

# CASE INFORMATION SHEET

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## COLOMBIA: Regulation of Public Utilities – Organisation, Information, and Transparency

An efficient and functioning infrastructure system is not only one of the key elements for sustainable economic development, it is fundamental to people's daily life. The water sector in particular has specific technical and economical characteristics and is embedded in a sensitive social and political environment. Therefore, it requires a strong regulatory system. Yet, even when good regulatory systems are in place, corrupt practices often undermine the effective operation of these institutions. Narrow-minded interest groups may aim at capturing regulatory processes, either ex ante to influence the design of regulations, or ex post, when regulations are already implemented. Water integrity thus becomes a safeguard for accomplishing efficient delivery of public services. To counter these problems, Colombia has implemented a number of policies, which promote transparency and participation in the water sector. This Water Integrity Case Information Sheet (WICIS) addresses the efforts and challenges of the Colombian regulatory system.

### Corruption Problems and Prevention

Even though, Colombia has an *independent regulatory commission* for the public service sectors (water, energy, gas, and telecommunications), the commissioned experts do not always offer the required independence necessary for this job. For instance, some of the expert's lack professional qualifications. All experts are placed for a fixed four year period. This sometimes generates problems, because it poses difficulties to remove officials who have succumbed to private interests. Moreover, in the case of Colombia, the requirements for the expert position are established by the regulator itself. This provides the possibility of changing the requirements at any time and circumstance

Another problem encountered by regulators is that of '*tailored information*'. When asked for data, firms usually tend to 'tailor' the information provided according to their interests. For example, depending on the issue of the information request, a regulated firm may declare higher or lower costs. To counter this problem, Colombia implemented the so-called 'Unique System of Information' (see next page).

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### Further Information

Boehm, Frédéric (2007): *Corruption and Capture in Public Service Sector Reforms*. Berlin: WiKu Verlag

Sistema Único de Información (SUI)  
www.sui.gov.co

Constitución Política de la República de Colombia de 1991 (with reforms of 1997)

Ley 80 de 1993, Ley 142 de 1994, Ley 190 de 1995 de Colombia

Stapper Buitrago, C.; Osorio Rocio, A. (2005): *La independencia del regulador desde el enfoque del análisis económico del derecho*. In: "Derecho de Aguas", Universidad Externado de Colombia, Bogotá

### Example: The Problem With Contract-Based Professionals and Consultants

The regulatory agency employs many contract-based professionals working on a contractual basis for a given time or project. Whereas public officials are not allowed to work for the private sector for a one-year period after they have left office to ensure independence, this is not the case with contract-based professionals. They may switch from the regulator to the regulated industry and vice-versa without time constraints. The potential problem is significant, as civil service employees belonging to the ministry (including secretaries, drivers etc.) is relatively small in relation to the high number of external experts. For example, in 2006 the water regulator (CRA) employed 52 staff employees and 22 contract-based professionals/staff. In 2008, CRA has increased its share of contract-based professionals to a relation of 43/45. To deal with the rising number of external experts temporarily working in the water sector, the experts could be

bound to sign a comparable obligation as civil servants when entering the contract. However, it is likely that without flexibility to switch from the public to the private sector, freelance experts may not find contracts with the regulator very attractive. Therefore, it should be envisaged to provide the regulator with adequate staffing and to contract external experts only when really necessary.

## Anti-Corruption Strategies of the Colombian Regulator

### The Unique System of Information (SUI)

Information regarding laws and regulations, names of experts, and administrative processes has to be made public by all regulatory commissions. Information is published on the internet, but can also be emailed to interested persons.

The water regulator (CRA) provides public participation in all regulatory decisions. All proposals concerning regulatory issues have to be made public in advance in order to permit the articulation of concerns, questions and commentaries by anyone interested in doing so. These are most often regulated firms and users. The water regulator collects, sorts and analyses each entry, and is required to comment on each input within a given period.

### Other Legal Provisions

Participation in regulatory decision-making processes by any person who has ties to the regulated industry is prohibited (Law 142, Art 44.1). Former employees of the regulated firms are disqualified from working for the regulator for a period of one year after having terminated their work for the firms. Kinship with employees from a regulated firm is a disqualification to work for the regulator (Law 142, Art 44.2). Bribes and other forms of corrupt behaviour are ruled in law 190 (1995). Such illicit behaviour is subject to penal law (codigo penal). Sanctions include prison up to 8 years, monetary fines and exclusion from public offices up to 8 years. It has become an informal rule that the regulator to never be alone during contacts with managers from regulated firms.

## Lessons Learned

The **SUI** system to foster participation of the general public is an interesting step forward towards transparency of the water regulator. It enables the high number of informal providers in the sector to comment and call attention to their particular problems, which often remain unknown. Yet, it remains questionable whether the system allows real 'participation' for users, or just 'consultation'. The former requires that user groups (and other stakeholders) are officially included in the regulatory decision-making process. This presupposes, amongst others, the provision of open meetings between regulators and regulated firms and, above all, full access to all relevant information.

There are not enough civil society groups that have sufficient power to balance the interests of the regulated firms and participate in the **SUI**. For example, individual citizens participating in the meetings to discuss regulatory projects are rarely the same. This shows that there need to be more groups who represent the various users' voices and make them heard effectively in the participation process.