
	To manage sufficient and timely budget (internal-use of expenditures stage)	Initiatives with assigned budget / Initiatives which received budget
	To optimise revenues.	Amount of generated revenue/Authorised budget
Stabilise the supervision and inspection processes using a risk-based approach.	Execute risk-based supervision and inspection programme.	Programme critical gaps / Total gaps
	Implement supervision strategy of the Verification and External Experts Units	External Experts Participation Needs / External Experts Census Participation of external experts / Approved, authorised and accredited external experts
	Execute risk-based supervision and inspection programme.	Percentage of progress in the Gap Closure Programme
	Implement supervision strategy of the Verification and External Experts Units	Number of verified requirements/number of established requirements. DAG's, evaluated NOM (PEC's) / DAG's, applicable NOM's
	Execute risk-based supervision and inspection programme.	Closed and verified gaps by ASEA
	Implement supervision strategy of the Verification and External Experts Units	Achieved programme/ real programme Observations or addressed corrective measures / No Observations or detected corrective measures
	Execute risk-based supervision and inspection programme.	Frequency index, index of unscheduled stoppages, compliance with inspection and testing programme, environmental events



Strategic objective	Strategic initiative	Indicator
	Implement supervision strategy of the Verification and External Experts Units	Number of detected observations/ number of observations referenced to the system requirements Unscheduled stoppages / scheduled stoppages. Real frequency index / Set frequency index (goal). Severity index / established severity index (goal).
Systematic management	Stabilise management	Priority procedures / Procedures
	Standardise technical and legal criteria for complex procedures	
	External experts to manage regulations	Board prioritised by Normative Document
	External experts' recruitment to manage regulations	
	Stabilise management	Percentage of progress of the program / priority procedures
	Standardise technical and legal criteria for complex procedures	
	External experts to manage regulations	Percentage of real progress / Percentage of expected progress
	External experts' recruitment to manage regulations	
	Stabilise management	Operational rules (standardised criteria) / issued criteria
	Standardise technical and legal criteria for complex procedures	
	External experts to manage regulations	Number of external experts / Defined vs diagnosis
	External experts' recruitment to manage regulations	
Efficient talent management	Stabilise management	Standardised dossiers / Total dossiers
	Standardise technical and legal criteria for complex procedures	
	External experts to manage regulations	Market coverage / required by the market
	External experts' recruitment to manage regulations	
	Strategy to develop managerial and technical competences	Percentage of employees managerial gaps Percentage of technical competences gaps.
	ASEA's individual performance evaluation model	Percentage of progress of the model stages
	Strategy to develop managerial and technical competences	% of trained officials
	SEA's individual performance evaluation model	Percentage of evaluated employees. Average of the grades of the workers by strata: operative, tactical and directive.
Operate based on a legal policy	Strategy to develop managerial and technical competences	Difference in managerial and technical competences compared to the previous period.
	ASEA's individual performance evaluation model	Average of the grades of the workers by strata: operative, tactical and directive.
	Strategy to develop managerial and technical competences	Difference in performance compared to the previous period in managerial competences and individual objectives.
	ASEA's individual performance evaluation model	Difference of the Performance Index of the previous and current period
	To reduce litigation	Appealed administrative decisions Popular claims Non-judicial requirements
	To provide effective and timely legal services	Requests for: Opinion Criteria Notification Sanctioning administrative procedures
	To reduce litigation	-Appeals (Recursos de revisión, Actos de autoridad recurridos) -Popular claims (Denuncias Populares) - Reports to resolve judicial and non-judicial requirements.
	To provide effective and timely legal services	Opinions pending to be issued/requested opinions. Criteria pending to be issued/requested criteria. Notifications being reviewed/requested notifications. Initiated administrative procedures/requested merits review.
	To reduce litigation	Resolved appeals/appeals pending to be resolved Resolved popular claims/popular claims pending to be resolved. Filed non-judicial reports/non-judicial reports pending to be integrated.
	To provide effective and timely legal services	Opinions issued in a time and form (define USER) / Requested opinions Criteria issued in time and form (define USER) / Requested criteria Valid notifications / requested notifications Resolved sanctioning administrative procedures/ Requested



