



Regulatory Policy in Costa Rica

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Foreword

This report was prepared by the OECD Secretariat to support the evaluation of regulatory policy, tools, and practices of Costa Rica undertaken by the OECD Regulatory Policy Committee, as part of the process for Costa Rica's accession to the OECD (see the Roadmap for the Accession of Costa Rica to the OECD Convention [C(2015)93/FINAL]). The information presented in this report is accurate at April 2017, and the corresponding assessment refers to the state of affairs at this time.

In accordance with paragraph 14 of Costa Rica's Accession Roadmap, the Regulatory Policy Committee agreed to declassify the report in its current version and publish it under the authority of the Secretary General, in order to allow a wider audience to become acquainted with the issues raised in the report. Publication of this document and the analysis and recommendations contained therein, do not prejudice in any way the results of the review of Costa Rica by the Regulatory Policy Committee or other OECD technical committees as part of Costa Rica's process of accession to the OECD. This report was published on 14 April 2020.

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Abbreviations and acronyms

APA	Administrative Procedure Act
ARESEP	Regulatory Authority for Public Services (<i>Autoridad Reguladora de los Servicios Públicos</i>)
ASA	Administrative Simplification Agency
BRU	Better Regulation Unit (<i>Dirección de Mejora Regulatoria</i>)
CBA	Cost-Benefit Analysis
CNT	National Registry of Administrative Procedures (<i>Catálogo Nacional de Trámites</i>)
COFEMER	Federal Regulatory Commission (<i>Comisión Federal de Mejora Regulatoria</i>)
CONAMER	National Regulatory Commission (<i>Comisión Nacional de Mejora Regulatoria</i>)
CONASSIF	National Council for Supervision of the Financial System (<i>Consejo Nacional de Supervisión del Sistema Financiero</i>)
CPI	Corruption Perception Index
CRECEX	Chamber of Foreign Trade (<i>Cámara de Comercio Exterior</i>)
DLD	Direction of Laws and Decrees (<i>Dirección de Leyes y Decretos</i>)
EX-IM permits	Export-Import permits
FDI	Foreign Direct Investment
FUNDES	Foundation for Sustainable Development (<i>Fundación para el Desarrollo Sostenible</i>)
GDP	Gross Domestic Product
ICT	Information and Communication Technologies
IFAM	Institute of Development and Municipal Advisory (<i>Instituto de Fomento y Asesoría Municipal</i>)
INVU	Housing and Urbanism National Institute (<i>Instituto Nacional de Vivienda y Urbanismo</i>)
iREG	Indicators of Regulatory Policy and Governance
LAC	Latin America and the Caribbean
MEIC	Ministry of Economy, Industry and Trade (<i>Ministerio de Economía, Industria y Comercio</i>)
MXN	Mexican pesos
NPRM	Notice of Proposed Rulemaking
OBPR	Office of Best Practice Regulation
OECD	Organisation for Economic Co-operation and Development

OIRA	Office of Information and Regulatory Affairs
ORT	Technical Regulation Body (<i>Órgano de Regulación Técnica</i>)
OST	Simplification Officer (<i>Oficial de Simplificación de Trámites</i>)
PRM	Regulatory Improvement and Simplification Plan (<i>Plan de Mejora Regulatoria</i>)
RIA	Regulatory impact assessment
RPC	Regulatory Policy Committee
SARE	System for Quick Business Start-Up (<i>Sistema de Apertura Rápida de Empresas</i>)
SCIJ	Costa Rican Legal Information System (<i>Sistema Costarricense de Información Jurídica</i>)
SICOPRE	Preliminary Control System (<i>Sistema de Control Previo</i>)
SIECA	Secretariat for Economic Integration (<i>Secretaría de Integración Económica Centroamericana</i>)
SUGEF	Banking Superintendency (<i>Superintendencia General de Entidades Financieras</i>)
SUGESE	Insurance Superintendency (<i>Superintendencia General de Seguros</i>)
SUGEVAL	Securities Superintendency (<i>Superintendencia General de Valores</i>)
SUPEN	Pensions Superintendency
SUTEL	Telecommunications Superintendency (<i>Superintendencia de Telecomunicaciones</i>)
UCCAEP	National Business Association (<i>Unión Costarricense de Cámaras y Asociaciones del Sector Empresarial Privado</i>)
URP	Urban Regulatory Plans (<i>Plan Regulador Urbano</i>)
US	United States of America
VUCE	Foreign Trade One-Stop Shop (<i>Ventanilla única de comercio exterior</i>)
WEF	World Economic Forum
WTO	World Trade Organization

Introduction

In accordance with Costa Rica's Accession Roadmap [C(2015)93/FINAL], the Government of Costa Rica submitted an Initial Memorandum on 16 February 2016 setting out Costa Rica's position on each OECD legal instrument in force and an assessment of the conformity of its legislation, policies and practices with the instrument. Accordingly, the Government of Costa Rica accepted the two RPC instruments, i.e. the Recommendation of the Council on Regulatory Policy and Governance [OECD-LEGAL-0278] (OECD, 2012^[1]) and the Recommendation of the Council on Improving the Quality of Government Regulation [OECD-LEGAL-0390] (OECD, 1995^[2]), with a timeframe for implementation until the end of 2019. The Appendix to the Accession Roadmap also sets out six core RPC principles in relation to which Costa Rica will be evaluated, which draw upon the content of the two RPC instruments.

To assess the willingness and ability of Costa Rica to implement the legal instruments within the RPC's competence and to compare and evaluate Costa Rica's policies and practices against OECD best policies and practices, the Secretariat collected information *inter alia* through a detailed questionnaire approved by the Committee, and two fact-finding missions to Costa Rica. The missions took place on 21-24 June 2016 and on 30 January – 2 February 2017, with Secretariat staff meeting key national stakeholders from inside and outside government.

This report provides an evaluation of Costa Rica's policies and practices against the Roadmap Core Principles, in order to help inform the Committee's formal opinion to the Council in the field of regulatory policy in the context of Costa Rica's accession to the OECD

Organisation of the report

The report is structured around the Core Principles spelled out in the Accession Roadmap. These principles draw on the RPC instruments and are as follows:

- **Principle 1: The commitment to an integrated 'whole of government' regulatory policy** to improve the quality of regulation for business and citizens, including both *ex ante* impact assessment and *ex post* evaluation with clear ministerial responsibility for implementation;
- **Principle 2:** The approach to policy development, including the establishment of institutions and processes for ensuring sound policy development, including regulatory impact assessment (RIA) and oversight and reporting on government-wide compliance with regulatory management practices;
- **Principle 3: RIA assessment capacity**, including the implementation of a regulatory impact assessment framework that incorporates explicit consideration of non-regulatory options, a preference for performance-based regulation and the efficient use of market mechanisms;
- **Principle 4: Adherence to the principles of transparency and public participation** in the development of regulations;

- **Principle 5: Regulatory performance**, including the performance of its regulatory system, focussing on the organisation of the functions of its regulatory agencies and inspectorates, their public accountability and their conformance with review and appeals processes;
- **Principle 6: Multi-level governance for regulatory coherence**, including the promotion of regulatory coherence through co-ordination with national, sub-national and supra-national bodies and the promotion of international regulatory co-operation.

Following an initial accession discussion with Costa Rica at the November 2016 RPC meeting, the Committee outlined that in anticipation of its next meeting, it would focus *inter alia* on:

- Further developments regarding the 6 Core Principles in the area of regulatory policy outlined in the Appendix of the Accession Roadmap;
- The implementation of a new digital platform for public consultation and regulatory impact assessment;
- The creation of a National Registry of Administrative Procedures;
- Strengthening regulatory capacities at the subnational level as well as within economic regulators.

The analysis included in this report presents key recommendations under each Core Principle, and provides a comparison of the extent to which Costa Rica's policies and practices are aligned with those of OECD countries.

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- OECD (1995), *Recommendation of the Council on Improving the Quality of Government Regulation*, <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0278> (accessed on 6 April 2020). [2]

1 Overview

This chapter presents the regulatory policy context in Costa Rica and assesses it against six core principles. It describes the main elements of the legal framework that underpins regulatory policy in the country, as well as the institutions in charge of guiding regulatory policy in Costa Rica. Moreover, the chapter offers an overview of the actions that have been taken by the government to implement regulatory management tools. Finally, this chapter offers key recommendations focused on improving regulatory policy.

Costa Rica's regulatory policy and governance has made progress since the issuance of Law 8220 on Citizens' Protection from the Excess of Requirements and Administrative Procedures. In some areas such as regulatory impact assessment and administrative simplification, Costa Rica's policies and practices have a similar structure to those of OECD countries. In other areas, such as managing the stock of regulation, managing the stock of administrative procedures; broadening the scope of the mechanisms to guarantee regulatory quality to all regulation; and, embedding good regulatory practices in the institutionally decentralised public sector (i.e. municipalities and economic regulators), Costa Rica still faces some challenges.

As part of the accession process and following the discussion of the 15th meeting of the Regulatory Policy Committee on 4 November 2016, Costa Rica set out an internal regulatory policy and governance roadmap for implementation before the year 2019. The internal regulatory policy and governance roadmap for Costa Rica contains the following components:

- Draft a comprehensive public policy on regulatory policy and governance that encompasses the scattered regulatory management tools.
- Broaden the scope of regulatory impact assessments for technical regulation including risk management.
- Implement regulatory management tools (stakeholder engagement, regulatory impact assessment, *ex post* evaluation) in the institutionally decentralised sector; for example, in institutions like the General Comptroller and the two autonomous economic regulators.
- Guide subnational governments in the implementation of good regulatory practices.
- Carry out simplification initiatives including cutting red tape and measuring and reducing administrative burden.
- Reform Law 8220 on Citizens' Protection from the Excess of Requirements and Administrative Procedures in order to strengthen enforcement and compliance.

Policies and practices of Costa Rica compared with the Core Principles

Commitment to an integrated whole of government regulatory policy

In Costa Rica regulatory policy is under the portfolio of the Ministry of Economy, Industry and Trade (MEIC). This arrangement could be further developed to unroll a whole-of-government regulatory policy that includes the introduction of compulsory quality control and regulatory management tools comprising the central and the institutionally decentralised public administration. Currently, the Ministry of Economy, Industry and Trade is in charge of implementing specific regulatory management tools such as regulatory impact assessment for administrative procedures and the simplification programme.¹

Law 8220 on Citizens' Protection from the Excess of Requirements and Administrative Procedures, frames regulatory governance and tools in Costa Rica. The government also follows the mandate of the National Development Plan to implement regulatory management tools aimed at improving the rule-making process; these efforts are grounded in an existing legal framework which focusses on the issuance of regulations only by the executive power (i.e. subordinate regulation).

Costa Rica has a strong focus on simplification of administrative procedures which overshadows the potential stemming from the use of other regulatory management tools such as RIA or public consultation during the rule-making process. Costa Rica could benefit from broadening the scope of its regulatory practices.

The scope of the Better Regulation Unit (BRU), within MEIC, has an ample margin for improvement in terms of reinforcing financial and human resources; notably, appointing the Director for the BRU, which would underline the political leadership and visibility for regulatory reform. Moreover, the Better Regulation

Unit's mandate includes the construction of the stock of regulation, implementation of a RIA system, and monitoring the simplification programme. These tasks however, require more financial and technical resources to succeed.

Approach to policy development

Costa Rica has adopted the practice of RIA using a digital platform called Preliminary Control System (SICOPRE); annual Regulatory Improvement and Simplification Plans; public consultation of regulation during the RIA process, amongst other things. In this manner, some building blocks exist to construct a more robust and sound whole-of-government regulatory policy and governance. However, tools for quality control over new and existing regulation in Costa Rica must be enhanced to achieve better results. For example, the Regulatory Improvement and Simplification Plans do not have quantitative or qualitative criteria to measure administrative burden as it is commonly done in OECD countries.

Regulatory oversight, including a challenge function, is exerted by MEIC only for the central administration. Oversight activities allow for proper implementation, follow-up, and evaluation of results; it is a key element to ensure a whole-of-government approach. Without proper overall oversight, regulatory policy in Costa Rica will not reach its potential. MEIC might be understaffed for this purpose.

Regulatory impact assessment capacity

The regulatory impact assessment system in Costa Rica has developed quality control mechanisms for the issuing or modification of regulation containing administrative procedures. Nonetheless, the effectiveness of the RIA process in place remains a challenge due to capacity –human and financial– constraints within the BRU. Success on RIA as a quality control requires a relevant investment on human resources and institutional capacity. Nowadays, Costa Rica pushes forward to instrument RIA, but the Better Regulation Unit and the entities obliged to comply with regulatory functions face important capacity constraints.

