

Chapter 1

Assessment and recommendations

Economic context and drivers for regulatory reform

Colombia is a unitary constitutional republic, composed of 32 departments (*departamentos*), as well as municipalities, special districts, and one Capital-District (*Distrito-Capital*) in Bogota. The Government of Colombia (GOC) functions within the framework of a presidential representative democratic republic as established in the Constitution of 1991. In accordance with the principle of separation of powers, government is divided into three branches: executive, legislative, and judicial.

The Political Constitution of 1991 is the highest legal instrument in the country. Its promulgation brought a change in the function of the State, which left its interventionist role as exclusive service provider and opened up the possibility of private sector participation in the economy, increasing competition. The Colombian State is now in charge of issuing public policies and regulations, being responsible mainly for supervision and control. This move was accompanied by the creation of regulatory commissions, which contributed to establish more predictable, coherent, and transparent regulatory frameworks where private participation is encouraged.

Several administrative reforms have accompanied this process with the aim to have a more professional, transparent and citizen-oriented public administration. The GOC has embarked in administrative simplification efforts, with the overarching goal of streamlining formalities that affect business and citizens. The GOC has also created regulatory commissions for utilities sectors and has separated out the supervisory function through the establishment of *Superintendencias*. It has also introduced principles and tools to improve the quality of regulations, which have focused mainly on legislative technique.

Public governance context for regulatory reform

Regulatory reform is closely linked to constitutional principles and various normative acts that have shaped the way the public administration deals with laws and regulations from their design and conception to their implementation and review. In this sense, positioning regulatory reform beyond the assurance of legal quality still has some way to go, despite the fact that the GOC is proactively promoting the elimination of restrictions to competition and barriers in product markets.

Regulatory management corresponds to a traditionally strong executive. The Colombian administration is structured around sectors, which facilitates co-ordination and coherence, but the executive remains a key player in defining the tasks the various institutions are responsible for, as well as for nominating the head of most public entities.

Regulatory reform developments and the main findings of the report

Strategy and policies for regulatory reform

Colombia has made progress over the last few years in introducing a number of elements of regulatory reform, but it lacks a whole-of-government policy for regulatory quality. The GOC has moved forward in the promotion of regulatory quality requirements for the preparation and implementation of regulation, as well as on the elimination of unnecessary formalities affecting business and services to citizens. A pro-competitive policy has also become an important part of regulatory decision making. Law 1340 of 2009 establishes mandatory consultation of the SIC on proposed regulations that could have an impact on competition, but its concept is non-binding.

However, after several years in place, this approach needs to be re-shaped, in order to go deeper into the legal background of procedures. It also requires the adoption of a systemic approach to challenge the reasons for and the logic behind formalities and, most importantly, regulations.

A number of initiatives have been launched to make the administration more transparent and accountable vis-à-vis citizens. The GOC has promoted information sharing through the use of ICT mechanisms that encourage dialogue between authorities and a wide range of stakeholders.

Institutional capacities for regulatory reform

Measures to promote regulatory quality are spread across in the Colombian administration and various institutions have taken the lead in these efforts, which could result in duplication and divert resources from key activities. The DNP leads the discussion on regulatory reform; the DAFP has a leadership role in the anti-formalities policy; the MINTIC leads the Government online strategy; the MCIT is responsible for the co-ordination of technical regulations and conformity assessment procedures; the Ministry of Justice and Law is the leader of legal policies; regulatory commissions are in charge of specific economic sectors, and *Superintendencias* oversee the implementation of regulation.

To date, there is no single institution responsible for promoting regulatory reform across the Colombian administration, which reflects the piecemeal approach to regulatory management. Institutions in charge of regulating operate under a top-down approach to decision making that characterises the Colombian presidential system, rather than to a co-ordinating, single institution with a coherent approach towards regulatory quality. As a result, mobilisation of the whole administration is incomplete and the strong political support for regulatory reform needs to be translated into a more effective way of ensuring that quality principles are observed.

None of the institutions mentioned previously has a clear mandate to perform the functions associated to a regulatory oversight body. It is critical to reflect on possibilities that could lead to the selection of the best option for such an institution.

Improved transparency through consultation and communication mechanisms

Colombia has made significant efforts to improve transparency in the preparation and implementation of regulations. The communication of regulatory proposals is generally sound, as some institutions such as regulatory commissions prepare regulatory agendas and inform the public about major regulatory decisions, even if sometimes the

information is incomplete. Decree 2696 of 2004 regulates the procedures to be followed for general acts issued by regulatory commissions. According to this decree, all information regarding normative agendas must be published yearly.

