



# The Autonomy of National Regulatory Agencies: The Case of Osinerghmin

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# **1. The Autonomy of Regulatory Agencies: Definitions and Pillars**

# ■ ¿ What is regulation? ¿Why is it important?

- «A regulation may be defined as any instrument by which governments, their subsidiary bodies, and supranational bodies (such as the EU or the WTO) set requirements on citizens and businesses that have legal force» (*OECD*).
- Regulatory policy can be viewed, strategically (alongside fiscal and monetary policy) as one of the three core levers at the disposal of governments for managing the economy and society, implementing policy and influencing behavior.

## Importance of Economic Regulation

- Economic regulation has aimed to promote effective competition where this is possible, and to provide a proxy for competition, where it is not possible.
- It provides a stable and predictable environment to ensure long-term investment decisions.
- It requires flexibility to respond to changing circumstances and continue to be relevant and effective over time.

# Regulated Industries and Infrastructure

- Investment in regulated industries is vital to promote economic growth and boost competitiveness.
- Appropriate economic regulation is a critical factor to foster infrastructure investment.
- In developing economies, promoting investment is very important to close infrastructure gaps and ensure universal access to energy services.



# Peru: Infrastructure Gap 2012-2016

Infrastructure Gap 2012-2016  
(Million US\$)

	2012 – 2016
Education	8,637
Electricity	8,326
Roads	7,375
Sanitation	6,306
Ports	3,600
Others	5,191
<b>Total</b>	<b>39,435</b>

## ■ Target: Improving quality of regulation

- Overcoming Inefficiencies:
  - Lack of consistency
  - Reducing risk of litigation
  - Simplification
  - Comprehensible rules
- **Strengthening credibility of public authorities.**
- Increasing competitiveness.

## **Autonomy of Regulatory Agencies: Definition**

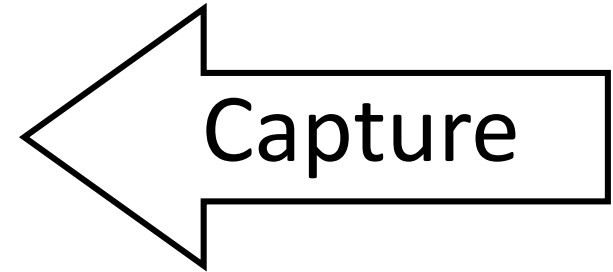
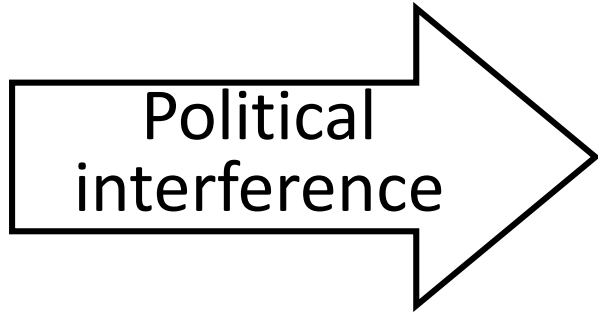
- Capacity of a regulatory agency to establish policies and actions for the interest of all economic agents.
- The decisions taken by these regulatory agencies must be morally correct, technically feasible and intellectually defensible.
- It involves a proper institutional design to avoid politicization and capture.
- Key: Strengthening autonomy of regulators in order to avoid the risks of capture and politicization.



# Why Autonomy is so important?

- Private investment in the energy sector is vulnerable to administrative expropriation due to :
  - Large amounts of sunk cost
  - Significant economies of scale and scope
  - Political rents = Voters.
- Temptation for political interference and risk of "capture" by the firms.
- Governments may be "opportunistic" and act in an "expropriation" manner, for example through reductions in regulated rates.
- It is necessary to ensure the "credibility" and "autonomy" through a proper institutional design: Institutional padlocks (e.g., contract law), autonomous, highly technical and independent regulatory agencies.

# ■ Pressure on Regulatory Agencies



## Political interference and Opportunism:

The expropriation of corporate profits by changing the rules.

Regulatory failure in creating the necessary credibility to promote investment in the energy and mining industries.

