

Steering regulatory agencies through their infancy

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consider the experience of Mexico's ASEA

The early days of the life of a regulatory agency are often seen as critical for its future standing and reputation. Statutory frameworks are being fought over, the role understandings are being developed, agency leaders are carefully selected to be in tune with the political zeitgeist, and staff with particular expertise are being recruited. There is consensus that these moments do matter for subsequent agency life. However, empirically we know rather little about how regulatory agencies develop their identity in their early infancy days.

In our research, we were allowed to investigate the early years of a new regulatory agency in the Mexican energy sector, the Agency for Industrial Safety and Environmental Protection (ASEA).¹ Our research suggests that ASEA succeeded in establishing itself as a professional and well regarded regulatory agency, both nationally and internationally. At the same time, however, the agency continued to face critical challenges in terms of structural and operational features, such as institutional and regulatory instrument design, inter-organizational coordination and internal capacity building. Taken together, the insights gleaned from the study of ASEA are important for those interested in the formative years of young institutions.

The background for the creation of this new agency was the Mexican Energy Reform of 2013. As part of a comprehensive reform programme under the presidency of Enrique Peña Nieto (2012–2018), the hydrocarbons and electricity markets were liberalized; the legal status and corporate governance of state-owned enterprises (Petróleos Mexicanos, PEMEX, and Comisión Federal de Electricidad, CFE) changed; and the regulatory framework was significantly transformed. Modifications to the regulatory landscape included the change in constitutional status of two existing regulatory agencies, the National Hydrocarbons Commission (Comisión Nacional de Hidrocarburos, CNH) and the Energy Regulatory Commission (Comisión Reguladora de Energía, CRE). These agencies' scope was expanded to include more markets and regulated entities. This jurisdictional expansion went hand in hand with considerable staff expansion.

Finally, these reforms also brought about the creation of a new regulatory agency: the Agency for Industrial Safety and Environmental Protection (ASEA). It was created to design and apply regulations and norms related to the industrial safety and environmental protection for all oil and gas-related activities. ASEA is internationally unique in its jurisdiction covering both industrial safety and environmental protection throughout the whole value chain of the oil and gas sector.

For ASEA this meant that it had to create a whole new strategy that covered both activities, each of which involve very different elements and risks (e.g. petrol stations in contrast to deep water exploration platforms). ASEA's current task is to identify and regulate risk activities. Its regulatory strategy demands protection of citizens and the environment, but also a profound understanding of potential benefits for and from the industry.

Two contrasting points of departure shaped ASEA's strategy. Environmental protection, in contrast to industrial safety, was in a more advanced state given international treaty commitments (especially the North American Free Trade Agreement, NAFTA). Despite the presence of regulatory standards with regard to the environment for over 20 years, these standards were developed by a highly fragmented set of regulatory bodies, at the regional and local level. For ASEA this presented the challenge of bringing together the existing norms and directives. In contrast, there was no formal industrial safety framework for oil and gas-related activities. Instead, the sector relied on self-regulation by the state-owned monopoly, Pemex. Private companies could only enter the market if they worked for Pemex.

The institutional landscape also represented a further challenge. ASEA was put under the remit of the Ministry of Environment (Secretaría de Medio Ambiente y Recursos Naturales, SEMARNAT) as a counterweight to energy sector actors within the government. It was established as a semi-autonomous agency. These two features are in clear contrast to the other two regulators, CNH and CRE, which by law have a ministerial status providing them with broader resources and a higher level of autonomy. ASEA's legal status not only constrains its margin for manoeuvre regarding day-to-day activities (e.g. hiring personnel or acquiring IT services), but also limits the agency's political status compared to its regulatory counterparts (CNH and CRE).

Regulatory instruments and strategies

Given this complex institutional setting, how, then did this young agency steer itself through its infancy? Apart from acquiring competencies to address technical issues and assess potential impacts on the industry, increased energy demand and new technologies encouraging the growth in shared energy infrastructure between Mexico and the United States (e.g. transboundary pipelines and related infrastructure), as well as a growth in energy trade (mainly in natural gas), created demand for harmonized regulatory frameworks.