Strategic objective	Strategic initiative	Indicator
	To reduce litigation	Administrative appeals in judicial review/resolutions of administrative appeals Popular claims in judicial review/resolutions of popular claims Non-judicial reports in judicial review/total non-judicial reports.
	To provide effective and timely legal services	Opinions being used/issued opinions. Criteria being used/issued criteria. Annulled notifications/valid notifications Appealed sanctioning procedures/resolved
Plan based on risk management	Development of business intelligence to identify the main gaps related to risks in regulations, management and inspections.	For the construction of boards: % of viable boards Information available / Information required % of Construction progress Actual progress / Planned progress For the diagnosis in the operation: % of critical gaps Identification of critical gaps /identified gaps
	Implement the strategic planning process	Process validated by the Steering Group * Binary
	Development of business intelligence to identify the main gaps related to risks in regulations, management and inspections.	% of initiatives from critical gaps Proposed initiatives/identified critical gaps
	Implement the strategic planning process	Execution according to design: % of Execution progress Actual progress / planned progress
	Development of business intelligence to identify the main gaps related to risks in regulations, management and inspections.	% of initiatives in execution Initiatives in projects or programmes / proposed initiatives
	Implement the strategic planning process	For strategic programme and operational plan: of implementation Implemented rules / established rules
	Development of business intelligence to identify the main gaps related to risks in regulations, management and inspections.	% of addressed gaps Closed critical gaps / identified critical gaps
	Implement the strategic planning process	For each level of maturity defined: % implementation of the level Executed criteria / established criteria
Better positioning of the agency	Identify and manage the long-term and medium-term objectives with strategic stakeholders and key topics for the agency's better positioning.	Validated work programmes / Work programmes needed
	Administration and reaction to key conjunctures	Number of key identified conjunctures.
	Identify and manage the long-term and medium-term objectives with strategic stakeholders and key topics for the agency's better positioning.	Progress of work programmes
	Administration and reaction to key conjunctures	Percentage of progress and resolution of conjunctural problems
	Identify and manage the long-term and medium-term objectives with strategic stakeholders and key topics for the agency's better positioning.	Work Programmes attended / validated programmes
	Administration and reaction to key conjunctures	Addressed conjunctures determined as improvement/ Identified conjunctures
	Identify and manage the long-term and medium-term objectives with strategic stakeholders and key topics for the agency's better positioning.	Changes in the "Result of the focused Perception Study"
	Administration and reaction to key conjunctures	mitigated conjuncture /identified conjuncture
Regulate for risk management	Develop regulations based on risk to implement the reform	Critical issues in programme / Critical issues (programme regulations)
	Improve the existing strategic regulations under the ASEA model	Strategic topics in programme / Strategic issues
	Develop regulations based on risk to implement the reform	Progress percentage (programme /plan)
	Improve the existing strategic regulations under the ASEA model	Progress percentage (progress / plan)
	Develop regulations based on risk to implement the reform	Number of publications in DOF / Necessary.
	Improve the existing strategic regulations under the ASEA model	Publications DOF / scheduled publications