Costa Rica should broaden the scope of the impact assessment to evaluate regulation that does not necessarily create formalities or administrative procedures. It would be important to extend the use of RIA to cover all regulations based on a specific impact threshold or those of major impact rather than to focus on administrative procedures and formalities. For example, RIA could boost other government objectives by including gender assessments or impacts on competition.

Extend the period of analysis of RIA to ensure its effectiveness. For instance, the BRU has 15 days to review and analyse the proposed regulation which might endanger the quality of the analysis when encountering complex regulation. In the same line, consider awarding more time to the existing 10 days of public consultation; time limits could be expanded to allow for meaningful input from stakeholders.

Transparency and public participation

While legal requirements and practices on stakeholder engagement exist, there is no systematic use of consultation throughout the whole administration. There is a commitment to transparency and consultation in Costa Rica enshrined in the General Law of Public Administration (stakeholders are given the opportunity to comment on draft regulations for a period of 10 days for subordinate regulation and 8 days for primary laws). However, the institutionally decentralised public administration (including economic regulators) retains significant leeway and, in practice, consultation with the general public is only used to inform the development of some regulations. Consultation needs to be better embedded in the rulemaking process to ensure it is systematically used in practice; public consultation could have more benefits if it is submitted at an early stage, before the assessment of RIA is done.

Relevant practices of stakeholder engagement are yet to be integrated. The government of Costa Rica is continuously seeking out business chambers and private sector associations' opinion; however, there could still be room to provide meaningful opportunities for a broader sector of society. Furthermore, stakeholders are not made aware of future consultations/regulations in the pipeline by including, for example a forward planning agenda. Moreover, while Costa Rica allows a consultation period of 8 days a majority of OECD countries has established binding minimum periods for public consultation of 4 weeks or longer according to the 2015 OECD Regulatory Policy Outlook 2015 (OECD, 2015^[1]).

A consolidated and centralised registry of administrative procedures and formalities is under construction. A complete and up-to-date formalities and administrative procedures database that uses plain language should be freely available to the public. Having a registry could also serve as a parting point for other regulatory reforms, i.e. manage and rationalise existing stock of regulation.

Regulatory performance

Ex post evaluation of regulation is not done systematically. *Ex post* evaluation is mainly focused on administrative simplification and is being carried out on a discretionary basis by public institutions. Lack of financial and human resources in MEIC may arise as one of the reasons for the lack of enforcement and compliance mechanisms and activities. Costa Rica currently has 10 people dedicated to the implementation of regulatory management tools. *Ex post* evaluation exercises should be enhanced not only as regards to administrative simplification but also to the overall effectiveness of regulation, as well as to monitor regulatory reform efforts.

Law 7472 establishes provisions to carry out *ex post* evaluation on formalities and administrative procedures with effects on commerce and market access. Currently, Costa Rica does not include measurement of burden of compliance costs in their simplification efforts. Moreover, the simplification programme does not include ICTs, nor does it involve the subnational level on a systematic basis.

MEIC has installed a Commission for Regulatory Improvement with the sole purpose of overseeing progress of the Regulatory Improvement and Simplification Plans. The Commission's role could be enlarged to pursue a more ambitious strategy and benefit from sustained capacity-building.

The governance of both economic regulators, the Regulatory Authority for Public Services (*Autoridad Reguladora de los Servicios Públicos*, ARESEP) and the Telecommunications Superintendency (*Superintendencia de Telecomunicaciones*, SUTEL) has opportunities for improvement, and the implementation of regulatory management tools within the regulators is a pending task. For example, economic regulators (being part of the institutionally decentralised public administration) overlap with the central public administration. Moreover both economic regulators current legislation does not include mechanisms to impede *revolving-doors* or set out *cooling-off* periods. Tools such as regulatory impact assessment, administrative simplification, and *ex post* evaluation are not systematically conducted in economic regulators.

Multi-level governance

Regulatory coherence across levels of government has an ample margin for improvement in Costa Rica. Co-ordination mechanisms for regulatory coherence are still in its primary stages. An example is MEIC's first project at the subnational level in the *Brunca* region to harmonise business permits along 6 *cantones*, or municipalities, in the area. Furthermore, the implementation of Regulatory Improvement and Simplification Plans, or digitalisation for better delivery of public services, are two examples of scattered and incipient efforts found scarcely at the subnational level.

Costa Rica could greatly benefit from strengthening regulatory management capacity and performance at the subnational level. Interviewed municipalities reiterated the need for capacity improvement to promote better regulation. The lack of resources was also mentioned in multiple occasions as the possible cause

for the lack of appropriate regulatory management in municipalities. MEIC could be in a position to deliver capacity-building workshops and guidance if provided with the proper resources.

Centralisation of government functions limits simplification efforts at subnational level. An example can be observed in the formalities required to open a business in Costa Rica, primarily outside San José, the capital city. In order to open a business, national and subnational regulation is blended; an issue however, is that central government does not have formal representation, at municipal level, increasing the cost of regulation. For the same reason, administrative simplification efforts are divided according to the level of government with few expectations of an integrated strategy.

The government of Costa Rica has in place a bilateral agreement with Mexico. The two governments have established a framework for co-operation that includes the implementation of RIA in Costa Rica. Moreover, attention is provided to international obligations such as those stated by the World Trade Organisation, or the Secretariat for Economic Integration (SIECA) which provides a platform to develop international legal and policy instruments in support of regulatory coherence.

Key recommendations

Commitment to an integrated whole of government

- Enhance specialisation and expertise in the Better Regulation Unit, responsible for regulatory oversight, with a view of broadening the assessment of economic and social impacts of draft legislation and policy documents. Appoint a Head of Unit for the BRU to lead and co-ordinate regulatory reform.
- Improve co-ordination and co-operation with the institutionally decentralised public sector so as to produce quality regulation and benefit from existing expertise in the BRU.
- Reinforce co-ordination and alignment with the presidential committees' goals so as to match the government's current objectives (i.e. competitiveness and innovation) to the regulatory policy agenda.

Approach to policy development

- Develop a more systemic approach to improve oversight and enforcement of the use of regulatory management tools by the institutionally decentralised public sector entities.
- Endow the Better Regulation Unit with the necessary human and financial resources to oversee regulatory management tools and push for the regulatory reform agenda.

Regulatory impact assessment capacity

- Introduce a threshold test that broadens the current scope to go beyond administrative procedures, to prepare a more in-depth impact assessment for draft legislation and policy documents, concentrating on regulation with the highest potential impact.
- Draw a diagnosis of lacking skills and carry out capacity-building workshops to increase expertise on responding the RIA evaluation requirements (e.g. problem definition, measuring impacts and costs of regulation) including the institutionally decentralised public administration (i.e. municipalities and economic regulators).

Transparency and public participation

- Introduce a proportionality principle for compulsory regulatory consultation made on a systematic basis for all institutions in the national administration, and not only for regulation that undergoes impact assessments.
- Include a larger period of time for the consultation process and incorporating feedback mechanism to inform stakeholders about how their comments were treated making views of participants public and providing an answer addressing the most significant issues that were raised.
- Introduce forward planning agendas, along preparatory regulatory files and relevant information for stakeholders to prepare meaningful input.
- Ensure a challenge function within the existing oversight mechanisms to guarantee that stakeholder engagement in the development of regulations is carried out in accordance to guidelines apart from the consultation conducted in the RIA process. A central oversight body overseeing the regulatory process from a whole-of-government perspective could take on that role.

Regulatory performance

- Monitor and evaluate regulatory reforms by, for example, identifying performance indicators and conducting systematic evaluation of key regulatory policies like the use of RIAs or the consultation process that could help improve the regulatory system.
- Revisit the simplification programme and consider including measurement of burden of compliance costs to focus resources; including ICTs in the simplification effort, where appropriate; involving the subnational level; and, broadening administrative simplification efforts to the administration.
- Support a process to embed good regulatory governance practices in the economic regulators including a code of conduct, reviewing roles and functions to avoid overlaps with other entities, and embedding regulatory management tools (e.g. RIA, administrative simplification, forward planning agendas).

Multi-level governance

- Introduce mechanisms for co-ordination and co-operation aiming to embed good regulatory practices at the subnational level,
- Strengthen expertise and improve regulatory capacities at the subnational level.

Note

¹ Information accurate at April 2017.

Reference

OECD (2015), *Regulatory Policy Outlook 2015*, OECD Publishing, Paris. [1]

2 Context information of Costa Rica

This chapter offers a brief picture of the social, political and economic context in Costa Rica. It describes the main political and economic elements in the country — the administrative divisions, the most relevant economic drivers and the government system. It also provides an overview of the social achievements and challenges in the country over the last years.

Costa Rica is a country located in Central America with a population of approximately 4.8 million people (2014). The country has a national government and a subnational level of government with 81 *cantones*, or municipalities. This Central-American country hosts the greatest density of species in the world. Costa Rica stands out in the region for its political and economic stability. It is a member of the World Trade Organisation since 1 January 1995 with its main exports being: food and live animals (31.9%), machinery and transport equipment (29.3%), and manufactured articles (17.4%) (OECD, 2016^[1]).

According to the latest economic report on the country, *OECD Economic Surveys: Costa Rica 2016: Economic Assessment*, Costa Rica's strong economic performance combines rising living standards and a sustainable use of natural resources (OECD, 2016^[1]). In the past three decades, real GDP per capita has nearly doubled, as the economy has evolved from a rural and agriculture-based economy to one with high value-added industries linked into global value chains. The process of opening up to international trade and attracting foreign direct investment (FDI) that started in early 1980s has diversified the country's production structure, boosted exports and labour force utilisation.

The World Economic Forum (WEF) Global Competitiveness Report 2015-16, ranks Costa Rica as the third most competitive economy in Latin America and the Caribbean after Chile and Panama, and ranks 52nd out of 140 economies. The quality of its primary education (39th) and the quality of its educational system overall (34th) makes it the highest ranked in Latin America for these two sub-categories. On the other hand, inefficient government bureaucracy, inadequate supply of infrastructure and tax rates were mentioned as the three main most problematic factors in terms of doing business in the country (World Economic Forum, 2015^[2]).

Costa Rica is governed by a unicameral parliamentary system. The Parliament (*Asamblea Legislativa*) is composed of 57 members elected by popular vote every four years with no immediate re-election. The President of the Republic is the head of government and the head of state and is elected by popular vote for a term of four years with no immediate re-election. The last Parliamentary elections were held on 2 February 2014 for the period 2014-2018 (OECD, 2015^[3]). The current Government of the Republic came to power after winning the national elections in February 2014, for a constitutional period of four years that began on 8 May 2014 and ends on 8 May 2018.

The 2015 *OECD Costa Rica: Good Governance, from Process to Results* public governance review (OECD, 2015^[3]) describes that the country has a "fragmented public administration, characterised by an important number of subsidiary bodies of central government ministries and a large institutionally decentralised sector". This entails an existing governance co-ordination challenge coupled with a necessity to consolidate and harmonise the use of control and steering mechanisms including regulatory management tools across the whole administration.

Costa Rica has a substantial fragmentation of the public sector, and while a certain degree of fragmentation is not uncommon in OECD countries, this fragmentation poses particular challenges in terms of policy co-ordination. Costa Rica's Constitution not only distinguishes between central and local government (i.e. "territorially decentralised public sector"), but also establishes the existence of autonomous institutions (Article 188 of the Constitution). The "institutionally decentralised sector" (as opposed to ministries and their subsidiary bodies) encompasses these autonomous institutions, and distinguishes between autonomous institutions and their subsidiary bodies, semi-autonomous institutions, state-owned and non-state-owned public enterprises and non-state public entities that collaborate in the satisfaction of the public interest (OECD, 2015^[3]).

Costa Rica ranks first in the Happy Planet Index. The Index further explains that Costa Rica abolished its army in 1949 and has since reallocated army funds to be spent on human capital on sectors like education, health and pensions (New Economics Foundation, n.d.^[4]). The average life expectancy at birth of Cost Ricans significantly higher than in other Latin American countries and Costa Rica made important progress on the Human Development Index.

In 2012, Costa Rica became a member of the Open Government Partnership, making a strong commitment to openness, transparency and accountability of the state (OECD, 2015^[3]). Costa Rica along with Uruguay and Chile are the best countries in Latin America ranked in the 2015 Transparency International Corruption Perception Index (CPI). The perception of corruption in Costa Rica has remained constant in the last few years (Transparency International, n.d.^[5]).