**The Autonomy, Independence and the Technical Specialization of the R.A. limit both pressures**

## Favoritism or capture of the regulation:

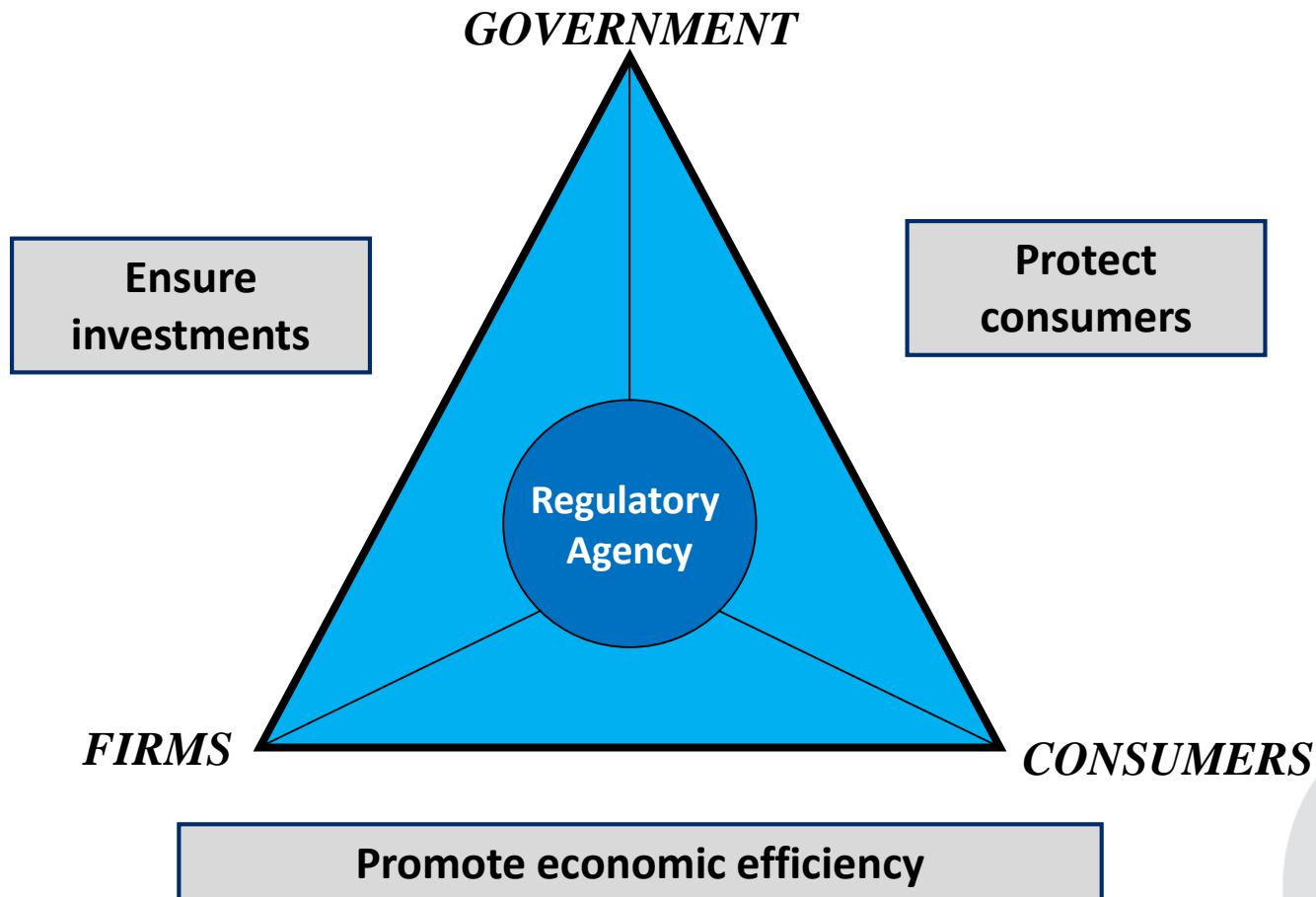
The use of coercive State power through regulation by stakeholders (corruption).

Failure of regulation in controlling natural monopolies.