Strategic objective	Strategic initiative	Indicator
	Develop regulations based on risk to implement the reform	Regulations in force (published PEC, available management tools) / Published
	Improve the existing strategic regulations under the ASEA model	Regulations in force / Programme for the qualification of complementary tools (published, available instruments, etc.)
Operate based on the "Institutional Architecture" model	Implement priority processes derived from planning	Number of priority processes to be developed and identified from planning
	Create priority technological solutions related to the digital platform of the strategic plan.	Number of processes to be automated.
	Offer a timely service of high availability of technological infrastructure	Approved PETIC
	Implement priority processes derived from planning	Priority processes in operation / Priority processes identified
	Create priority technological solutions related to the digital platform of the strategic plan.	Processes in development for automation / Processes to be automated
	Offer a timely services of high availability of technological infrastructure	% of progress of PETIC implementation
	Implement priority processes derived from planning	Priority processes in operation / Priority processes identified
	Create priority technological solutions related to the digital platform of the strategic plan.	Automated processes in operation/ processes to be automated
	Offer a timely services of high availability of technological infrastructure	% of operating technological solutions/ % of scheduled technological solutions
	Implement priority processes derived from planning	(Executed criteria / established criteria ) *100
	Create priority technological solutions related to the digital platform of the strategic plan.	Achieved improvement (time, budget)/objective improvement (time, budget) medium term? % of digitalisation ASEA (long term)
	Offer a timely services of high availability of technological infrastructure	Customer satisfaction survey

Source: Information provided by ASEA, 2018.

## Impact update: National Hydrocarbons Commission (CNH)

CNH regulates the “upstream sector” of hydrocarbons by regulating, monitoring and evaluating the exploration and extraction of hydrocarbons in Mexico. Established in 2008, the functions, powers and status of CNH were strengthened by the 2013 Energy Reform. It is now a ministerial-level entity governed by two federal laws, which establish technical, operational, and managerial autonomy for the regulator.

The remit of the CNH was substantially broadened by the Energy Reform. CNH has successfully traversed the early phases of implementation of the reform and is seen as a professional and trusted regulator. It is urgent to build on this trust and track record to enhance internal processes that can further support the performance of CNH and fully reap the benefits of its formal autonomy.

### Role and objectives

#### *Review findings*

Entrusted with the responsibility of running a novel process for Mexico – the auctioning of the access to oil resources – CNH has successfully managed the launch of the first round of auctions. The professionalism in running this process, a conscious effort to be transparent and the development very early on of a code of ethics against undue influence from industry and government have created a capital of credibility that needs to now be invested into building internal processes supporting performance over time. This should start with the development of a comprehensive strategy to steer CNH’s activities.

CNH has started a vision/planning exercise that has led to the identification of six core strategic objectives, stemming from the CNH’s enabling legislation, as well as general, specific and operational actions to be implemented over a one-year horizon. However, there is not yet a medium-term operational plan to set priorities for the achievement of the core strategic objectives.

Administrative and operational demands related to CNH’s new tasks and responsibilities have been particularly intense for staff, leaving limited space to consolidate and focus on more analytical and strategic tasks like deciding which oil fields are to be auctioned, or monitoring exploration and extraction entitlements and contracts.

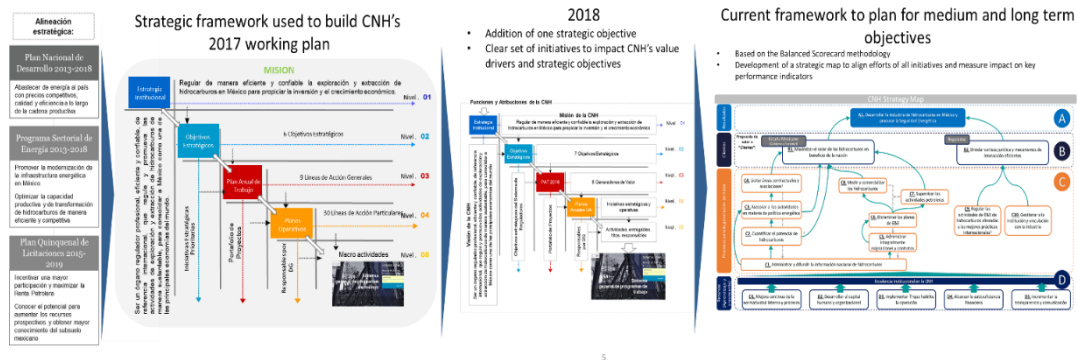
#### *What happened?*

The CNH has sought to strengthen its strategic planning model via several initiatives. A series of strategic and tactical planning workshops were carried out with Commissioners, unit holders and general managers for the elaboration of the 2018 Programme of Work (*Programa Annual de Trabajo*, PAT). These workshops analysed the Commission's annual and future context and agreed to add a sixth strategic objective to the five that had been previously agreed: “To contribute to the development of the hydrocarbon industry in Mexico”.<sup>3</sup>