According to the 2016 *Latinobarómetro*, the five main challenges Costa Rica faces are unemployment (25%), political crisis (15%), crime /public security (12%), economic problems (12%) and poverty (6%) (Latinobarómetro, 2015^[6]). Unemployment rate reached 9.6% in 2015, higher than the regional average 7.2%. This rate has been practically constant for the past 5 years implying that there is a structural problem that needs to be fixed (La República, 2016^[7]). Furthermore, women face higher unemployment rates and their labour market participation is especially low, with only slightly over half of working-age women participating in the labour market. Youth unemployment reaches 24% (OECD, 2016^[1]). Furthermore, informal employment is increasing and now reaches more than 30% of total employment; being agriculture, construction and domestic work services, the sectors where informality is more important, it reaches 60% of total employment.

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3 Commitment to regulatory policy

This chapter provides a brief overview of Costa Rica's commitment to an integrated whole-of-government regulatory policy to improve the quality of regulation for business and citizens. It presents how regulatory policy is embedded in strategic government documents in Costa Rica. It then presents the institutional set up for regulatory policy and division of competences. It finally presents an assessment of the implementation of the Core Principle.

Core Principle: *the commitment to an integrated 'whole of government' regulatory policy to improve the quality of regulation for business and citizens, including both ex ante impact assessment and ex post evaluation with clear ministerial responsibility for implementation.*

Regulatory policy: legal and planning instruments in Costa Rica

The legal and institutional groundwork for regulatory policy in Costa Rica is found along several law and planning instruments. There is no single document that articulates regulatory policy comprehensively in Costa Rica. Nonetheless, the government has set some of the foundations to develop a regulatory policy that can be found in several primary laws as well as subordinate regulation which will be explained further in this section.

The 2015-18 National Development Plan (Ministerio de Planificación Nacional y Política Económica, 2014^[1]), is a testimony of the regulatory policy approach of the government that encompasses a strong component on simplification of formalities and administrative procedures. The National Development Plan introduces tools such as the Regulatory Improvement and Simplification Plans.

The main document guiding the rule-making process for subordinate legislation is Law 8220 on Citizens' Protection from the Excess of Requirements and Administrative Procedures (*Ley de Protección al Ciudadano del Exceso de Requisitos y Trámites Administrativos*). It also sets the foundation for the Cost-Benefit Analysis (CBA) required only for regulations that involve the creation, or modification, of an administrative procedure or formality. In principle, the aforementioned law covers both the central administration and the decentralised bodies; however, in practice implementation varies.

Executive Decree 37045-MP-MEIC functions as the subordinate regulation of Law 8220. The decree introduces the obligation to have a National Registry of Administrative Procedures (*Catálogo Nacional de Trámites*, CNT). It further explains and details the administrative simplification system in Costa Rica.

In 1994, Law 7472 for the Promotion of Competitiveness and the Effective Defence of the Consumer (*Ley de Promoción de la Competencia y Defensa Efectiva del Consumidor*) was published. This law introduces, for the first time, the issue of deregulation in national legislation establishing a series of obligations for public institutions to eliminate all unnecessary regulations, which constitute barriers to trade. It also creates the Regulatory Improvement Commission within the Ministry of Economy, Industry and Trade (MEIC).

Law 8220 was amended and complemented by Law No. 8990 of 27 September 2011, by which certain conditions for proper and efficient implementation of regulatory improvement principles were enhanced. Amongst some of the amendments we can find the following:

- MEIC's mandate to implement regulatory improvement measures is explicitly stated.
- Article 12 introduces the obligation to conduct regulatory impact assessment prior to issuing or amending new regulations.
- Article 13 gave a binding nature to the criteria issued by MEIC for entities of the central administration on regulatory improvement, and a recommendatory nature to the criteria issued to all entities of the decentralised public administration on regulatory improvement.

In the case of technical regulations, Article 39 of Law 8279 on the National Quality System (*Ley del Sistema Nacional de Calidad*), creates the Technical Regulation Body (*Órgano de Reglamentación Técnica*) as an inter-ministerial commission to contribute to the development of technical regulations through advisory. It is responsible for co-ordinating with the respective ministries the development of technical regulations. The functions are, amongst others, as follows:

- Recommend the adoption, update, or repeal of technical regulations issued by the Executive Power.
- Issue technical criteria regarding the draft technical regulation to be implemented by the Executive Power.

- Avoid technical barriers to trade.
- Ensure that technical regulations give the imported products a treatment that is similar to that of domestic products.

By means of Executive Decree No. 32068-MEIC-S-MAG-MICIT-MOPT-COMEX-MINAE, published in the Official Gazette No. 216 of 4 November 2014, the rules of the Technical Regulation Body are issued with the purpose of establishing the organisation, powers, functions, and procedures for the preparation of technical regulations.

Institutional responsibility

The responsibility for co-ordinating regulatory policy and promoting regulatory quality lies within the purview of the Ministry of Economy, Industry and Trade, (*Ministerio de Economía, Industria y Comercio*, MEIC) and more specifically under the Better Regulation Unit (*Dirección de Mejora Regulatoria*, BRU). BRU is responsible, amongst other things, for the following functions:

- Enforcing Law 8220 on *ex ante* and *ex post* control mechanisms to cut red tape according to Article 11.
- Issuing guidance and carrying out training workshops for agencies to comply with the aforementioned Law 8220, according to the principles exposed in articles 8 and 9.
- Overseeing simplification efforts in all the public administration, central, and decentralised, including autonomous and semi-autonomous institutions, bodies with instrumental legal personality, non-state public entities, municipalities, and public enterprises (Article 1).
- Developing a national registry of administrative procedures and formalities.

Box 3.1. Regulatory oversight bodies in OECD countries: institutional arrangements and mandates

The institutional design of the agency with the attribution to supervise the implementation of practices to promote the regulatory quality is one of the most relevant elements of regulatory policy. The success of the agency will depend on the politic empowerment, and its operative and financial capacity. While experience of OECD countries does not evidence the necessity of a particular institutional arrangement for the oversight body, several have chosen to place it in the centre of government or ministries close to the centre of government. Some examples are provided in what follows:

In **Australia**, the Office of Best Practice Regulation, (OBPR) within the Regulatory Reform Division in the Department of the Prime Minister and Cabinet is in charge of supervising the regulatory policy. Regulatory policy in Australia includes the preparation of impact evaluation, measurement of administrative burdens, the development framework of regulators and the management of stock of regulation. The OBPR also provides training and support to public agencies that carry out impact evaluation and/or other forms of regulatory powers.

In **Canada**, the process to issue primary and secondary regulation follows different paths. The process to develop primary regulation is embedded in the Cabinet Directive on Law-Making. The supervision of consultation process, *ex post* analysis and quality evaluation is made by the Privy Council Office. For subordinate regulation, the Treasury Board of Canada Secretariat is responsible for overseeing quality standards. In Canada, the process to issue subordinate regulation is more detailed and transparent. For example, all regulation must have an impact evaluation, a consultancy process and be according to the evaluation requirements of the Treasury Board Policy.

The **United States'** Office of Information and Regulatory Affairs (OIRA) is part of the Office of Administration and Budget of the White House. Its main functions include: reviewing the regulation of the executive power, approving the information requirements of the government, establishing the practices regarding the statistics of the public agencies and co-ordinating the privacy policies of the government. The head is appointed by the President of the United States.

In **Mexico**, The Federal Commission of Regulatory Improvement (COFEMER, now CONAMER) is a decentralised body of the Ministry of Economy. CONAMER holds operative and administrative independence in order to achieve its functions and manage its financial resources. The main roles of the Commission are: rule RIAs, co-ordinate simplification projects and advise subnational governments on regulatory improvement.

Source: (Government of Canada, n.d.^[2]), (Department of the Prime Minister and Cabinet, n.d.^[3]), (Office of Management and Budget, n.d.^[4]), (Comisión Nacional de Mejora Regulatoria, n.d.^[5]), <https://www.gob.mx/conamer>.

The Solís administration established a series of six Presidential Councils, including the National Council for Competitiveness and Innovation, which was announced in the month of September 2014 to underscore, inter alia, administrative simplification. The Council is composed of public sector representatives, the Central Bank, the private sector through the National Business Association (*Unión de Cámaras y Empresas del Sector Privado*, UCCAEP) and the Private Sector Council on Competitiveness. The First Vice President of the Republic leads this Council and is mandated with submitting periodical reports to the President. Within the actions of the Presidential Council, two guidelines were issued regarding regulatory policy:

- Urge entities and bodies of the central and decentralised Public Administration, to designate a Simplification Officer (*Oficial de Simplificación de Trámites*, OST) and to formulate an annual Regulatory Improvement and Simplification Plan.¹
- Urge entities to publish their Regulatory Improvement and Simplification Plans. It also establishes MEIC's leadership on the subject. The Presidency of the Republic will monitor the level of progress as it relates to compliance and will apply, as appropriate, the respective sanctions in case of non-compliance.²

MEIC also holds under its purview the Regulatory Improvement Commission which was installed by Executive Decree No. 28575-MEIC in 2000. This intersectoral commission includes four ministries;³ in practice, the meetings are convened by MEIC and do not occur periodically and on a systematic basis. For example, during the year 2016, they have had two meetings to evaluate progress of the regulation agenda.

In the case of technical regulations, Article 39 of Law 8279 on the National Quality System (*Sistema Nacional para la Calidad*), of 2 May 2002, creates the Technical Regulation Body (*Órgano de Regulación Técnica*) as an inter-ministerial commission to contribute to the development of technical regulations through advice in the issuing process. It is also responsible for co-ordinating with the respective ministries on the development of technical regulations, in order to ensure effective and efficient protection of the health of humans, animals, and the environment, of safety, consumers, and other protected legal interests.

Costa Rica has legal and planning instruments established to oversee regulatory quality including an institutional mandate and strategic actions for the implementation of regulatory management tools like administrative simplification, stakeholder engagement in the rule-making process and regulatory impact assessment in line with practices from OECD countries as seen in Table 3.1. Costa Rica is currently developing an explicit whole-of-government regulatory public policy and governance strategy as mentioned in the 'conclusions and recommendations' section.

Table 3.1. Costa Rica's comparison to OECD countries: regulatory policy and process

	Costa Rica	LAC	OECD
Explicit, published regulatory policy exists	Yes	Yes (5); No (2)	Yes (32); No (2)
Minister / high-level official accountable for promoting regulatory reform	Yes	Yes (4); No (3)	Yes (28); No (6)
Body responsible for promoting regulatory policy and reporting on regulatory quality	Yes	Yes (5); No (2)	Yes (32); No (2)

Notes: The data on LAC countries include: Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico and Peru. They reflect the situation as of 31 December 2015. Data on OECD countries cover 34 OECD countries and reflect the situation as of 31 December 2014.

Source: (OECD, 2016^[6]).

Issues for consideration

In Costa Rica regulatory policy is under the portfolio of the Ministry of Economy, Industry and Trade (MEIC). This arrangement could be further developed to unroll a whole-of-government regulatory policy that includes the introduction of compulsory quality control and regulatory management tools comprising the central and the institutionally decentralised public administration. Currently, the Ministry of Economy, Industry and Trade is in charge of implementing specific regulatory management tools such as regulatory impact assessment for administrative procedures and the simplification programme.

Law 8220 on Citizens' Protection from the Excess of Requirements and Administrative Procedures, frames regulatory governance and tools in Costa Rica. The government also follows the mandate of the National Development Plan to implement regulatory management tools aimed at improving the rule-making process; these efforts are grounded in an existing legal framework which focusses on the issuance of regulations only by the executive power (i.e. subordinate regulation).

Costa Rica has a strong focus on simplification of administrative procedures which overshadows the potential stemming from the use of other regulatory management tools such as RIA or public consultation during the rule-making process. Costa Rica could benefit from broadening the scope of its regulatory practices.

The scope of the Better Regulation Unit (BRU), within MEIC, has an ample margin for improvement in terms of reinforcing financial and human resources; notably, appointing the Director for the BRU, which would underline the political leadership and visibility for regulatory reform. Moreover, the Better Regulation Unit's mandate includes the construction of the stock of regulation, implementation of a RIA system, and monitoring the simplification programme. These tasks however, require more financial and technical resources to succeed.

Notes

¹ Session 11 15/07/2014.

² Session 04/11/2014.

³ Ministry of Economy, Industry and Commerce, Ministry of Health, Ministry of Environment and Energy, Ministry of Agriculture and Livestock.

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<https://www.whitehouse.gov/omb/information-regulatory-affairs/> (accessed on 6 April 2020).