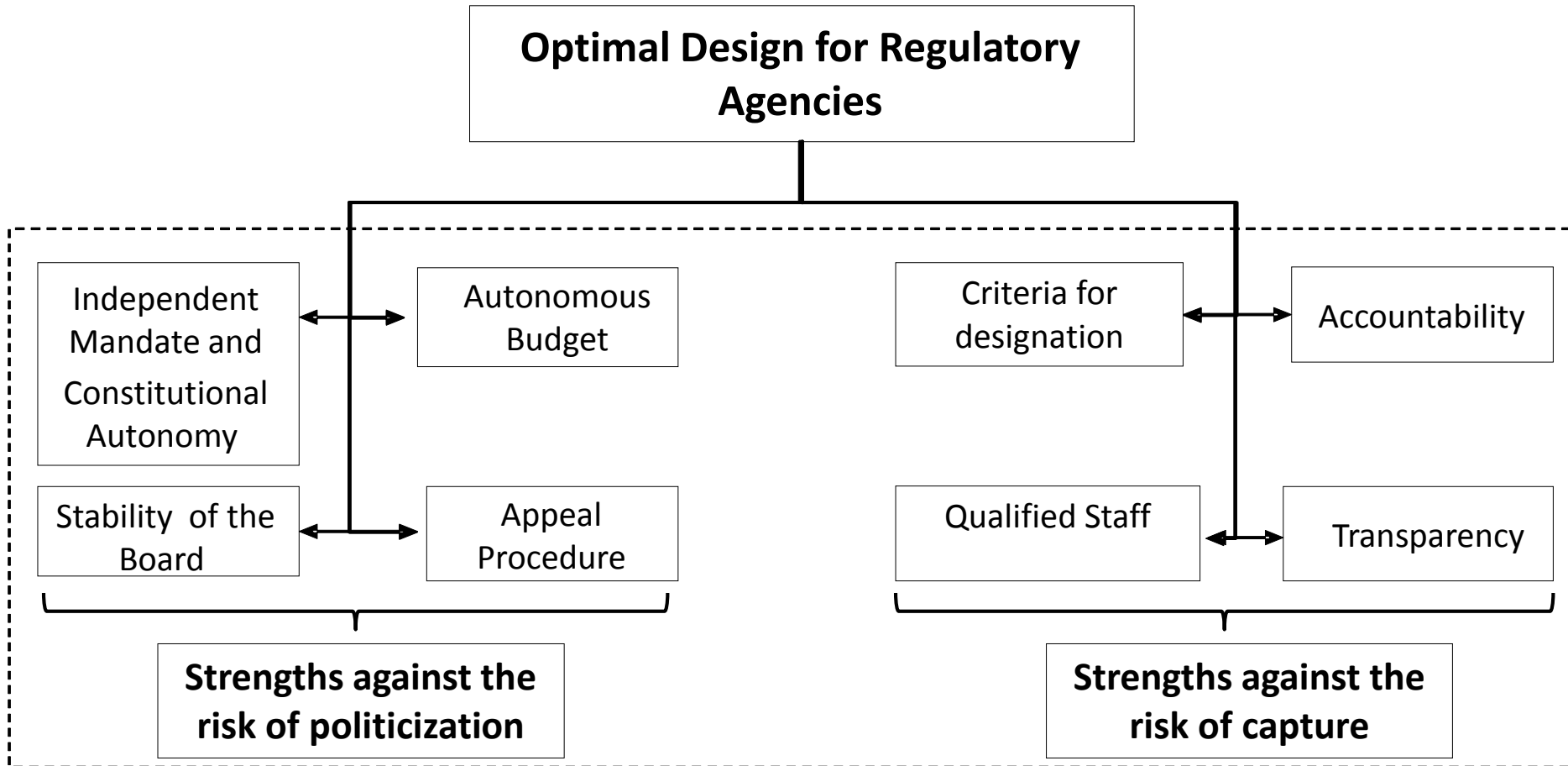


# Regulatory Agency position in Economic Activity

## Stakeholders and objectives of the regulatory activity



# Optimal Institutional Regulation Design



Source: Laffont y Tirole (1993), Levy y Spiller (1995).

## Pillars of the Autonomy

- a) **Independent Mandate**, clear objectives and responsibilities of the regulator, independence of political power, delimitation of normative and regulatory functions by law.
- b) **Stability of the Board**, staggered election of directors, for fixed periods and clearly defined causes of removal.
- c) **Autonomy Budget**, stable budgets, financed through contributions from regulated companies. It will allow that RA have the resources to develop their activities efficiently.
- d) **Appeal Procedure**, independent mechanisms for reconsideration and appeals of decisions, with plural instances, qualified and independent.

## Pillars of the Autonomy

- e) **Criteria for designation:** Board members from various professions related to the RA functions, with high technical qualifications and political management.
- f) **Accountability:** Publication of reports, decisions and procedures. Board's decisions justified in the regulatory framework.
- g) **Qualified Staff:** Incentives to attract and retain qualified staff with experience, integrity and probity.
- h) **Transparency:** Regulatory proposals presented in public hearings for discussion with stakeholders.