<sup>3</sup> The initial five SOs of CNH were: i) Promote knowledge of the subsoil and evaluate oil potential; ii) Increase response capacity, efficiency and transparency of the bidding process for hydrocarbon

CNH has also introduced the Balanced Scorecard methodology to co-ordinate the administrative Units and serve as foundation for the elaboration of the Commission's PAT. The Strategic Map of CNH, shown in Figure 3, based on this methodology, lays out 17 objectives linked to the portfolio of initiatives. The portfolio of initiatives is aligned with the legal framework, the National Development Plan, the Sectorial Energy Program 2013 – 2018, and the strategic Plan 2018 – 2022 of the system of regulators of the energy Sector (SRSE) formed by the CNH, CRE and ASEA.

**Figure 3. Evolution of CNH strategic planning model**



Source: Information provided by CNH, 2018.

## Input

### Review findings

The CNH is funded through the federal budget and fees, taxes and duties. CNH's own income has come from the most part from payments for licences of information uses for exploration and extraction to the regulated sector. The Energy Reform foresees that by 2019 CNH should be fully funded through fees, taxes and duties from the regulated sector.

This income is paid into a trust fund. The CNH cannot make use of the trust fund until the third month of the year and needs government approval for this to happen, which represents a high transaction cost and undermines effective and autonomous operations. The lack of a medium to long-term Strategic Plan and performance evaluation also hinders CNH's capacity to prioritise activities in the most efficient manner.

There is currently no established recruiting mechanism to fill in vacancies and little has been done to put in place such a career service. This can create a perception of unfairness and undermine the capacity of CNH to attract and retain talent over time. The CNH also needs more autonomy and flexibility to attract and retain talent, given the competition with the regulated sector on talent and the constraint of the federal salary scale.

exploration and extraction contracts; iii) Have a robust and transparent system to manage entitlements and contracts; iv) Have efficient regulation, adhering to international best practices and verifying their compliance; v) Support the correct and most convenient choice of (exploration and extraction) areas, the efficient management of biddings, entitlements and contracts, and the efficient evaluation of exploration and extraction plans to foster the increase of production and reserves; vi) Consolidate the entity with efficient, systematised processes and a defined organisational structure.

***What happened?***

CNH has carried out work to set up a Professional Career Service throughout 2017-18, including a strategic consultation workshop on an advanced proposal with all Commissioners. Based on feedback received in this exercise, the Regulation and Consultation Directorate has finalised the framework which is being launched in October 2018<sup>4</sup>. It includes, among others, transparent and predictable recruitment mechanisms and a career development programme for current and new employees.

**Process***Review findings*

CNH is headed by a governing council made up of seven Commissioners of whom one serves as the President Commissioner. The President of the Republic presents a shortlist of three candidates for each Commissioner position and the Senate makes the final appointment following a hearing.

The President Commissioner acts both as Chairman of the governing council and as the chief executive officer. There is no designated person acting as operational co-ordinator. Cumulating these functions without the support of such a co-ordinator burdens the agenda of the President Commissioner with operational matters, leaving a narrow margin for strategic thinking and representation.

As all federal entities, the CNH is accountable to Congress and Audit Institutions. However, there is no regular reporting and interaction with relevant bodies in Congress.

The CNH has set safeguards to avoid conflict of interest such as an internal Code of Conduct and the issuance of a yearly declaration of conflict of interest from Commissioners, Heads of Unit and General Directors.

The regulatory process builds on internal and external quality control mechanisms, including stakeholder engagement and regulatory impact assessment. However, some of the internal mechanisms are either ad hoc or still in the early stages of development.