4 Approach to policy development

This chapter provides a brief overview of the implementation of the Core Principle supporting a sound approach to policy development, drawing on the Regulatory Policy Committee instruments. It first presents the rule-making process in Costa Rica depending if it is primary legislation or subordinate legislation given that the processes differs. It then details Costa Rica's regulatory oversight – institutions and mechanisms. It finally presents an assessment of the implementation of the Core Principle.

Core Principle: the approach to policy development, including the establishment of institutions and processes for ensuring sound policy development, including regulatory impact assessment (RIA) and oversight and reporting on government-wide compliance with regulatory management practices.

The rule-making process in Costa Rica

Primary laws

Regulation in Costa Rica can be issued through the Legislative Assembly, the Executive power and decentralised, autonomous or technical bodies. Laws emerging from the Legislative Assembly can be initiated by popular initiative (if ten congressmen adopt the project), by own initiative or by extraordinary sessions of the executive power. All regulation from this process must be published in the Official Gazette for an eight-day public consultation process. These projects are also accompanied by a legal and economic report which is used to evaluate the viability of the law. The project has to be approved by the commission and then in the Legislative Assembly.

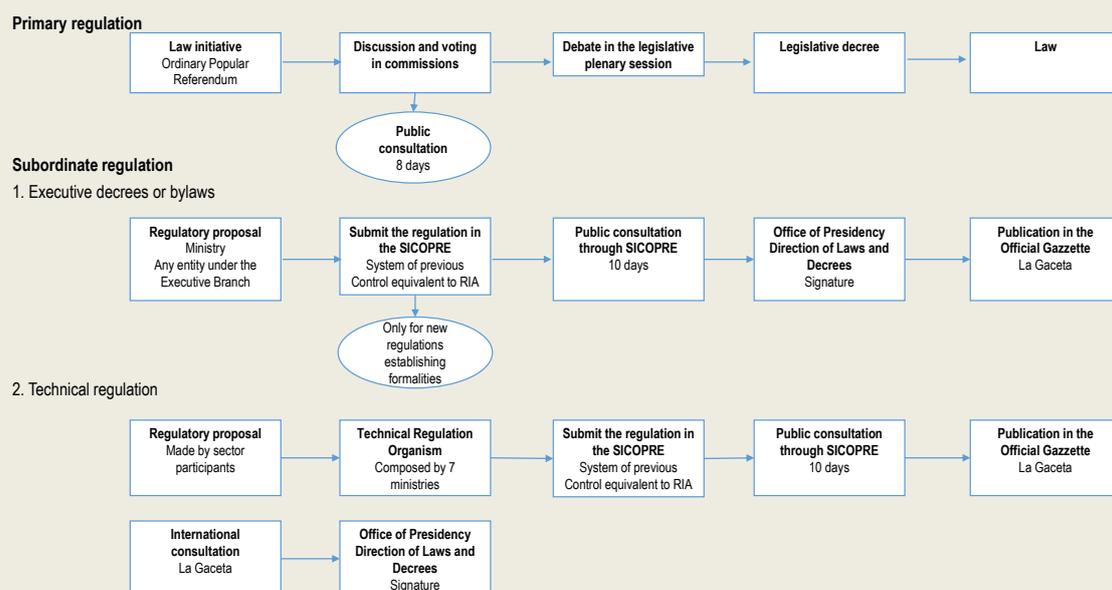
Subordinate regulation

The executive branch has the power to issue subordinate regulation and the output comes in the form of decrees or rules which can cover any sector. These projects must be published and submitted to public consultation if they have impact on third parties. However, in practice, proposals are sent for the President's signature without the proper consultation process on the basis of exceptional circumstances, (i.e. when they rely on public interest). All regulation emerging from this process must go through a preliminary control quality system by MEIC.

Box 4.1. Primary regulation and subordinate regulation in Costa Rica

Policy development in Costa Rica depends on the institution that initiates the regulation deriving mainly into 3 different standard procedures: primary regulation (initiated in the legislative), and subordinate regulation (initiated in the executive), and technical regulation (initiated in the executive). A simplified version of the three processes is described in the following diagram:

Figure 4.1. Process for the elaboration of regulations in Costa Rica



Source: Information provided by the government of Costa Rica (January 2017).

The framework for technical regulation is defined in the National Quality System Law (*Sistema Nacional para la Calidad*). This law sets out activities linked to the development of quality and the accomplishment of international commitments in evaluation and approval with an aim to increase national competitiveness of enterprises. All technical regulation proposals have to be checked by the National Quality Council (*Consejo Nacional de Calidad*) which is led by MEIC and composed of seven more ministries, chambers of commerce, normalisation and accreditation representatives. Moreover, the proposal has to be released for a domestic consultation period of 10 days. In addition, it is submitted for an international consultation process and finally sent for the Presidential stamp at the Direction of Laws and Decrees (DLD).

Regulatory policy development of subordinate regulation

The institution in charge of overseeing regulatory policy in Costa Rica is the Better Regulation Unit (*Dirección de Mejora Regulatoria*, BRU) within MEIC, according to Law 8220. The BRU is comprised of two areas: i) Institutional Support – responsible for the Regulatory Improvement and Simplification Plans (PMR) and the National Registry of Administrative Procedures – and, ii) Regulatory Analysis – responsible for regulatory impact assessments, personnel accounts for a staff of 10 public officials.

All regulation under the umbrella of Law 8220 (which is limited to regulation that creates or increases formalities or administrative procedures for citizens and business) must go through regulatory impact assessments and public consultation overseen by MEIC, and more specifically the BRU. The criteria and recommendations issued by the BRU on RIAs presented by the central public administration are binding, as opposed to the institutionally decentralised sector (e.g. autonomous and semi-autonomous bodies) where the nature of the criteria issued is recommendatory. In other words, regulation issued by the institutionally decentralised sector follows quality control mechanisms (RIA and public consultation) but cannot be challenged by the BRU, given that the recommendations stemming from the BRU are not binding for that sector.

Article 9 of Executive Decree 37045-MP-MEIC, which is a subordinate regulation for Law 8220, allows for the creation of the Better Regulation and Simplification of Formalities System (*Sistema de Simplificación de Trámites y Mejora Regulatoria*). The system obliges public institutions to appoint an administrative simplification official (*oficial de simplificación de trámites*, OST) to serve as the responsible for the creation of: i) the National Registry of Administrative Procedures (*Catálogo Nacional de Trámites*); and, ii) the Regulatory Improvement and Simplification Plans (*Planes de Mejora Regulatoria*, PMR).

The implementation of PMRs within Costa Rican public institutions aims at reducing red tape. Each institution is required to present at least two formalities to be reviewed on a yearly basis. These proposals are based on criteria set by MEIC in an explicit technical guidance, which includes:

1. Frequency
2. Institutional process
3. Citizen satisfaction
4. Relevance of the administrative procedure
5. Coverage
6. Compliance with the time the procedure takes

In practice, there is no clear evidence that the outcome of PMRs is clearly defined or evaluated. Such plans are currently not accompanied by clear pre-established quantitative goals and not all of the criteria mentioned above are taken into account when developing and implementing the plans. Furthermore, according to the subordinate regulation of Law 8220 (Article 23), PMRs must be linked to the Institutional Operation Plans (*Planes Operativos Institucionales*) and the budgetary annual goals. In practice this has not happened yet.

Simplification officials (OST) in charge of PMRs for each institution are the sole persons responsible for overseeing the correct implementation of the simplification plans. These officials are assigned with these tasks as supplementary duties, given that they already carry out other functions within their agencies. In practice, most central and decentralised institutions have appointed officials as OSTs; this is not the case for the majority of the 81 municipalities which do not comply with this requirement.

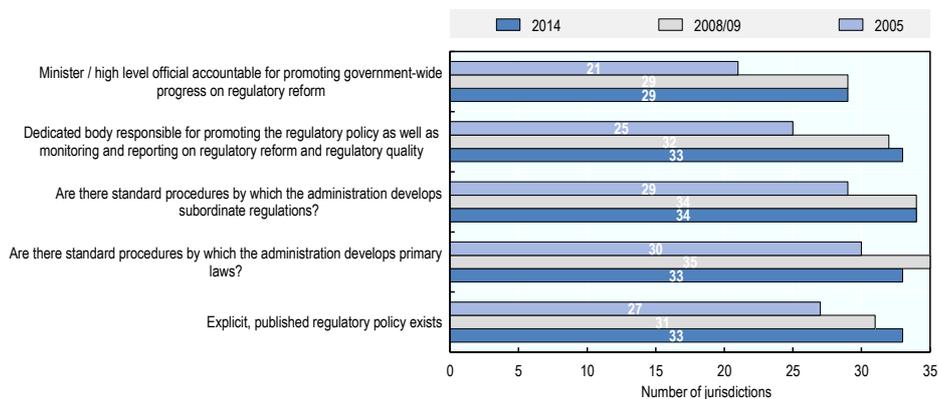
The National Registry of Administrative Procedures is a topic for follow-up by the Regulatory Policy Committee as stated in the Chair's Letter of 12 December 2016. The registry is being revamped by MEIC at the moment, the new registry is a digital platform that aims at including the list of formalities and administrative procedures at the subnational level given that administrative procedures for the central government are already included in the Registry.

As stated above, Costa Rica has established a Regulatory Improvement Commission with the participation of 4 ministries, according to Article 19 of Law 7472 Promotion of Competitiveness and the Effective Defence of the Consumer (*Ley de Promoción de la Competencia y Defensa Efectiva del Consumidor*). The Ministries which are part of the commission are:

1. Ministry of Economy, Industry and Commerce
2. Ministry of Health
3. Ministry of Environment and Energy
4. Ministry of Agriculture and Livestock
5. The President of the Commission to Promote Competition
6. One representative for each of the 5 business chambers¹
7. One representative of co-operatives
8. One representative of the *Solidarista* Movement
9. One representative of productive agricultural associations
10. One representative of the Chamber of Foreign Trade (CRECEX)
11. One representative of the unions

The Commission has ordinary meetings every six weeks. However, in 2015 the Commission only had 5 ordinary meetings and during 2016 there were only two meetings held.

Figure 4.2. The adoption of an explicit whole-of-government policy for regulatory quality by OECD countries



Note: Based on data from 34 countries and the European Commission. Chile, Estonia, Israel and Slovenia were not members of the OECD in 2005 and so were not included in that year's survey.

Source: (OECD, 2015^[1]), 2014 Regulatory Indicators Survey results, www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm.

Costa Rica has developed an *ex ante* control system through the digital Preliminary Control System (*Sistema Digital de Control Previo*, SICOPRE) following the mandate of Law 8220. The system enables institutions to carry out Cost-Benefit Analysis for each new regulation or any reform to existing ones, which in turn is made public for consultation.

The issuance of regulation – that being primary laws or subordinate regulation – in Costa Rica, follows the establishment of quality control mechanisms and practices such as stakeholder engagement. Regarding only subordinate regulation there are standard procedures that include tools like RIA, consultation process, and simplification programmes, similarly to OECD countries.

However, there is currently no effective enforcement mechanism to ensure consistent implementation of regulatory management tools, and the implementation of these tools needs to be enhanced with extensive training but also with clear oversight exerted by the BRU. This will allow ensuring that its implementation is indeed improving quality of regulation. For instance, the simplification programme could make use of burden measurement to focus resources, public consultation could be done for all regulation and not only those that account for administrative procedures.

Issues for consideration

Costa Rica has adopted the practice of RIA using a digital platform called Preliminary Control System (SICOPRE); annual Regulatory Improvement and Simplification Plans; public consultation of regulation during the RIA process, amongst other things. In this manner, some building blocks exist to construct a more robust and sound whole-of-government regulatory policy and governance. However, tools for quality control over new and existing regulation in Costa Rica must be enhanced to achieve better results. For example, the Regulatory Improvement and Simplification Plans do not have quantitative or qualitative criteria to measure administrative burden as it is commonly done in OECD countries.

Regulatory oversight, including a challenge function, is exerted by MEIC only for the central administration. Oversight activities allow for proper implementation, follow-up, and evaluation of results; it is a key element to ensure a whole-of-government approach. Without proper overall oversight, regulatory policy in Costa Rica will not reach its potential. MEIC might be understaffed for this purpose.

Note

¹ Agriculture Chamber, Industry Chamber, Commerce Business Chamber, Exports Chamber and Construction Chamber.

Reference

OECD (2015), *2014 Regulatory Indicators Survey Results*, [1]
<http://www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm>
 (accessed on 6 April 2020).

5 RIA capacity

This chapter provides a brief overview of the implementation of the Core Principle supporting RIA capacity, drawing on the Regulatory Policy Committee instruments. It details Costa Rica's RIA requirements, and RIA guidance and training.