There is a legal requirement to consult in the preparation of regulations (contained in Law 1437 of 2011), which applies to all institutions with regulatory powers, but its implementation has been difficult. For example, Decree 2696 of 2004 established that administrative acts of general application issued by regulatory commissions must be preceded by a citizen participation process to allow for input from stakeholders. However, methods for conducting consultation vary across the administration and it is not clear how effective it is, given that participation tends to be limited.

There is room for improvement in terms of regulatory consultation and communication in Colombia. Specific requirements for the whole administration could be improved, taking into consideration existing good practices. More information about the process of producing regulations and communicating results is essential to encourage public participation. Clear deadlines for consultation periods could avoid consultation become a pure formality. Employing various techniques for consultation could assist with developing a more effective way of gathering information.

The development of new regulations

There are no comprehensive standards within Colombia for how to prepare regulations. Some good practices do exist in the regulatory process and these have been encouraged over the last few years. The development of recent guidelines on the preparation of new regulations could help advance standards for preparing norms and improve them over time.

During the process of preparing new regulations, the administration focuses predominantly on the review of legal quality. When preparing laws, for instance, a careful review of the constitutionality of the proposed laws is conducted to avoid future issues with the Constitutional Court. Reviews of legal quality are also conducted in relation to secondary regulation.

The GOC has recently shown an interest in introducing RIA to improve the quality of new regulations. Strong political support is needed to ensure the tool is widely used within the public administration, and it should be compulsory for regulatory institutions. To date, a few Colombian institutions have some initial experiences with RIA, but this does not extend to undertaking a sound cost-benefit analysis, and the supporting documents do not always feed into the decision-making process. Other elements of a RIA system are still to be developed in Colombia, such as establishing clear criteria, procedures, and thresholds for RIA and the selection of the methodological approach for impact assessment. The preparation of guidelines and supporting materials, which is yet to get underway, would assist with disseminating knowledge of RIA and improve the likelihood of regulators implementing it. Capacity-building and training are at the initial stages.

The management and rationalisation of existing regulation

In Colombia there is a single point of information on formalities. In fact, formalities can only be required to citizens if they are registered in the SUIT. Ministries and agencies are mandated by law to provide basic information on formalities through this system.

The GOC does not make systematic use of regulatory reviews. Despite the existence of the SUIT, there is no single database containing the full regulatory stock, information about the progress of legislative and regulatory proposals, and listing proposed amendments. The experience in developing SUIT, as well as those of sectoral inventories of regulation, could be leveraged to take stock of the complete inventory of laws and regulations in effect. A single database containing the regulatory stock does not necessarily have to be integrated into the SUIT, but would certainly complement the information on formalities provided by SUIT. Given that there is no *ex ante* regulatory assessment system in place as a requirement for the whole public administration, there is a risk of regulatory inflation and a need to systematise and streamline the stock of regulations.

Concerning administrative simplification initiatives, the GOC has been successful in advancing one-stop shops to streamline specific business procedures (i.e., starting-up a business, registering property, engaging in foreign trade operations) and in setting up participatory mechanisms, such as the Competitive Regulation programme. However, simplification initiatives should focus on high-impact procedures and should be applied to regulations, not just formalities.

Compliance, enforcement, and appeals

In Colombia, regulatory functions are separate from the enforcement and supervisory functions related to promoting compliance. The *Superintendencias* are primarily responsible for this role and they report that the level of compliance with regulation in Colombia is generally good. There are, however, gaps in carrying out enforcement roles, including the limited use of risk-based approaches to inspections and enforcement.

Compliance and enforcement should be complemented by access to an appeals system that enables citizens and businesses to challenge regulatory decisions. In Colombia, the first instance to challenge a regulatory decision, under certain circumstances, is direct revocation by those that issued the regulation. There are other mechanisms that give more opportunities to citizens and businesses to lodge a lawsuit, such as the State Council (for resolutions taken by regulatory commissions) and the Constitutional Court.

Ex post regulatory evaluation

The GOC has had limited experience in conducting *ex post* evaluations of laws and regulations. According to Decree 2696 of 2004, regulatory commissions are required to conduct an *ex post* evaluation on the dynamic and sustainability of their respective sectors every three years. Other institutions assess particular tools or programmes as the need arises. A more systematic approach to *ex post* evaluation would identify any necessary amendments to make regulations more efficient, up-to-date, and effective.