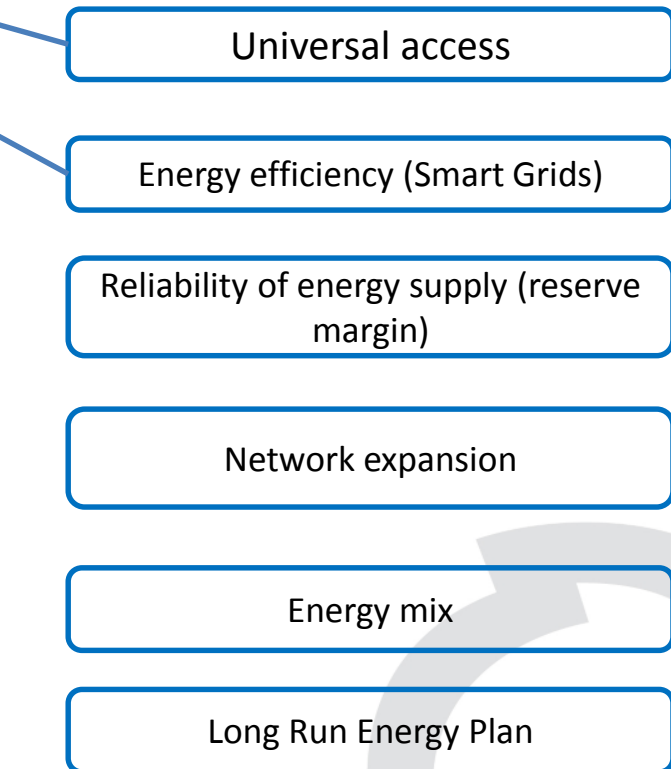
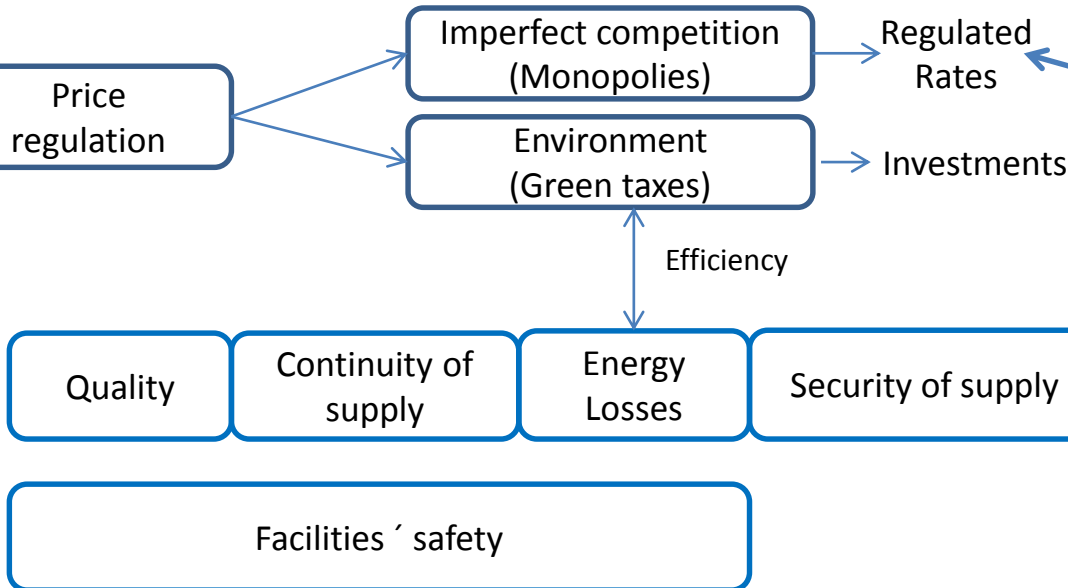
## **2. Autonomy in Osinergmin**



# Energy and Mining Sector Institutions Competence

**Regulatory Agency: Mining and energy policy in the areas of its specific competence**

**Ministry: Planner and designer of the Energy and Mining policy**





# Osinegmin: Scope of Regulatory actions



	Liquid Hydrocarbons	Natural Gas	Electricity	Mining
Tariff setting		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Standars setting	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Control and Supervision	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
User Claims		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Dispute settlement	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Concession contracts' review	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	

# Pillars of Autonomy and Osinergmin practices

## Strengths against the risk of politicization

### Independent Mandate

- The Framework Law on Private Investment Regulatory Agencies in Public Services (Law No. 27332) enacted in 2000, defined its scope, nature and functions.
- Osinergmin is a public agency, under the Presidency of the Council of Ministers. **It has administrative, functional, technical, economic and financial autonomy.**

### Stability of the Board

- Staggered election of directors (annual renewal of each board member).
- Fixed periods (5 years).
- Clearly defined causes for removal .