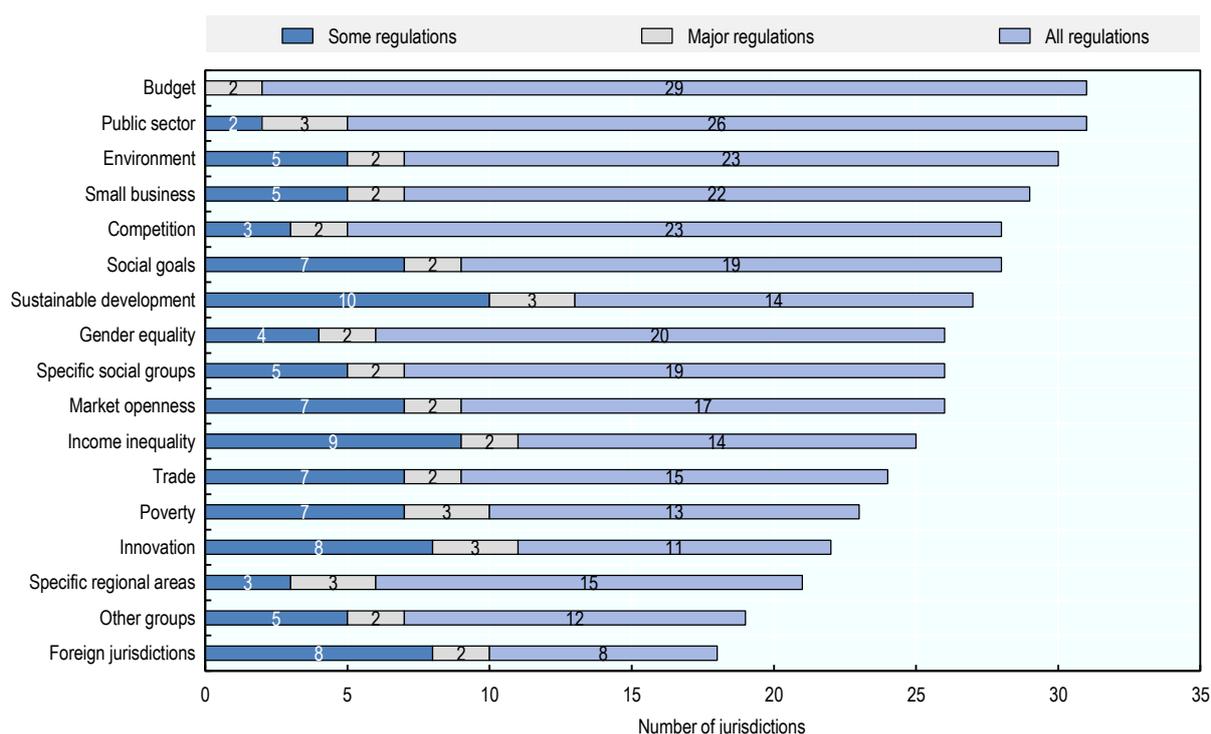
Core Principle: RIA assessment capacity, including the implementation of a regulatory impact assessment framework that incorporates explicit consideration of non-regulatory options, a preference for performance-based regulation and the efficient use of market mechanisms.

RIA Implementation

Law 8220 spells out the regulatory impact assessment process that central and decentralised public institutions, as well as autonomous and semi-autonomous bodies, organisms with legal representation, public entities out of the state, municipalities and public firms (except those active in national security) must follow. All the public administration (centralised and decentralised) institutions are obliged to conduct CBA before issuing any new regulation, or modifying any already existing one only if such impose formalities, requirements and administrative procedures.

In broad terms, the RIA process is only compulsory for regulation that creates or modifies formalities, procedures or obligations that regulated entities or citizens are obliged to comply with. This situation clearly limits the scope of the implementation of RIA and its potential benefits (as well as for costs). This situation contrasts with the scope of OECD countries where the analysis is broader and can include assessment of budget, environment, small business, gender equality or competition to name some as seen in Figure 5.1. The specific criteria followed by Costa Rica in terms of RIA are described in the following paragraphs.

Figure 5.1. Regulatory impact assessment in OECD countries



Note: Based on data from 34 countries and the European Commission.

Source: (OECD, 2015^[11]), 2014 Regulatory Indicators Survey results, www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm.

Box 5.1. Regulatory impact assessment in the United Kingdom

The **United Kingdom** achieves the first place in the composite indicator of regulatory impact assessment within the 2015 OECD Study on Regulatory Policy. Such indicator is composed by 4 variables linked with the practice of regulatory impact employed by each country: methodology, transparency, systematic adoption and supervision and quality control. Some good practices of the United Kingdom are the following:

- Handbook on regulatory policy and the green book: The United Kingdom has published two guidelines so as the public officials can undertake the regulatory impact analysis. In the first, relevant concepts surrounding the regulatory impact assessment are presented. This includes goals, operation, exemptions, expected approaches, etc. In the green book are explored in deep, specific topics which are part of the regulatory impact analysis.
- Calculator of costs and benefits: The United Kingdom has also published a friendly-use calculator in Excel format to compute costs and benefits of the proposed regulatory projects. In such calculator, the expected costs and benefits during the life of the project are presented, computing the net present values; as well as the main alternatives identified. This tool is useful to compare the best alternative on objective basis.
- Proportionality analysis: Not all regulatory projects must face a regulatory impact analysis nor all must have the same complexity and depth. The elements used by the United Kingdom to disseminate the necessity and depth of the analysis are the following: attention level that surrounds the regulation, originality and irreversibility of regulation, development step of the policy, location and distribution of expected impacts, uncertainty level and data availability.
- Publication of the regulatory impact analysis: The United Kingdom do not only accomplish with the duty to publish the assessments. Besides, it holds formats so the public can easily understand the contents, no matter which agency is the owner of the project.

Source: (OECD, 2015^[2]), OECD Regulatory Policy Outlook 2015, Paris. <http://dx.doi.org/10.1787/9789264238770-en>; (Department for Business, 2020^[3]) Department for Business, Energy & Industrial Strategy (2013), Better Regulation Framework Manual (Manual Marco de Mejores Prácticas Regulatorias), obtenido en: <https://www.gov.uk/government/publications/better-regulation-framework-manual>, accessed 12 January 2017.

Preliminary Control System, SICOPRE

The process and methodology to conduct a cost-benefit analysis have their legal basis in the subordinate regulation of Law 8220. The process requires, *inter alia*, a questionnaire integrated by two sections: *i*) Regulatory Improvement Preliminary Control (*Control Previo de Mejora Regulatoria*); and, *ii*) regulatory impact assessment (*análisis de impacto regulatorio*). Oversight duties concerning quality controls of the RIA process are, as stated in previous sections, exerted by MEIC; the challenge function that comes from the oversight power is binding for the central administration and voluntary for the decentralised public sector.

Article 1 of Executive Decree No. 37045-MP-MEIC states that Preliminary Control, exerted by MEIC, is compulsory for the central –with binding resolutions- and decentralised public institutions –with non-binding resolutions-. Section I, or Regulatory Improvement Preliminary Control, consists of a checklist of questions which act as a filter in order to determine if the regulation should be submitted to Section II or not. Section I includes a brief description of the regulation and qualitative questions regarding the possible impacts of requirements and formalities and their justification, including:

- Creation or modification of formalities

- Creation of new requirements or obligations (or tightening of the current)
- Establishment or increase in the resolution period
- Establish or increase of tariffs on charges to services
- Regulate a new activity
- Tighten the accomplishment of any formality or requirement
- Establish or modifies technical guidelines or criteria.

If, and only if, all the criteria were labelled as negative, the regulation does not have to fulfil the RIA section and the documents are sent to the Direction of Laws and Decrees (DLD) of the Presidency of the Republic without any further requirements to be approved by BRU. Thus, the DLD is the authority that exerts a legal quality control and evaluates the accuracy of the *Preliminary Control*. In case the DLD considers the regulation indeed creates or modifies administrative procedures or formalities, it can consult the BRU *exceptionally*.

If the regulation answers positive to at least one of the criteria stated above, the institution presenting the proposal has to fill out Section II of the *Preliminary Control*. The process is done through the digital Preliminary Control System, or SICOPRE. The working day after the delivery of the form with the supporting paperwork the system publishes the project for public consultation for ten working days (see section on *Transparency and Public Consultation*). At the same time, the corresponding Ministry presents the public consultation process to the BRU in the subsequent 15 working days for analysis. The digital system has a component of regulatory improvement, public consultation, transparency and accountability.

The regulatory impact assessment includes the following themes and issues:

- Problem definition and objectives of the regulation, as well as the identification of the legal foundation that grants the faculty to regulate on such topic.
- Alternatives of the regulation with the justification of the elected option. It includes the regulatory alternatives (government regulation, performance regulation and co-regulation), non-regulatory (market instruments, semi-regulation, auto-regulation, and information campaigns) and inaction.
- Impact of the regulation regarding the new requirements or formalities or its modifications; the impact over tariffs or charges; and the quantitative estimation of costs and benefits for each stakeholder or group of them.
- Define the mechanisms needed to achieve the desired objective.
- State regulatory performance indicators to evaluate the regulation proposed.
- The public consultation summary indicating the consulted groups, comments submitted and the comments taken into account.
- The CBA form needs to be signed by the OST.

If the proposal is aligned with the principles of regulatory improvement, MEIC issues a positive resolution which is then sent to the DLD of the Presidency. Otherwise, if the BRU finds inconsistencies in the draft proposal it will issue a negative (binding) resolution in order for the responsible entity to review and analyse the criteria stated in the resolution.

The institutionally decentralised sector institutions follow the same process with a few nuances. If Section I does not foresee new formalities or requirements, the entity can issue and publish the regulation at any given moment. Otherwise, the regulation has to follow the same process for Section II but the resolution issued by the BRU is just a proposal, which does not have a binding nature but a recommending one. The body from the institutionally decentralised sector can take the recommendation into account or not. If the decentralised institution adopts the recommendation, it will have to submit the proposal again to the Preliminary Control System.

Table 5.1. Regulatory impact assessment reviewed by the Better Regulation Unit (2015-17)

Year	Central administration	Institutionally decentralised administration	Total
2015	73	8	81
2016	73	4	77
2017	9	2	11
Total	155	14	169

Source: Information provided by MEIC (January 2017).

Non-regulatory alternatives

The RIA Form includes the following selection of regulatory and non-regulatory alternatives:

- Baseline or status quo scenario
- Regulatory: Government regulation; Performance-based regulation and co-regulation.
- Non-regulatory: Market instruments; quasi-regulation; self-regulation, and information campaigns.

The Institution proposing the regulation conducts an analysis of both regulatory and non-regulatory alternatives, and translates the benefits and costs of each of these alternatives. Consequently, the entity proposing the regulation selects the option that is most efficient.

Stakeholder engagement in RIA

The implementation of the digital Preliminary Control System makes the cost-benefit template accessible to the general public. The system is an electronic platform through which all ministries and institutions publish the cost-benefit form and attach documents and the regulatory proposal. The cost-benefit, together with the draft of the Executive Decree and/or Regulation, will be published when the public administration sends its regulatory proposal to the Better Regulation Unit. MEIC will publish the documents for public consultation for ten working days.

Guidance and training

The Better Regulation Unit conducts workshops, seminars, and meetings with public officials, where an explanation of how the cost-benefit form should be filled is carried out. Furthermore, MEIC has issued guidelines to instruct how to fill out the format of the cost-benefit evaluation (*Guía de completitud del formulario de evaluación costo beneficio*¹).

Regarding technical regulations, MEIC by means of the Quality Unit, offers training programmes on regulatory impact assessment and, through a co-operation project between the Central America Economic Integration Secretariat (*Secretaría de Integración Económica Centroamericana*, SIECA) and the European Union, has conducted workshops on the importance of RIA.

Costa Rica has had important progress in embedding RIA in their regulatory system regarding subordinate regulation as shown in Table 5.2. The government has advanced in writing guidance on the preparation of RIA and training officials responsible for carrying out the impact assessments in their own public institutions in line with OECD countries. Costa Rica has also installed a control mechanism where the BRU oversees the quality of RIA by using the digital SICOPRE in line with policies and practices of OECD countries. Importantly, impact assessments are only done for regulation containing administrative procedures, leaving a wide-array of regulation without a quality control mechanism.