ASEA's response to these challenges was to launch a strategy based on regulatory risk management. The emphasis in terms of approach was on management- and performance-based regulatory regimes so as to ensure, on the one hand, an adequate level of oversight to encourage safety, and, on the other hand, flexibility to encourage compliance by the highly diverse industry. In doing so, ASEA set aside existing prescriptive rules. During our research, this process of moving away from a prescriptive rules-based approach was still ongoing. The issuance of norms (Normas Oficiales Mexicanas, NOMs) remained rather prescriptive, as these norms indicated on a detailed micro level, the steps each firm needed to follow. At the same time, instruments such as directives proved to be more flexible and closer to the agency's ambition to focus on broader guidelines. One key example for the latter was the introduction of the so-called System for Safety and the Environment, designed by each regulated entity following only general procedures to establish goals, activities, and a monitoring system.

ASEA was further exposed to numerous wicked issues. One of them was fracking. ASEA's position towards fracking remained undecided, reflecting wider controversies about emissions, water usage and pollution, as well as about production techniques. Another issue was methane. While there is consensus about the contribution of methane to climate change, the regulation of methane is characterized by uncertainty. Identifying sources for methane emissions has proven highly complex. Only few countries have attempted to tackle methane through regulation. Despite this uncertainty, ASEA did adopt a highly ambitious target, namely mandating all natural gas-related companies to establish a certain baseline and to reduce methane emissions by 80 per cent by 2025.

Institutional capacities and constraints

ASEA devoted considerable attention to strengthening its regulatory capacities, especially in terms of staffing. This involved innovative recruitment efforts to attract recent graduates from different academic fields (economics, law, environmental sciences, for example). It also included recruitment of recently retired experts from the industry itself (especially from Pemex). The combination of young public servants and industry veterans proved highly successful, particularly in areas such as the implementation of regulatory inspections or the development of new regulatory standards. The acquisition of greater analytical capacity was further supported by extensive training and development activities. Organizational 'culture' related exercises suggested that ASEA was a desirable employer.

Nevertheless, ASEA, as with so many other regulators, faced significant challenges in terms of staff retention. In contrast to the other constitutionally autonomous agencies, ASEA's legal status meant that its salary levels and career progression plans were regulated by the federal public administration's civil service laws. This meant that ASEA faced a challenge to recruit and retain staff, not just vis-à-vis the regulated industry but also other regulators. The salary cuts that were instituted by the incoming presidential administration are likely to further accentuate this problem.

ASEA also paid considerable attention to inter-organizational coordination. Despite its constitutionally 'junior' status, ASEA succeeded in creating a joint coordination scheme in partnership with the two other agencies, CNH and CRE. Regular meetings were held to consider areas of potential under- and overlap and to exchange information. The joint working also extended to merging procedures and inspections. Indeed, the efforts of coordinating inter-agency activities received official praise from the OECD. Whether, however, these mechanisms will survive in the future is somewhat questionable. The presidential rotation brought with it a considerable amount of staff turnover. As coordination among agencies was largely about good personal relationships, there was the risk that these activities would receive less attention in view of the new leadership of the different agencies. In other words, institutional commitments to work together were highly dependent on the political commitment by the agencies and the Ministry of Environment.

Conclusion

What general lessons can we draw from research into the early years of ASEA? On the one hand, ASEA is a surprising success story. In a very short time, ASEA succeeded in positioning itself as a highly relevant and well regarded regulatory agency. On the other hand, the presidential turnover also revealed the weak institutional foundations of this success story. ASEA's institutional status, the complex world of highly prescriptive and broader principles-based regulation, and the need to maintain regulatory capacities proved highly challenging. Only time will tell whether ASEA's success during its infancy will give rise to successful adolescence, or whether the critical junctures of presidential transitions proved vital for determining the fate of this young agency.

¹ The research was enabled by ASEA's then Executive Director, Carlos de Regules. We put together a group of scholars from various Mexican and international institutions, to research ASEA's regulatory conditions, its progress and limitations, and we put together a book (available, in Spanish: <https://www.researchgate.net/publication/328964109> *ASEA Una nueva institucion del Estado mexicano*). The contributors to this volume are Ángel de la Vega (Universidad Nacional Autónoma de México, UNAM); José Alberto Hernández Ibarzábal (Australian National University); Juan Carlos Belausteguigoitia and Pedro Liedo (Instituto Tecnológico Autónomo de México, ITAM); Luis Everdy Mejía (Hertie School of Governance); Guillermo Morales and Anna Pietikainen (Organization for Economic Co-operation and Development, OECD); Martin Lodge (LSE); and María del Carmen Pardo, José Roldán Xopa, Ricardo Massa, Alberto Casas, and José Manuel Heredia (Centro de Investigación y Docencia Económicas, CIDE).

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