Multi-level regulatory governance

Even though the attributions of departments, districts, and municipalities are residual and limited by law, there are fields in which their powers can impact economic activity (i.e., by regulating land use, supervising and controlling activities concerning construction). Hence, it is important that territorial entities apply better regulation policies and practices. In general, they have been successful in advancing simplification initiatives to improve *Doing Business* rankings. However, sub-national governments do not apply comprehensive regulatory policies to the different stages of the regulatory governance cycle.

There is a need to establish a multi-level dialogue platform to discuss national priorities and agree on policy agendas. Likewise, there is wide scope for the central government to facilitate the development and implementation of regulatory policies at the sub-national level, in conjunction with increased political commitment from the territorial entities.

Key recommendations

Chapter 3. Regulatory reform and policies in a national context

- The GOC should, as a key priority, develop and issue a formal regulatory policy, which is explicit, binding, and consistent across the whole-of-government, establishing the procedures, institutions, and tools that will be used to pursue high-quality regulation.
- An explicit regulatory policy should clearly recognise that regulating is not the only feasible solution to a public policy problem and must establish procedures to determine when it is in the public interest to regulate.
- Following the conclusion reached by the National Development Plan 2010-14, regulatory policy should move beyond the administrative simplification of formalities to concentrate on the quality of regulation.

Chapter 4. Institutions to promote regulatory reform in Colombia

- The GOC should establish an institutional mechanism at the centre of government to promote regulatory quality, namely an oversight body in charge of regulatory reform.
- The current regulatory structure of Colombia requires an advisory mechanism at the highest political level to promote and advocate regulatory quality.
- Autonomy and accountability mechanisms should be strengthened for regulatory commissions and *Superintendencias* to facilitate better performance and efficiency.
- The GOC should strive to improve co-ordination mechanisms between ministries, regulatory commissions and *Superintendencias* by ensuring they systematically discuss at early stages of the regulatory process and participate in the preparation of new regulations and the interpretation of existing ones.

Chapter 5. Colombia's administrative capacities for making new regulations

- The GOC should develop a common and compulsory set of standards and administrative requirements to prepare regulations of the highest quality and evidence-based.
- Develop and implement mandatory standards on the use of public consultation as a means to involve citizens, business and civil society in the regulatory process and obtain better policy outcomes.

- The GOC should integrate the systematic use of RIA in the policy-making process.

Chapter 6. The management and rationalisation of existing regulations in Colombia

- The GOC should undertake a comprehensive and across-the-board review of the stock of regulations, starting by creating a centralised registry of laws and regulations.
- The GOC should focus on high impact regulations to provide momentum to a long-term simplification programme. Making use of qualitative methods and measuring regulatory burdens against which achievements and savings can be assessed are complementary approaches to move forward in this direction. Citizens, business and civil society should participate in this effort and the experience of Competitive Regulation might be leveraged for this purpose.
- The GOC would advance regulatory certainty and responsiveness by adopting specific tools to increase discipline in the management of formalities.

Chapter 7. Compliance, enforcement and appeals in Colombia

- Regulatory bodies should promote the use of risk-based approaches to increase compliance, target regulations, and focus their resources.
- The GOC should improve judicial review processes of regulatory decision making through increasing specialisation of judges.
- Undertake an assessment of the current judicial review channels for regulatory decisions and identify areas for reform.

Chapter 8. Ex post regulatory evaluation in Colombia

- The GOC should promote the systematic use of *ex post* evaluation of regulations, regulatory reform programmes and institutions to make regulation more efficient and effective.

Chapter 9. Multi-level regulatory governance in Colombia

- When developing a national regulatory policy, the GOC should make explicit the roles that territorial entities should play to deliver better regulation, as well as the support that the central government will provide.
- The central government should work with the territorial entities to develop a permanent and institutionalised multi-level dialogue platform. The multi-level dialogue should facilitate political buy-in and a consistent approach at sub-national and national levels, which are necessary to pursue policies to advance productivity and growth.

Chapter 10. Regulatory reform in Barranquilla

- The Government of Barranquilla should develop a clear and simple regulatory policy that goes beyond simplification by formally establishing the process by which regulation is designed, a co-ordinating unit in charge of regulatory policies, and the tools that will be implemented to ensure compliance with regulatory quality criteria, as well as the role that stakeholders should play to strengthen regulatory management practices
- Based on already existing good practices, the Government of Barranquilla should promote a more systematic process to prepare new regulations and review existing ones, in order to increase their quality. The use of consultation and RIA should be an integral part of that process.
- The Government of Barranquilla should provide momentum to its simplification initiatives by extending the transactional capacities of its web-based tools.
- The Government of Barranquilla should devote efforts and resources to improving enforcement and compliance levels with regulation.