Table 5.2. Regulatory impact assessment (RIA)

	Costa Rica	LAC	OECD
Requirement to conduct RIA	All subordinate regulations	All (2) Major (0) Some subordinate regulations (1) Never (4)	All (22) Major (6) Some subordinate regulations (4) Never (2)
RIA conducted in practice	Some subordinate regulations	All (1) Major (0) Some subordinate regulations (3) Never (3)	All (16) Major (8) Some subordinate regulations (7) Never (3)
RIA quality check by government body outside the ministry preparing the regulation	Yes	Yes (2) No (5)	Yes (25) No (9)
Written guidance on the preparation of RIA provided	Yes	Yes (6) No (1)	Yes (33) No (1)

Note: The data on LAC countries include: Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico and Peru. They reflect the situation as of 31 December 2015. Data on OECD countries cover 34 OECD countries and reflect the situation as of 31 December 2014.

Source: (OECD, 2016^[41]) Indicators of Regulatory Policy and Governance (iREG) for Latin America 2016. Indicators of Regulatory Policy and Governance (iREG) 2015, <http://www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm>.

Issues for consideration

The regulatory impact assessment system in Costa Rica has developed quality control mechanisms for the issuing or modification of regulation containing administrative procedures. Nonetheless, the effectiveness of the RIA process in place remains a challenge due to capacity –human and financial– constraints within the BRU. Success on RIA as a quality control requires a relevant investment on human resources and institutional capacity. Nowadays, Costa Rica pushes forward to instrument RIA, but the Better Regulation Unit and the entities obliged to comply with regulatory functions face important capacity constraints.

Costa Rica should broaden the scope of the impact assessment to evaluate regulation that does not necessarily create formalities or administrative procedures. It would be important to extend the use of RIA to cover all regulations based on a specific impact threshold or those of major impact rather than to focus on administrative procedures and formalities. For example, RIA could boost other government objectives by including gender assessments or impacts on competition.

Costa Rica should extend the period of analysis of RIA to ensure its effectiveness. For instance, the BRU has 15 days to review and analyse the proposed regulation which might endanger the quality of the analysis when encountering complex regulation. In the same line, consider awarding more time to the existing 10 days of public consultation; time limits could be expanded to allow for meaningful input from stakeholders.

Note

¹ <http://www.meic.go.cr/web/114/mejora-regulatoria/guias-y-formularios>.

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6

Transparency and public participation

This chapter provides a brief overview of the implementation of the Core Principle supporting adherence to the principles of transparency and public consultation in the development of regulations, to ensure that regulation serves the public interest and is informed by the legitimate needs of those interested in and affected by regulation. It details Costa Rica's tools for stakeholder engagement in the regulation-making process as well as other regulatory reform initiatives for ensuring transparency of regulation and regulatory frameworks. It finally presents an assessment of the implementation of the Core Principle.

Core Principle: adherence to the principles of transparency and public participation in the development of regulations.

Public consultation

Primary laws

Regarding issuance of primary laws, a mandatory public consultation process on the bills which are presented to the Legislative Assembly is pursued. The consultation is carried out after the bill is presented to the Secretary of the Legislative Board, which as a first step sends it to be published in the Official Gazette (*Diario Oficial La Gaceta*). Once it is published in the Official Gazette it is open for public comments for a period of 10 days.

In addition, if the bill is assigned to a committee in Congress for further discussion before presenting it to Congress the draft proposal is submitted to consultation once more. It is made known to the stakeholders that may be affected by the draft proposal for a period of eight days, observations are disclosed to the Commission and are analysed by the members of Congress who compose the aforementioned Commission. If the bill undergoes substantial changes and is processed by a substitute text for approval, whether in the Commission or the Assembly, it abides by the same publishing and consulting process again before approval.

Subordinate regulation

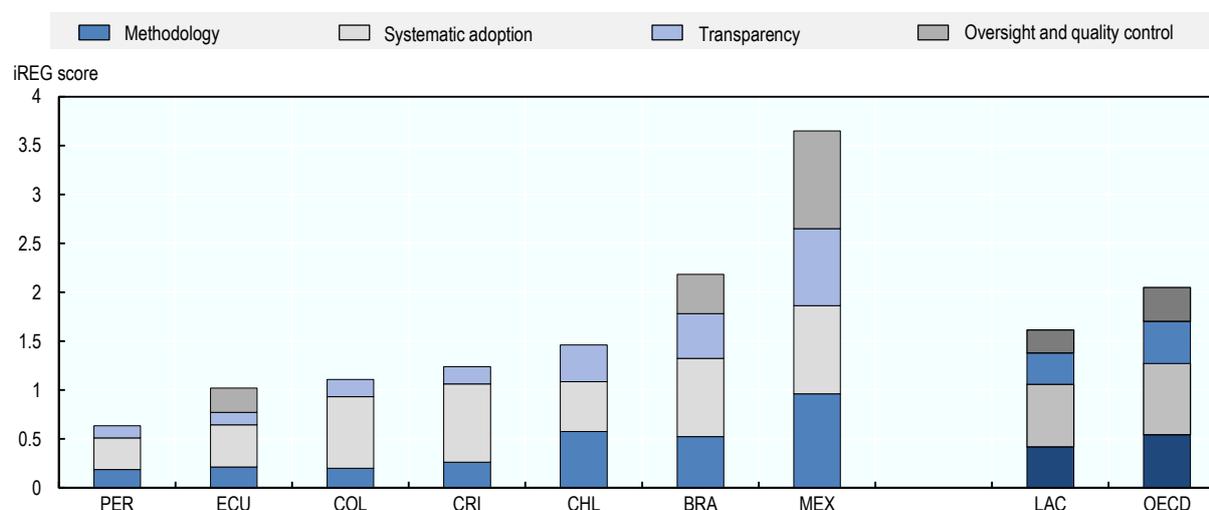
In case of subordinate regulation, Article 361 of the General Law of Public Administration provides that where a proposed regulation affects general interests, it must be submitted to public consultation for a period of 10 days. Such consultation is binding for the whole Public Administration whether central or institutionally decentralised; nonetheless, in practice, it is done on a discretionary basis. Usually this consultation is done when the proposed regulation is already drafted at a later stage of the rule-making process. The proposed regulation, or a notice, is published in the Official Gazette, alongside the proposed regulation which is published on the website of the agency that proposes the regulation.

This public consultation is reinforced by the requirement in Article 12 of the Law on Citizens' Protection from Excess Requirements and Administrative Procedures which obliges public institutions to fill the RIA Form. Note that consultation is linked to the regulatory impact assessment only when the proposed regulation contains paperwork, requirements, and procedures.

The entity proposing the regulation analyses the comments and accepts them or rejects them according to their technical criteria. Public authorities have a legal duty to respond to the observations or comments that are made in the public consultation, either individually or collectively; however, they are not obliged to publish the results of the consultation process. Even when there is a legal requirement to respond to comments, according to the interviewed representatives of the private sector, compliance with the requirement is not enforced.

Regarding technical regulations, the public consultation process involves domestic consultation followed by an international one. It aims at providing feedback to the proposed regulation with the observations and comments received from stakeholders in order to identify possible difficulties in the implementation of a technical regulation at an early enough stage, so that corrective or alternative measures can be taken. In addition, as stated above, technical regulation is submitted to an international public consultation. In the case of national technical regulations, observations and comments received in the consultation process are made public for stakeholders. Also, observation matrices and their answers are published on the website <http://reglatec.go.cr/reglatec/principal.jsp> as part of the communication with national stakeholders as well as for the notification required by the WTO.

Figure 6.1. Composite indicator: stakeholder engagement in developing subordinate regulations



Notes: The figure displays the aggregate score of the composite indicator on stakeholder engagement in developing subordinate regulations across four categories. The maximum score for each category is one, and the maximum aggregate score for the composite indicator is four. The more regulatory practices as advocated in the 2012 OECD Recommendation on Regulatory Policy and Governance a country has implemented, the higher its indicator score.

Source: (OECD, 2016^[11]).

Costa Rica has grounded the requirement to carry out public consultation in legal instruments and has made some progress in setting safeguards so that it occurs in practice (e.g. publication of the proposed regulation in the Gazette for consultation or the need to have the BRU's criteria before the President's signature). There is still room for improvement vis-à-vis OECD countries' practices; for example, while Costa Rica allows a consultation period of 8 days a majority of OECD countries has established binding minimum periods for public consultation of 4 weeks or longer according to the 2015 *OECD Regulatory Policy Outlook 2015*.

Box 6.1. Consultation in Mexico and in the United States of America

Consultation in Mexico is strongly influenced by the requirements formally established in two separate pieces of legislation. First, the Federal Lay of Administrative Procedures sets out specific public consultation requirements as an integral part of the RIA process. Second, more recently adopted transparency legislation has established more general consultation requirements that are independent of the RIA process itself. In particular, this law requires all regulatory proposals to be published on the website of the relevant ministry or regulatory agency.

The draft RIA is required to be open to consultation for at least 20 working days but, in practice, much longer consultation periods appear to be the norm. This reflects, in part, the need for COFEMER (now CONAMER) to undertake its initial analysis of the RIA document and publish its response. Consequently, it appears that the process provides extensive opportunities for stakeholder input. The Commission also supports effective engagement in consultation by actively providing the draft RIA to key stakeholders and soliciting their inputs in many cases.

In the United States, the Administrative Procedure Act (APA) requires all US government agencies to provide public notice and seek comment prior to issuing new subordinate regulations or revising existing ones. The purpose of allowing public comment is to provide the agency with information that will

increase its knowledge of the subject matter of the proposed rule, and to permit the public to challenge the factual assumptions, analyses and tentative conclusions underlying the proposed rule.

Agencies are required to publish a Notice of Proposed Rulemaking (NPRM) in the Federal Register. The NPRM comprises the draft regulatory text, a summary of the issues and actions under consideration and the rationale for the rule. It also contains supplementary information, including a discussion of the merits of the proposed solution, important data and other information used to develop the action, and details its choices and reasoning. In general, the comment period ranges between 30 and 60 days and all “interested persons”, regardless of domicile, may participate. Many agencies give several options for submitting comments, including U.S. mail, private courier, email, and electronic submissions on the website Regulations.gov. In addition, an agency may hold public hearings during the comment period, where people can make statements and submit data. Sometimes, webcasts and interactive internet sessions are also used to provide information to the public on the substance of the proposed rule.

The government portal Regulations.gov supports the public notice and comment process and provides access to all publicly available regulatory materials, e.g. final rules and supporting analyses, as well as ANPRMs and NPRMs. Stakeholders can directly provide electronic comments on regulations through the portal. More than 5 million documents are posted on Regulations.gov, 80% of which are public submissions. Nearly half a million comments are submitted through Regulations.gov each year by nearly 4 million annual visitors.

Source: (OECD, 2014^[2]), *Regulatory Policy in Mexico: Towards a Whole-of-Government Perspective to Regulatory Improvement*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264203389-en>. (OECD, 2016^[3]), Pilot database on stakeholder engagement practices in regulatory policy.

Transparency

Since 2010 the digital and printed versions of the Official Gazette have been harmonised; moreover, as of 2013 the Gazette can only be consulted via web, there is no longer a printed version. The digital version works with a certified digital signature. The Gazette contains information on the draft legal acts and regulations in general and can be found in the Official Gazette’s website (Imprenta Nacional de Costa Rica, n.d.^[4]). Laws can also be found in the Costa Rican Legal Information System (*Sistema Costarricense de Información Jurídica*, SCIJ) (Procuraduría General de la República, n.d.^[5]). Moreover, the National Assembly’s website allows the public to consult regulation.

The aforementioned National Council on Competitiveness and Innovation instructed agencies to make their Regulatory Improvement Plans public in each institution’s website to engage with stakeholders. After the period of consultation, the final Regulatory Improvement and Simplification Plans (PMR) need to be published in the internet. Furthermore, the institutions must publish progress made every two months in their respective websites. The Presidency of the Republic monitors compliance of the Plans in practice.

Costa Rica’s technical regulations can be found in the Technical Regulation System (Ministerio de Economía, n.d.^[6]), where a citizen can access proposals, public consultations and responses, and effective final texts, amongst other information. Publicity of the consultation results goes far back as 2008.

In the case of administrative procedures and public formalities, Article 4 of Law 8220 stipulates that “no administrative procedure can be enforced without; ... b) being published in the Official Gazette alongside the procedure, manuals, forms and any other corresponding documents. These must be visible for the public at the equivalent agency.”

In terms of regulatory transparency, Law 7472, introduces the obligation to create a National Registry of Administrative Procedures. The registry is currently being revamped by the Better Regulation Unit in the MEIC. The objective is to present a more accessible and updated registry that includes reviewing the stock of administrative procedures and formalities in the central and the institutionally decentralised public administration of Costa Rica. In practice, the registry currently does not encompass all administrative procedures and formalities for the subnational level.