***What happened?***

CNH has created the position of a Chief Operations Officer (COO) who oversees the regulator's daily operations and co-ordinates its professional units. These required revisions of CNH internal rules and by laws, following benchmarking with international regulatory bodies to identify gaps and determine functions and resources for the COO office. These revisions were approved by the Board and published in the Official Gazette in July. The support provided by the COO to the President Commissioner and the Board have increased time and technical information available for strategic decision making by the Board. Concretely, in the first 10 months of 2018, the Board has met 72 times and approved 131 resolutions, compared with 66 and 104 respectively for the same period in 2017.

<sup>4</sup> [http://www.dof.gob.mx/nota\\_detalle.php?codigo=5535725&fecha=23/08/2018](http://www.dof.gob.mx/nota_detalle.php?codigo=5535725&fecha=23/08/2018) (accessed 15 November 2018).

Building on its proactive initiatives in favour of transparency and integrity in the regulator's decisions and engagement with industry, CNH has implemented a series of new activities and strategies to continue being on the forefront. For example, CNH now ensures that information on the process of each bidding round is public and online on a recently revamped website—contracts, annexes, the name of companies involved at each stage of the bidding process. Progress in the bids can now be tracked by external parties. Contracts with foreign oil companies have also been made fully public, as have companies' investment plans.

CNH has signed a collaboration agreement with the Executive Secretariat of Mexico's National Anti-Corruption Body (SESNA). The agreement was presented to public officials and the civil society in March 2018 and is available online<sup>5</sup>. It will prompt the implementation of joint activities for training, exchange of information and dissemination of best practices that allow for greater accountability and combat acts of corruption. The agreement also promotes the construction of additional tools for the identification of possible conflicts of interest, promotion of transparency and accountability, which will allow CNH to continue leading in the development of further measures in favour of integrity.

CNH has also been proactive in strengthening its link with Congress, for example by soliciting an appearance in front of the Special Committee for Monitoring the Co-ordinated Energy Regulators in April 2017 to present its roles, functions and scope, as well as report on the historical information transfer process to Pemex and the Mexican Petroleum Institute to CNH.

Furthermore, CNH has strengthened its engagement and transparency commitment with regard to civil society and academia, by creating the Citizen Participation Group and agreeing to comply to jointly agreed information requirements on Exploration and Extraction contracts, entitlements and compliance with exploration plans. CNH also now participates in NRG's initiative to evaluate Entitlements, Contracts and Implementation of the bidding process in terms of the Extractive Industries Transparency Initiative (EITI) standard or to develop Open Government Partnership (OGP) national action plans and in November, CNH accepts EITI's invitation to lead the international network for contract transparency. In this area, CNH has also published the "CNH best practices in terms of transparency, accountability and combating corruption". This handbook aims to establish the general policy on transparency, accountability and combating corruption by the CNH.

Finally, to address the ad hoc nature of internal control mechanisms for regulatory quality, CNH has established an internal regulation development and evaluation group (*Grupo de Desarrollo y Evaluación de Normas*), a cross-unit team that provides a feedback mechanism and channels for the structure and definition of rules and regulations issued by CNH. So far, the Group has published a series of 6 regulations in order to shorten the time and the regulatory burdens and improved their quality overall.

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<sup>5</sup> [https://www.gob.mx/cms/uploads/attachment/file/308754/Convenio\\_CNH-SESNA\\_14\\_marzo\\_2018\\_1.pdf](https://www.gob.mx/cms/uploads/attachment/file/308754/Convenio_CNH-SESNA_14_marzo_2018_1.pdf) (accessed 15 November 2018).

## Output and outcome

### *Review findings*

The CNH hosts the National Centre for Hydrocarbon Information (*Centro Nacional de Información de Hidrocarburos*, CNIH) that receives all data provided by the regulated sector, including *Petróleos Mexicanos* (PEMEX). The CNIH has developed a dedicated platform where information and data regarding the exploration and extraction of hydrocarbons can be accessed transparently by all ([portal.cnih.cnh.gob.mx](http://portal.cnih.cnh.gob.mx)).