### Autonomous Budget

- Budget financed through contributions from regulated companies.

### Appeal Procedure

- Regulatory Procedures ( ISO 9001 certification): Firms Proposals-Regulation Draft- Comments-Final Decision. All documents have public access (except those classified as confidential).
- Mechanisms for reconsideration and appeal of decisions.

# Pillars of Autonomy and Osinermin practices

## Strengths against the risk of capture

### Criteria for designation

- Board members of various professions (engineers, economists and lawyers).
- Election of board members through public tender.
- Prohibitions on conflicts of interest (economic interests in the regulated industry).

### Accountability

- Publication of Regulatory Procedures (i.e. Tariff, Supervision).
- Publication of investigation reports.
- Interaction with the Academia.
- Issue of Periodic Bulletins.

### Qualified Staff

- Private employment scheme.
- Strategic Recruitment and Training (Curso de Extensión).

### Transparency

- Law No. 27838 : Guidelines to ensure regulatory process transparency in all Utility Regulators.
- Fair and public hearings in all regulatory procedures.
- In order to promote transparency, all regulatory procedures are published through Osinermin's website.



# 3. Challenges



**EJECUTIVE POWER**



**Constitutionally autonomous bodies**

- **Central Reserve Bank of Peru**

- Regulation of Price Level (Inflation, Exchange Rates)
- Operational Supervision of Monetary Aggregates and Exchange Market

- **Superintendence of Banking and Insurance**

- Supervision and Monitoring of Financial Institutions (Financial Risk Control, Equity, Credits, etc.)

*Macroeconomic and Financial Regulators (constitutional autonomy)*

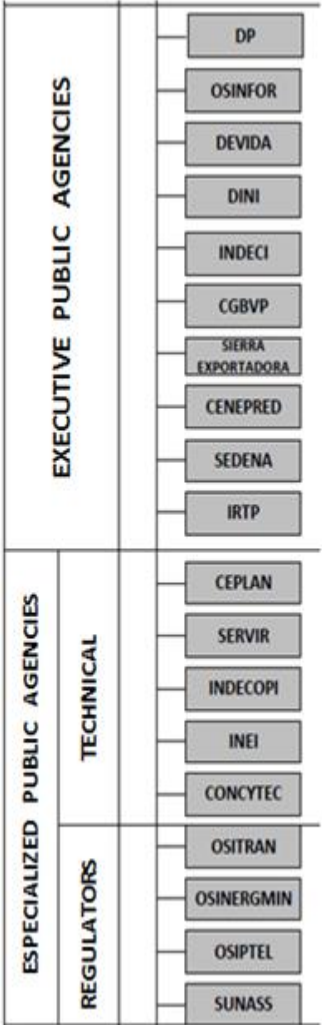
• Both types of regulators perform similar functions; they however have different levels of autonomy and independence.

*Greater autonomy → Greater Efficiency and Effectiveness of Regulatory Management*

*Market Regulator Energy and Mining*

- **Osinergmin**

- Regulation of Energy Tariffs
- Enterprise oversight on technical aspects and industrial safety
- Users Complaints
- Dispute Resolution
- Legislations
- Opinion to concession contracts and Public-Private Partnerships (APPs)



## Challenges to strengthen the autonomy

- Strengthening the role of Osinergmin as an enforcer of energy policy: independent, autonomous, highly technical regulatory agency, shielded against political interference and capture (OECD guidelines).
- Minimum intervention from the Executive Branch (only final choice of Board Chairman after a public tender process), but maintaining the constitutional control to limit regulatory discretion (Comptroller General and judiciary authorities).
- Energy Regulators hold similar importance as central banks and financial regulators; their autonomy should be recognized in the constitution of the country.
- Maintaining a stable and transparent legal and regulatory framework to promote the predictability of regulatory policy and encourage investment.



**Thank you very much!**

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