The government of Costa Rica is currently working on a single website that will centralise and make public all the Regulatory Improvement and Simplification Plans of the public administration. It is being designed to be a digital system that will allow the development of plans for institutional regulatory improvement, monitoring, and evaluation. It will aim at providing citizens with an agile and transparent access to comment on the PMRs.

Stakeholder engagement in administrative simplification

Administrative simplification planning in Costa Rica stems from the Regulatory Improvement and Simplification Plans as described in the following Core Principle which have a requirement to do public consultation as part of their design. Interviews with business associations informed that they are not actively engaged in the elaboration of the Regulatory Improvement and Simplification Plans. However, The MEIC holds periodical meetings with private sector Business Associations through the National Council for Competitiveness and Innovation.

Issues for consideration

While legal requirements and practices on stakeholder engagement exist, there is no systematic use of consultation throughout the whole administration. There is a commitment to transparency and consultation in Costa Rica enshrined in the General Law of Public Administration (stakeholders are given the opportunity to comment on draft regulations for a period of 10 days for subordinate regulation and 8 days for primary laws). However, the institutionally decentralised public administration (including economic regulators) retains significant leeway and, in practice, consultation with the general public is only used to inform the development of some regulations. Consultation needs to be better embedded in the rulemaking process to ensure it is systematically used in practice; public consultation could have more benefits if it is submitted at an early stage, before the assessment of RIA is done.

Relevant practices of stakeholder engagement are yet to be integrated. The government of Costa Rica is continuously seeking out business chambers and private sector associations' opinion; however, there could still be room to provide meaningful opportunities for a broader sector of society. Furthermore, stakeholders are not made aware of future consultations/regulations in the pipeline by including, for example a forward planning agenda. Moreover, while Costa Rica allows a consultation period of 8 days a majority of OECD countries has established binding minimum periods for public consultation of 4 weeks or longer according to the *OECD Regulatory Policy Outlook 2015*.

A consolidated and centralised registry of administrative procedures and formalities is under construction. A complete and up-to-date formalities and administrative procedures database that uses plain language should be freely available to the public. Having a registry could also serve as a starting point for other regulatory reforms, i.e. manage and rationalise existing stock of regulation.

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7 Regulatory performance

This chapter provides a brief overview of the implementation of the Core Principle supporting regulatory performance, including the performance of the regulatory system, focussing on the organisation of the functions of its regulatory agencies and inspectorates, their public accountability and their conformance with review and appeals. It finally presents an assessment of the implementation of the Core Principle.

Core Principle: regulatory performance, including the performance of its regulatory system, focussing on the organisation of the functions of its regulatory agencies and inspectorates, their public accountability and their conformance with review and appeals processes.

Regulatory performance indicators

Costa Rica does not have a systematic monitoring and evaluation system for their regulatory reform efforts. The Ministry's web portal¹ makes public scattered information of regulatory tools like the Regulatory Improvement and Simplification Plans and the National Registry of Administrative Procedures but does not offer an evaluation of key regulatory policies.

Ex post reviews of regulation in Costa Rica

Article 3 of Law 7472 on the Promotion of Competition and the Effective Defence of the Consumer (*Ley de Promoción de la Competencia y Defensa Efectiva del Consumidor*) regarding the elimination of formalities and exemptions, indicates that the regulation of economic activities must not impede, slow down nor distort the transactions of the domestic and international markets. It also provides that public administration must review, analyse and eliminate such formalities and requirements whenever the human health, animal or vegetal; safety; the environment; and quality standards are covered.

The same article indicates that the Commission of Regulatory Improvement, led by MEIC, must carry out permanently *ex post* evaluations to keep up-to-date regulation regarding essential formalities and requirements to guarantee the health, safety, etc. In addition, the article indicates that, the continuous evaluation of current regulation must consider the formalities authorised through *the silent-is-consent rule*, so as to select a random sample to demand an explanation of the reasons that motivated such silence.

In Costa Rica, there is no evidence that *ex post* evaluations are carried out systematically; this is in part due to capacity issues. For the same reason, there is no evidence of the effectiveness and the impact of regulation. In practice, *ex post* reviews of regulation done by the BRU are only based on demand or due to specific circumstances. The main reason not to follow a scheduled program is the lack of capacity of the BRU and the MEIC; the unit in charge of carrying out this effort accounts for 10 persons. While this is an area for improvement in Costa Rica, it is so for many OECD countries.

Costa Rica does not appear to have undergone an *ex post* evaluation to assess whether regulation are meeting their objectives so far as explained in Table 7.1. The 2015 *OECD Regulatory Policy Outlook* shows that evaluation of regulations is mainly carried out *ex ante* through the regulatory impact assessment (RIA) process while *ex post* evaluation remains the least developed of the regulatory tools across OECD countries as shown in Figure 7.1.

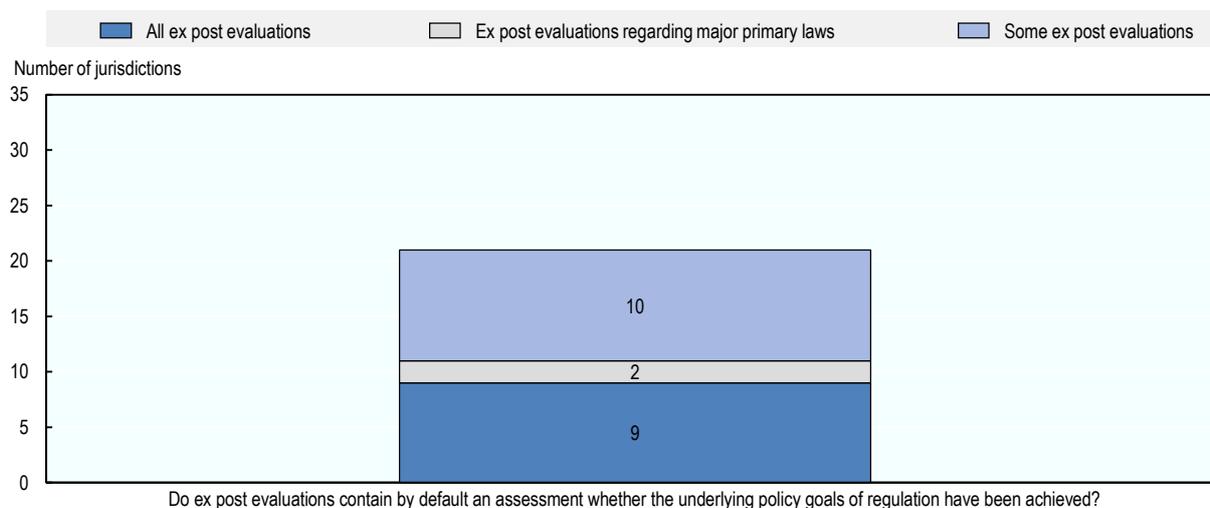
Table 7.1. Ex post evaluation and administrative simplification in the LAC region

		Costa Rica	LAC
Ex post reviews conducted that include an assessment of whether the objectives of the regulation have been achieved	Primary laws	No	Yes (2) No (5)
	Subordinate regulations	No	Yes (3) No (4)

Note: The data on LAC countries include: Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico and Peru. They reflect the situation as of 31 December 2015.

Source: (OECD, 2016^[1]), Indicators of Regulatory Policy and Governance (iREG) for Latin America 2016. Indicators of Regulatory Policy and Governance (iREG) 2015. <http://www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm>.

Figure 7.1. Ex post evaluation in OECD countries



Source: (OECD, 2016^[11]) Indicators of Regulatory Policy and Governance (iREG) for Latin America 2016. Indicators of Regulatory Policy and Governance (iREG) 2015. www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm.

Administrative simplification

Costa Rica has implemented a permanent administrative simplification strategy. This strategy takes shape in the Regulatory Improvement and Simplification Programmes (PMR) that all public institutions must comply with. This is an instrument which helps to fix objectives, goals, indicators, activities, timing and amount of personnel, in order to reduce administrative burdens arising from regulation. One of the remaining challenges is to measure administrative burden stemming from information obligations.

PMRs were designed to ensure that procedures and formalities are effective, efficient and under high quality standards, imposed to accomplish policy objectives. For this reason, an Administrative Simplification Official is appointed to track simplification projects on each public institution in Costa Rica. A challenge still remains since the appointed officials lack time and capacities to work systematically on administrative simplification.

One-stop shops

The foreign trade one-stop Shop (*Ventanilla Única de Comercio Exterior 2.0*, VUCE) is the first effort to join formalities and procedures within a virtual platform, avoiding duplicities of information and unnecessary processes. This effort is one of the most important projects in which partial *ex post* evaluation was conducted. The platform integrates the complete foreign trade digital procedures and formalities, including EX-IM permits. This platform was made official in January 2014 and is available 24/7/365.

A second effort on one-stop shops is the *Regístrelo* Platform (Registration of Health Products). This is an electronic platform for citizens to carry out the processes related to the registration of health related products, in order to significantly reduce the registration period for a product.

Sector and independent regulators

Costa Rica has independent regulators that exist outside the Ministries. Several financial superintendencies exist in fields such as Insurance (SUGESE), Pensions (SUPEN), Securities (SUGEVAL), Banking (SUGEF) and, subject to the topic they regulate, they have their own supervision

entity called the National Council for Supervision of the Financial System (*Consejo Nacional de Supervisión del Sistema Financiero* CONASSIF).

Quality of public services regarding the energy, transport and water sectors are regulated and overseen by an independent entity called the Regulatory Authority for Public Services (*Autoridad Reguladora de los Servicios Públicos*, ARESEP) and regarding telecommunication, the market is supervised by the Telecommunications Superintendency (*Superintendencia de Telecomunicaciones*, SUTEL).

The institutional arrangement of the aforementioned regulators grants them legal and administrative independence; as for the financial regulators they have their own quality control mechanisms for the regulation issued. In addition, ARESEP and SUTEL do not implement regulatory management tools such as RIA, *ex post* evaluation, or carry out administrative simplification programmes. For both financial and economic regulators the process for issuing regulation rests discretionary, and is not necessarily publicly promoted.

ARESEP and SUTEL undergo public consultation procedures as part of their tariff-setting mechanisms and are currently progressing into carrying out public hearings 15 days before the public consultation to explain to the community how to present an observation or complaint during consultation. In 2017, both regulators will set out a forward planning agenda to let the public know the regulation that is foreseen to be issued in line with OECD countries' practices.

Issues for consideration

Ex post evaluation of regulation is not done systematically. *Ex post* evaluation is mainly focused on administrative simplification and is being carried out in a discretionary basis by public institutions. Lack of financial and human resources in MEIC may arise as one of the reasons for the lack of enforcement and compliance mechanisms and activities. Costa Rica currently has 10 people dedicated to the implementation of regulatory management tools. *Ex post* evaluation exercises should be enhanced not only as regards to administrative simplification but also to the overall effectiveness of regulation, as well as to monitor regulatory reform efforts.

Law 7472 establishes provisions to carry out *ex post* evaluation on formalities and administrative procedures with effects on commerce and market access. Currently, Costa Rica does not include measurement of burden of compliance costs in their simplification efforts. Moreover, the simplification programme does not include ICTs, nor does it involve the subnational level on a systematic basis.

MEIC has installed a Commission for Regulatory Improvement with the sole purpose of overseeing progress of the Regulatory Improvement and Simplification Plans. The Commission's role could be enlarged to pursue a more ambitious strategy and benefit from sustained capacity-building.

The governance of both economic regulators, the Regulatory Authority for Public Services (*Autoridad Reguladora de los Servicios Públicos*, ARESEP) and the Telecommunications Superintendency (*Superintendencia de Telecomunicaciones*, SUTEL) has opportunities for improvement, and the implementation of regulatory management tools within the regulators is a pending task. For example, economic regulators (being part of the institutionally decentralised public administration) overlap with the central public administration. Moreover both economic regulators current legislation does not include mechanisms to impede *revolving-doors* or set out *cooling-off* periods. Tools such as regulatory impact assessment, administrative simplification, and *ex post* evaluation are not systematically conducted in economic regulators.

Note

¹ MEIC's better regulation web portal: <http://www.meic.go.cr/web/42/mejora-regulatoria.php>.

Reference

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8

Multi-level governance for regulatory coherence

This section provides a brief overview of the implementation of the Core Principle supporting multi-level governance for regulatory coherence, drawing on the RPC instruments. It details Costa Rica's regulatory management at the sub-national level, as well as Costa Rica's consideration for international standards and frameworks. It finally presents an assessment of the implementation of the Core Principle.