In 2016, the CNH carried out a process to define their vision and set high-level objectives that would allow monitoring its performance. However, the planning exercise did not produce granularity on timelines, milestones or budget requirements to attain the regulator's six core objectives.

### *What happened?*

During 2018, CNH carried out quarterly strategy progress meetings to analyse the status of the portfolio of initiatives and make the appropriate adjustments through the implementation of preventive and corrective actions. The Commission has also developed an information repository (Work plan management system) to monitor the progress of the initiatives, which is updated monthly.



## Impact update: Energy Regulatory Commission (CRE)

CRE regulates the “midstream and downstream” sectors of hydrocarbons, as well as the entire electric power supply chain. It also holds responsibilities linked to the regulation of clean and renewable energies. Created in 1993, the functions, powers and status of CRE were strengthened by the 2013 Energy Reform. Like CNH, it is now a ministerial-level entity governed by two streamlined federal laws, which establish technical, operational, and managerial autonomy for the regulator. Following the reform that substantially increased CRE’s responsibilities, CRE has been able to swiftly realign its organisation and processes to focus on implementing key aspects of the reform. Moving forward, it is paramount that CRE also place more emphasis on internal processes such as planning, resources and performance management in order to ensure its effective working over the long-term.

### Role and objectives

#### *Review findings*

The 2013 Energy Reform created additional regulatory responsibilities for CRE in the hydrocarbons and electricity sectors. The reform also provided CRE with a new status as a co-ordinated energy regulator with technical, operational and managerial autonomy and the ability to generate income to carry out its regulatory responsibilities. Fully occupied with implementing the reform, CRE had not yet developed a strategic plan. Greater emphasis will be required on setting and implementing strategic objectives, while pursuing the implementation of the reform. This is particularly important given the recent decision to bring forward the liberalisation of the downstream gasoline and diesel markets, which will continue CRE’s heavy workload in implementing the Energy Reform. The delivery of this policy objective is also dependent on co-ordination among CRE, the Ministry of Finance and Public Credit (SCHP), the Federal Economic Competition Commission (COFEC) and the Federal Consumer Protection Agency (PROFECO).

#### *What happened?*

In 2017-18, CRE has established a five-year Strategic Plan as well as one year operational plans to enhance its medium- to long-term planning. The drawing up of the Strategic Plan was based on an internal SWOT (Strengths, Opportunities, Weaknesses and Threats) evaluation, and an external benchmark analysis to identify the best regulatory governance practices. CRE took as case studies eight regulatory agencies of the energy sector in Brazil, Chile, Colombia, Spain and the United Kingdom.

In June 2018, a five-year Strategic Plan (2018-22) was presented to the Commissioners, heads of units, internal control body and staff. This Plan seeks to reflect the agency’s vision, mission, values and objectives for implementing a new institutional philosophy.

With the publication of the Strategic Plan 2018-22, CRE’s Planning Department has aligned the Annual Work Programme with the Regulatory Programme. In addition, this department is responsible for supervising the implementation of Strategic Plan initiatives.



Moreover, in December 2018, the Committee for the Evaluation of Regulatory Performance (*Comité de Evaluación del Desempeño Regulatorio*, CEDR), an internal evaluation and monitoring body, will hold its first meeting. The Committee will have quarterly sessions to measure compliance with the Strategic Plan.

Regarding the development of an annual plan, CRE issued the 2018 Work Programme and published it on its web portal. It contains the description of the main activities in the natural gas, LP gas, petroleum and electricity sectors. It also describes activities for institutional strengthening. Similarly, CRE's governing body approved the 2018 Annual Regulatory Programme and it was published on its web portal. This Programme is issued annually and is reviewed every six months.

CRE aligned the Work Programme, the Regulatory Programme and the Evaluation Report on the objectives of the Strategic Plan 2018-22. This aims to provide certainty regarding the regulatory tools to be issued annually, as well as the necessary financial and human resources to achieve the annual objectives.