Core Principle: multi-level governance for regulatory coherence, including the promotion of regulatory coherence through co-ordination with national, sub-national and supra-national bodies and the promotion of international regulatory co-operation.

Regulatory coherence at the subnational level

The constitutional mandate for municipalities is broad and general, meaning that municipalities are not in charge of a specific policy or public sector. In general, municipalities are responsible for managing and providing some municipal public services (i.e. setting and collecting municipal fees and taxes). Finally, the municipality has the authority to dictate the Urban Regulatory Plans (URP) and all guidelines pertaining to spatial planning; furthermore, on matters related to the regulation of economic activities municipalities deal with construction permits and business licences, amongst other things.

While the subnational level is subject to the application of regulatory instruments, especially Law 8220, it is also true that such entities overlook the scope of this legislation, justified by the principle of municipal autonomy. Some efforts have been carried out at subnational level to add these municipalities to regulatory reform initiatives like the issuance and implementation of their Regulatory Improvement Plans or subscribing to the National Registry of Administrative Procedures.

As stated before, Law 8220 obliges all bodies in the public administration to issue Regulatory Improvement Plans as well as to submit their formalities and administrative procedures currently in force to the National Registry of Administrative Procedures, including the subnational level. However, in practice, compliance is low on both fronts; the issuance of Regulatory Improvement Plans is not a common practice. Furthermore, there are just a handful of municipalities that have updated administrative procedures registered in the National Registry of Administrative Procedures.

Municipalities are responsible for the development of the corresponding URPs alongside the approval of the Housing and Urbanism National Institute (*Instituto Nacional de Vivienda y Urbanismo*, INVU). In this regard, Law 4240 on Urban Planning mandates municipalities to update their URPs every 5 years; nonetheless, in practice there are municipalities where the updating process has taken 10 years due to cumbersome inside government procedures.

Co-ordination mechanisms

The legal provisions that allow for co-ordination mechanisms can be found in several instruments like the General Law of Public Administration, the Law on Protection from the Excess of Requirements and Administrative Procedures and the Municipal Code. Furthermore, the MEIC has powers to liaise with municipalities under Public Law 8220. The approach remains fragmented and sectorial and co-ordination is framed by top-down decisions that depend mostly on political will.

Nonetheless, MEIC recently carried out a first effort to harmonise regulation and improve regulatory coherence in the Brunca Region. The Project encompasses six municipalities (*Pérez Zeledón, Corredores, Golfito, Buenos Aires, Osa, Coto Brus*) where a simplification process has been implemented, by defining a standard model for obtaining a business licence in the region. The user can submit his application via a unified single form that involves not only the municipalities but public sector institutions like the Ministry of Health, the Ministry of Agriculture and the Institute for Social Security. The model has reduced the time to obtain a business patent from 45 to 10 days. This project will serve as the basis to replicate the experience in other areas of the country.

Regulatory management capacity and performance at the sub-national level

In view of municipal autonomy that sub-national corporations have, they are responsible for their own regulatory quality; however, MEIC through the Better Regulation Unit may issue an opinion in the form of a recommendation to the sub-national governments in relation with the issuance of quality standards

according to Law 8220, even when this does not happen regularly in practice. Furthermore, the elaboration of Regulatory Improvement and Simplification Plans hinges on the ability and political will to reach an agreement between the national and municipal authorities.

National regulatory performance at the subnational level could be improved by having local offices of public agencies in the municipalities with homogenous administrative procedures. Thus, citizens and entrepreneurs must travel from their municipalities to the central offices when they need to solve administrative procedures.

Simplification at the sub-national level: construction permits as a starting point

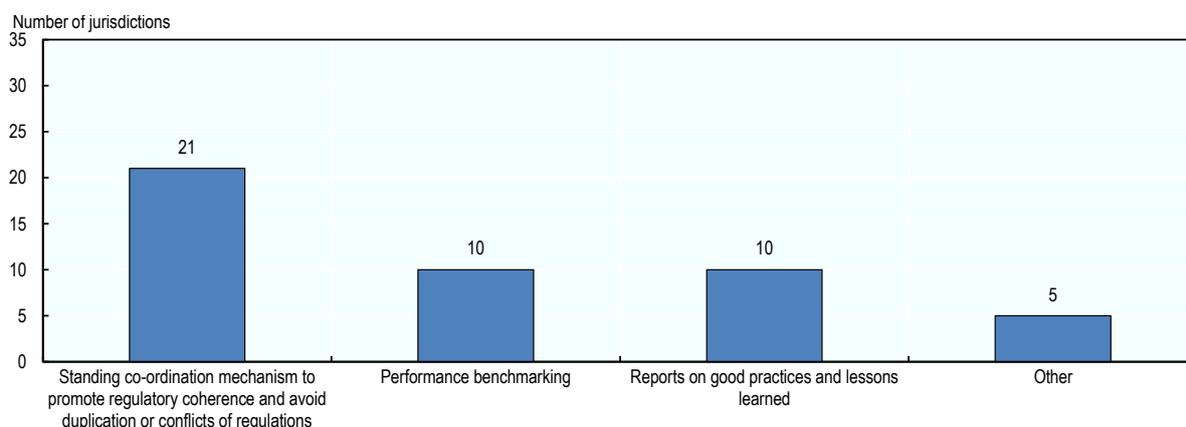
As stated before, each municipality is responsible for improving regulatory quality in their territories. However, even when discretionary, all municipalities have signed an agreement with the College of Architects to be part of the digitised construction permit procedure (CFIA, MEIC and MIVAH, n.d.^[1]). Moreover, from the 81 municipalities involved, 64 have been incorporated in the procedure and only 12 are able to operate digitally.

Use of regulatory tools at the subnational levels like administrative simplification is scarce. This is an expected outcome as financial resources available at subnational governments are limited. Notwithstanding, some municipalities have some practices on administrative simplification, mainly conducted as special projects by national and international non-governmental organisations.

In Costa Rica, several municipalities have taken upon themselves to implement one-stop shops; however, even when they speed up the process vis-à-vis the citizens it is not more than a centralised centre to receive citizen petitions without any type of digitalised or automated processes. Such one-stop shops provide information from local and central formalities. The central government is working on helping regions of municipalities match their procedures' requirements and simplifying them, serving as a first step before digitalisation:

- The Central-Pacific region project – it consists of 10 municipalities with capacity-building international partners like the Inter-American Development Bank and national partners like FUNDES (<http://fundes.org/>) and IFAM (<http://www.ifam.go.cr/>).
- The *Chorotega* region project – consisting of 11 municipalities. It is currently on a bidding process due to lack of financial, human capital and expertise.

Figure 8.1. Mechanisms to ensure coherence across all levels of government and improve performance at the subnational level



Note: Based on data from 34 countries and the European Commission.

Source: (OECD, 2015^[2]) 2014 Regulatory Indicators Survey results, www.oecd.org/gov/regulatory-policy/measuring-regulatory-performance.htm.

Installing good regulatory practices at the subnational level is an area with an ample margin for improvement in Costa Rica as compared to OECD countries. There are currently no mechanisms to ensure coherence and improve performance at the subnational level in the BRU as opposed to several OECD countries practices and policies as seen in Figure 8.1.

Box 8.1. National support to develop regulatory policies at the sub-national level: Belgium and Mexico

In **Belgium**, since 1999 they created the Administrative Simplification Agency (ASA) (<http://www.simplification.be/>) in the Chancellery of the Prime Minister with enough autonomy and with a mandate to solve the administrative complexity for the business environment. The ASA evolved to encourage and co-ordinate simplification efforts across different administrations. The ASA's tasks include, inter alia, organizing co-operation between the different federal administrations; organising dialogue on administrative simplification with all levels of authority; establishing a dialogue with administrations over simplification projects for citizens; and, managing the “Kafka contact point”.

The Belgian “Kafka contact point” is an initiative in which the government of Belgium collects suggestions for administrative simplification proposed by stakeholders. When it receives a message in which the municipalities are cited, the ASA forwards the message to the relevant municipality, which is required to answer the complainants and to resolve the issue. In the case of administrative streamlining projects in which the municipalities are involved, the ASA tries out the solutions proposed in respect of the selected municipalities.

A higher level of involvement by sub-national levels of government lies in making them a part of the project, meaning that some simplification measures are directly aimed at regulations adopted at the sub-national level. The states/regions (or in some cases also municipalities) can be given their own reduction targets. The power of the centre to require sub-national levels of government to reduce regulatory burden and to fulfil these targets is again, of course, dependant on the degree of autonomy.

In **Mexico**, the Federal Law on Administrative Procedure grants COFEMER (now CONAMER) the mandate to promote regulatory quality in states and municipalities. Accordingly, this entity helps states develop their own laws on regulatory improvement. Twenty out of the thirty one federal states and the Federal District have a law on better regulation, mandating state authorities and, sometimes, municipalities, to pursue regulatory improvement policies. In addition, eight states have laws on economic development containing a section on regulatory improvement.

One of the main multi-level co-ordination mechanisms used in Mexico consist of covenants between the Commission, states and municipalities. These covenants establish that the former will provide training, advice, and implementation assistance concerning regulatory policies and tools. For example, COFEMER has led the implementation of the System for quick business start up (SARE), which is a simplification programme for start-up procedures. Up until October 2011, 189 SARE had been implemented, leading to the establishment of 264 489 businesses and 701 157 jobs, with an investment of MXN 42 441 million. According to the Commission, the turnaround time for the municipal start-up licence went down from 25.2 to 2.4 days in the municipalities that established SARE between March 2010 and November 2011.

Just recently, the Commission started promoting a regulatory governance cycle approach in states and municipalities. Accordingly, it has helped states and municipalities to develop and apply not only regulatory reviews but build centralised registries.

Source: (OECD, 2014^[3]), Mexico, Towards a Whole-of-Government Perspective to Regulatory Improvement, Paris. (OECD, 2010^[4]), Why Is Administrative Simplification So Complicated?: Looking beyond 2010, Cutting Red Tape, Paris.

Consideration of international standards and frameworks for co-operation

A bilateral agreement called “Technical Cooperation Agreement on Regulatory Improvement Matters between Mexico and Costa Rica” between the Federal Commission for Regulatory Improvement in Mexico (*Comisión Federal de Mejora Regulatoria*, COFEMER, now CONAMER) and MEIC through the Better Regulation Unit is currently in force.

In the case of national technical regulations Costa Rica is a member of the World Trade Organisation through which regulations are obliged to pass through an international public consultation process. Also, observation matrices and their answers are published on <http://reglatec.go.cr/reglatec/principal.jsp> on the tabs for answering to the national public consultation and notification to the WTO.

Costa Rica forms part of the Secretariat for Economic Integration (*Secretaría de Integración Económica*, SIECA) which is the regional body that facilitates the economic integration of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama, members of the Central American Integration System (SICA). The SIECA ensures the correct application of regulation dealing with economic integration by promoting regulatory convergence. The Ministry of Economy, Industry and Trade, and more specifically the Technical Regulation Body (*Órgano Reglamentación Técnica*, ORT) is in charge of following the process for the regional regulation. Currently there are over 60 bylaws issued by SIECA.

Issues for consideration

Regulatory coherence across levels of government has an ample margin for improvement in Costa Rica. Co-ordination mechanisms for regulatory coherence are still in its primary stages. An example is MEIC’s first project at the subnational level in the *Brunca* region to harmonise business permits along six *cantones*, or municipalities, in the area. Furthermore, the implementation of Regulatory Improvement and Simplification Plans, or digitalisation for better delivery of public services, are two examples of scattered and incipient efforts found scarcely at the subnational level.

Costa Rica could greatly benefit from strengthening regulatory management capacity and performance at the subnational level. Interviewed municipalities reiterated the need for capacity improvement to promote better regulation. The lack of resources was also mentioned in multiple occasions as the possible cause for the lack of appropriate regulatory management in municipalities. MEIC could be in a position to deliver capacity-building workshops and guidance if provided with the proper resources.

Centralisation of government functions limits simplification efforts at subnational level. An example can be observed in the formalities required to open a business in Costa Rica, primarily outside San José, the capital city. In order to open a business, national and subnational regulation is blended; an issue however, is that central government does not have formal representation, at municipal level, increasing the cost of regulation. For the same reason, administrative simplification efforts are divided according to the level of government with few expectations of an integrate strategy.

The government of Costa Rica has in place a bilateral agreement with Mexico. The two governments have established a framework for co-operation that includes the implementation of RIA in Costa Rica. Moreover, attention is provided to international obligations such as those stated by the World Trade Organization, or the Secretariat for Economic Integration (SIECA) which provides a platform to develop international legal and policy instruments in support of regulatory coherence.

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