Moreover, the planning department developed a working agenda to hold meetings with the heads of units and directors for linking the strategic objectives with financial and human resources.

Finally, regarding co-ordination with other public entities, in addition to the creation of the ERG:

- On the 16th of October 2018, COFECE and CRE signed a MoU to jointly implement activities to exchange relevant information, which will help promote competition and guarantee trust in the energy sector. Previously, CRE had supported COFECE in the study “Transition to competitive energy markets: LP gas”, and earlier in 2018, CRE filed its first potentially anti-competitive behaviour complaint before COFECE in the LP gas commercialisation and distribution market.
- In 2017, CRE established a co-operation agreement with PROFECO for compliance on petroleum and LP gas regulations. CRE developed digital platforms for consumers to identify prices and service stations. These platforms facilitate information to consumers to challenge irregular practices.

## Input

### *Review findings*

CRE's financial and human resources have increased substantially over a short period of time due to significant expansion in its regulatory mandate due to the Energy Reform. While its headcount has risen by 163% between 2012 and 2016, CRE has not yet established job descriptions setting out the specific professional and technical requirements for each position within CRE.

At the same time, CRE faces competition for its staff from the private and public sector. While CRE seeks to provide competitive salaries within the confines of the federal salary scales, there appear to be opportunities for CRE to improve staff retention by providing further non-salary incentives. This may assist them to recruit and retain staff with specific skills, such as expertise in tariff setting.

*What happened?*

Since the review, CRE has issued the Human Capital Management System Statute (*Estatuto del Sistema de Gestión de Capital Humano*), published in Mexico's Official Gazette as a basis document to establish CRE's Professional Service Career policy. The Statute includes components such as staff planning, entry requirements (recruitment and selection), training, professional development, performance evaluation and stimuli, and separation from the position

**Process***Review findings*

CRE's decision-making body is its Governing Council, which is composed of seven Commissioners, one of whom serves as the President Commissioner. All meetings of the Governing Council are publicly broadcast. Meetings between Commissioners and industry are held at CRE's premises with at least two Commissioners present, and are recorded. Commissioners also participate in the development of regulation in Commissioner working groups, which were established to distribute the workload associated with implementing the 2013 reform. Separate working groups were established on electricity, natural gas and petroleum. Commissioners also work directly with staff in the development of specific regulation. The regulation that CRE develops is subject to the COFEMER process, which requires CRE to prepare regulatory impact assessments and submit regulation to a public consultation process. While CRE has a Regulatory Performance Evaluation Committee that is tasked with reviewing its regulation, it has not yet developed processes for the ex post review of regulation. However, CRE does review its regulatory approach, and is currently in the process of revising its approach to tariff regulation and making it consistent across hydrocarbon markets.

*What happened?*

CRE published an updated version of its internal rules in 2017, including more precision on the relationship between the commissioners and the staff and new Operating Guidelines for Speakers (*Lineamientos de Operación de Ponencias*). The latter require Commissioners to specialise in the topics in which they act as speakers and define the participation of Commissioners in designing regulation, whereby Commissioners guide the elaboration of regulation from inception to approval.

To ensure compliance with CRE's Strategic Plan, each commissioner is assigned a specific strategic objective to monitor its execution. In addition, each administrative unit is assigned a Prioritized General Action Line (*Línea de Acción General Priorizada*, LAGP). The governing body will assume a supervising role, while the administrative units will be in charge of implementing the Strategic Plan.

The LAGP is aligned with the strategic objectives to create a more precise working relationship between the commissioners and the heads of unit in monitoring the implementation of the Strategic Plan.

**Table 3. CRE Strategic objectives and Priority actions, 2018-2022**

Strategic objective	Prioritised general action line
1) Build trust and certainty	Strengthen the regulatory improvement system
2) Issue effective regulations that promote the development of the energy sector.	Design and issue effective and efficient regulations
3) Promote formal and functional markets	Monitor the evolution of hydrocarbon and electricity markets Reduce barriers to entering the energy markets
4) Ensure compliance with regulations	Develop an effective supervision strategy
5) Empower consumers and protect their interests	Facilitate access to information and energy products for consumers
6) Strengthen CRE's capacities	Carry out continuous improvement processes

Source: Information provided by CRE, 2018.

## Output and outcome

### *Review findings*

CRE collects a large amount of data from the regulated industry in order to carry out its regulatory responsibilities, some of which include making information available to the public (such as information on gasoline and diesel prices). This data could be useful for assessing how CRE performs. In the absence of an operational plan and strategic objectives, CRE did not have a framework for measuring its performance. CRE is accountable to Congress, and does prepare an annual report, but it does not have a regular obligation to report on its performance aside from reporting of indicators to SHCP.

### *What happened?*

The Strategic Plan 2018-22 included indicators to measure the agency's effectiveness to implement the strategic objectives. These are:

- 1) Build trust and certainty.
  - Trust and certainty perception on CRE by regulated entities on CRE.
  - Disputes resolved in favour of CRE.
  - Compliance with the Annual Regulatory Programme.
- 2) Issue effective regulations that promote the development of the energy sector.
  - Pipeline transport systems capacity of natural gas.
  - Storage systems capacity.
  - Electric generation capacity.
- 3) Promote formal and functional markets.
  - Herfindahl-Hirschman concentration index.
- 4) Ensure regulatory compliance.
  - Regulatory non-compliance per permit holder.
  - Ratio of Sanctioned permit holders and the total number of infringements.
  - Verifications and inspections per permit holder.

- 5) Empower the consumers and protect their interests.
  - Perception of switching cost to change suppliers.
  - Perception of availability of information on energy products and services.
- 6) Strengthen CRE's capacities.
  - CRE's electronic procedures.
  - Length of internal procedures.
  - Index of Climate and Organizational Culture of the Secretariat of Public Function.

The indicators consider the performance of the sectors and the regulator. The expected impact is to:

- Measure organisational performance for reducing costs and increasing labour productivity.
- Have better information for regulatory and organisational decision-making.
- Include qualitative and quantitative information in decision-making.
- Align CRE's regulatory practices to international experience.
- Issue effective regulations: easy to implement and monitor.
- Offer public information on the performance of the energy market.

## What next?

Going forward, the Energy Regulators Group can provide a relevant forum to communicate on the value added and benefit of independent economic regulation of the energy sector, regardless of market structure or economic policy.

By creating the ERG, Mexico's energy regulators have effectively established an explicit co-ordination mechanism. Moreover, they have empowered themselves to do so through a formal and transparent process that has been key in providing legitimacy to the ERG as well as in demarcating it from the CCSE, a higher-level co-ordination body under the leadership of the Ministry of Energy. The content of the ERG's strategic objectives and initiatives, however, go far beyond simple co-ordination by including concrete joint action and deliverables for the three regulatory agencies.

Going forward, the ERG can strengthen the impact of its joint activities and its credibility by accompanying its comprehensive strategic framework with transparent reporting on activities and their results. This would contribute to its legitimacy and ability to share lessons learnt and successes with other federal entities in Mexico as well as with regulatory authorities worldwide. Beyond the ERG, robust reporting will also be key for each of the regulatory authorities to show the impact of their activities on the performance of the energy sector and the Mexican economy at large.

Finally, for the regulators to be able to continue delivering on their wide mandates and goals, the stability of their resourcing frameworks will be essential. This concerns both their ability to continue attracting highly qualified staff and to autonomously manage their financial resources.

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**Agency for Safety, Energy and Environment (ASEA)**  
[www.gob.mx/asea](http://www.gob.mx/asea)

**National Commission for Hydrocarbons (CNH)**  
[www.gob.mx/cnh](http://www.gob.mx/cnh)

**Energy Regulatory Commission (CRE)**  
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